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**To:** [Hamre, John G.](#)  
**Subject:** Filing Accepted for Case: 08-2018-CV-02937; Environmental Law and Policy Center, et al. vs. North Dakota Public Service Commission, et al.; Envelope Number: 3293199  
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## Filing Accepted

Envelope Number: 3293199

Case Number: 08-2018-CV-02937

Case Style: Environmental Law and  
Policy Center, et al. vs. North Dakota  
Public Service Commission, et al.



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Filing Details	
<b>Court</b>	Burleigh County - South Central District
<b>Case Number</b>	08-2018-CV-02937
<b>Case Style</b>	Environmental Law and Policy Center, et al. vs. North Dakota Public Service Commission, et al.
<b>Date/Time Submitted</b>	1/31/2019 6:34 PM CST
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<b>Filing Description</b>	CR Exhibit 25 Record Addition 10 response
<b>Activity Requested</b>	EFileAndServe
<b>Filed By</b>	John Hamre
<b>Filing Attorney</b>	Illona Jeffcoat-Sacco

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08-2018-CV-02937

**Fredrikson**  
& BYRON, P.A.

March 24, 2017

**VIA EMAIL & U.S. MAIL**

Patrick Fahn  
Director, Public Utilities Division  
Public Service Commission  
State of North Dakota  
600 East Boulevard, Dept. 408  
Bismarck, North Dakota 58505-0480



Re: Meridian Energy Group, Inc. – Davis Refinery

Dear Mr. Fahn:

I am writing in response to your letter of March 1, 2017. In your letter, you indicate that it appears that the proposed construction of the Davis Refinery in Billings County, North Dakota (the “Refinery”) by Meridian Energy Group, Inc. (“Meridian”) falls under the jurisdiction of North Dakota’s Energy Conversion and Transmission Facility Siting Act. You further indicate that this appearance is based on the fact that Meridian has filed applications with the State Water Commission and the North Dakota Department of Health based on a facility capable of refining 55,000 barrels of oil per day. Although some of the permitting documents allow for a facility of that size, the current facility design is not capable of refining 55,000 barrels of oil per day and there are no current plans to build such a facility.

As indicated in my letter of July 20, 2016, Meridian’s current plans for construction of the Refinery contemplate a facility capable of refining up to 27,500 barrels of oil per day. N.D.C.C. § 49-22-07 requires an entity to obtain a certificate of site compatibility before the entity may begin construction of an “energy conversion facility.” N.D.C.C. § 49-22-03 defines an “energy conversion facility” as a “plant, addition, or combination of plant and addition, designed for or capable of . . . [m]anufacture or refinement of fifty thousand barrels . . . or more of liquid hydrocarbon products per day.” Because the Refinery is not designed for or capable of refining more than 27,500 barrels of oil per day, Meridian maintains its position that it is not required to obtain a certificate of site compatibility at this time.

As noted in your letter, Meridian has filed applications with other agencies based on a Refinery capable of refining up to 55,000 barrels of oil per day. Though Meridian does not presently have any designs or plans to propose a Refinery with capacity beyond 27,500 barrels of

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Response to 1 March 2017 letter re inquiry on jurisdictional determination  
Meridian Energy Group, Inc.  
Lawrence Bender, Fredrikson&Byron, P.A.

March 24, 2017

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oil per day, Meridian considers it a possibility that such addition could be made at a later date, and that after such addition the Refinery could be capable of refining more than 50,000 barrels of oil per day. I specifically noted this possibility in my letter of July 20, 2016. Meridian chose to account for this possibility of addition to the Refinery in its applications to the North Dakota Department of Health and the State Water Commission so that expansion at some future date might be possible. It was not a reflection on current capability or plans.

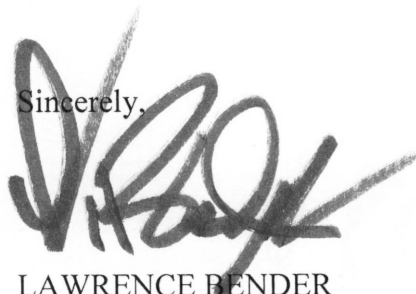
Applications for permits to construct an air contaminant source under Chapter 33-15-14 of the North Dakota Administrative Code specifically contemplate the identification of "alternative operating scenarios" as part of a permit application. *See, e.g.*, N.D.A.C. § 33-15-14-02(3)(b)(2)(c). To this end, Meridian was directed by Health Department personnel to use the 55,000 barrel-per-day capacity estimate in its application under Chapter 33-15-14, despite its immediate plans to only construct a 27,500 barrel-per-day facility. This is explained in Section 4.20 of Meridian's application, in which Meridian detailed its "Phase 1" plan to construct a hydroskimming refinery capable of processing 27,500 barrels of oil per day. The application went on to state, "[a]dditional distillation, hydrotreatment and conversion units will be added during subsequent construction in order to increase the crude feedstock processing capacity to 55,000 BPD to augment the gasoline and middle distillates yields and reduce fuel oil production." Furthermore, applications to different state agencies concerning the same energy conversion facility need not be identical. *See* N.D. Op. Atty. Gen. 76-130 (Apr. 29, 1976). Meridian therefore does not believe that its applications to the State Water Commission and the North Dakota Department of Health in connection with the Refinery triggers Meridian to obtain a certificate of site compatibility from the Commission.

Finally, N.D.C.C. ch. 49-22 does not provide that the Commission's jurisdiction is dependent upon possible future additions to a given facility. Section 49-22-07 provides that a utility "may not begin construction of an energy conversion facility . . . in the state without first having obtained a certificate of site compatibility." Thus until Meridian plans to "begin construction" of any addition to the Refinery that would trigger the Commission's jurisdiction, Meridian is not required to obtain a certificate of site compatibility. Also, Chapter 69-06-02.1 of the North Dakota Administrative Code permits a utility to request a determination as to whether a planned facility is within the Commission's jurisdiction. For purposes of such a determination, the requesting utility is not required to identify or describe any possible future additions to its facility. N.D.A.C. § 69-06-02.1-02. For this further reason, Meridian does not believe that the possibility of future addition to the Refinery requires it to obtain a certificate of site compatibility at this time. If and when the decision is made to move forward with an addition to the Refinery, Meridian will immediately seek a siting permit from the PSC.

If you should have any further questions regarding Meridian's proposed construction of the Refinery and its decision not to seek a certificate of site compatibility, please advise.

March 24, 2017  
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Sincerely,

A handwritten signature in black ink, appearing to read 'L. Bender', with a large, stylized flourish extending from the end of the signature.

LAWRENCE BENDER

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