

# STATE OF COLORADO

Bill Ritter, Jr., Governor  
James B. Martin, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department  
of Public Health  
and Environment

April 13, 2009

Mr. Robert R. Gabriel, Deputy General Manager  
Meridian Metropolitan District  
12111 E. Belford Ave.  
Englewood, CO 80112

Certified Mail Number: 7007 0220 0001 0160 6129

**RE: Order for Civil Penalty, Number: MP-090413-1**

Dear Mr. Gabriel:

Meridian Metropolitan District is hereby served with the enclosed Order for Civil Penalty ("Penalty Order"). This Penalty Order is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by §25-8-608(2) of the *Colorado* Revised Statutes. Payment of the imposed civil penalty should be made in accordance with the methods referenced in the Penalty Order and [Compliance Order on Consent Number: MC-090213-3].

If you have any questions regarding the Penalty Order or the payment method, please do not hesitate to contact Ginny Torrez of this office at (303) 692-3612 or by electronic mail at [gabby.torrez@state.co.us](mailto:gabby.torrez@state.co.us).

Sincerely,

Kristi-Raye Beaudin, Legal Assistant  
Compliance Assurance and Data Management Section  
WATER QUALITY CONTROL DIVISION

cc: Tri-County Health Department  
MS-3 File

ec: Aaron Urdiales, EPA Region VIII  
Bret Icenogle, Engineering Section, CDPHE  
Gary Beers, Permits Unit, CDPHE  
Dick Parachini, Watershed Program, CDPHE  
Carolyn Schachterle, OPA

Enclosure(s)



**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**  
**DIVISION OF ADMINISTRATION**  
**WATER QUALITY CONTROL DIVISION**

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**ORDER FOR CIVIL PENALTY**

**Number: MP-090413-1**

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**IN THE MATTER OF: MERIDIAN METROPOLITAN DISTRICT**  
**CDPS PERMIT NO. CO-0039110**  
**DOUGLAS COUNTY, COLORADO**

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This matter having come to my attention as the Designee of the Executive Director of the Colorado Department of Public Health and Environment upon petition for imposition of a civil penalty by the Water Quality Control Division's Compliance Assurance Section and pursuant to §25-8-608 C.R.S, I hereby impose a civil penalty in the amount of Twelve Thousand One Hundred Ninety Six Dollars (\$12,196.00) against the Meridian Metropolitan District for the violations cited in the February 12, 2009 Compliance Order on Consent (Number: MC-090213-3). A copy of the Compliance Order on Consent is attached hereto as Exhibit A and is incorporated herein by reference.

The Water Quality Control Division's Compliance Assurance Section has acknowledged receipt of a cashier's check, No. 70164, made out to the Colorado Department of Public Health and Environment, Water Quality Control Division, in the amount of Twelve Thousand One Hundred Ninety Six Dollars (\$12,196.00) constituting full payment of this penalty.

Dated this 13<sup>th</sup> day of April, 2009.

  
\_\_\_\_\_  
Steven H. Gunderson, Director  
Water Quality Control Division  
DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT  
WATER QUALITY CONTROL DIVISION**

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**COMPLIANCE ORDER ON CONSENT**

**NUMBER: MC-090213-3**

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**IN THE MATTER OF:      MERIDIAN METROPOLITAN DISTRICT  
                                 CDPS PERMIT NO. CO-0039110  
                                 DOUGLAS COUNTY, COLORADO**

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The Colorado Department of Public Health and Environment ("Department"), through the Water Quality Control Division ("Division"), issues this Compliance Order on Consent ("Consent Order"), pursuant to the Division's authority under §25-8-605, C.R.S. of the Colorado Water Quality Control Act ("the Act") §§ 25-8-101 to 703, C.R.S., and its implementing regulations, with the express consent of the Meridian Metropolitan District ("Meridian"). The Division and Meridian may be referred to collectively as "the Parties."

**STATEMENT OF PURPOSE**

1. The mutual objectives of the Parties in entering into this Consent Order are to resolve, without litigation, the alleged violations cited herein by the Division and the associated civil penalties.

**DIVISION'S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS**

2. Based upon the Division's investigation into and review of the compliance issues identified herein, and in accordance with §25-8-602 and 605, C.R.S., the Division has made the following determinations regarding Meridian, the Facility and Meridian's compliance with the Act and its implementing regulations.
3. At all times relevant to the violations cited herein, Meridian was a "Special District" formed pursuant to §§32-1-101 to 32-1-1702 C.R.S. in Douglas County, Colorado.
4. Meridian is a "person" as defined by §25-8-103(13), C.R.S.
5. Pursuant to §25-8-702(1) C.R.S., no person shall commence the construction of any domestic wastewater treatment works or the enlargement of the capacity of an existing domestic wastewater treatment works, unless the site location and the design for the construction or expansion have been approved by the Division.

6. In Section §25-8-701(1) C.R.S., “construction” is defined as entering into a contract for the erection or physical placement of materials, equipment, piping, earthwork, or buildings which are to be a part of a domestic wastewater treatment works.

**Commencement of Construction Prior to Obtaining Site Location Approval and Design Approval**

7. On May 25, 2007, the Division received an Application for Site Location Approval for Expansion of an Existing Domestic Wastewater Treatment Works from Meridian (the “Application”). The Application was for the expansion of the Facility’s hydraulic and organic maximum 30-day average capacities from 1.25 MGD to 1.50 MGD and 1,734 lbs./day to 6,225 lbs./day, respectively.
8. The Division issued a letter dated July 3, 2007 to Meridian identifying a number of questions and issues regarding the Application which needed to be addressed by Meridian before the Division could approve the Application.
9. On September 26, 2007, Meridian executed an Agreement and Formal Contract with Jennison Construction Company for the construction of the Facility expansion and other activities at the site (the “Contract”). A Notice to Proceed was executed by Meridian on September 30, 2007.
10. By entering into a contract with Jennison Construction Company for construction of the Facility expansion, Meridian effectively commenced construction of the expansion of the Facility on September 26, 2007.
11. At the time Meridian executed the contract with Jennison Construction Company, it had not yet responded to the Division’s July 3, 2007 letter regarding the Application. Meridian’s response to the Division’s July 3, 2007 letter is dated September 28, 2007.
12. Subsequent Division letters requesting information from Meridian to enable the Division to approve the Application are dated October 3, 2007, November 13, 2007, and December 20, 2007. Corresponding responses from Meridian are dated October 19, 2007, December 5, 2007, and February 1, 2008.
13. Via letter dated March 3, 2008, the Division issued Site Application Approval No. 4974 for expansion of Meridian’s Facility. This letter advised Meridian that the design (construction plans and specifications) for the treatment works must be approved by the Division prior to commencement of construction.
14. On March 17, 2008, a representative of the Division performed a site visit to Meridian’s wastewater treatment facility. During the site visit, the Division’s representative observed and photographically documented that work related to the Facility expansion was underway. Specifically, construction crews were observed to be working on the foundation of the headworks building, on the earthwork for aeration basins no. 1 and no. 2, and on the secondary clarifier structure. The foundation of the headworks building appeared complete to the floor subgrade and the concrete secondary clarifier walls were approximately seventy-five (75) percent complete.
15. Division records establish that Meridian had not received design approval for the construction of the Facility expansion observed by the Division’s representative on March 17, 2008.

16. By entering into a contract with Jennison Construction Company for construction of the Facility expansion, Meridian effectively commenced construction of the Facility expansion on September 26, 2007.
17. Meridian's failure to obtain site application approval and design approval from the Division prior to commencing Facility expansion is a violation of Section 25-8-702(1), C.R.S., which states in part "No person shall commence the construction of any domestic wastewater treatment works or the enlargement of the capacity of an existing domestic wastewater treatment works, unless the site location and the design for the construction or expansion have been approved by the division."
18. On May 9, 2008 the Division issued a Notice of Violation / Cease and Desist Order citing Meridian with violation of Section 25-8-702(1), C.R.S.
19. The Division acknowledges that Meridian satisfactorily performed all of the obligations and actions required under the May 9, 2008, Notice of Violation / Cease and Desist Order.
20. The Division is unaware of any other pending issues with Meridian pertaining to the purported failure to obtain site location and/or design approval, which were not set forth in the May 9, 2008 Notice of Violation/Cease and Desist Order.

#### **ORDER AND AGREEMENT**

21. Based on the foregoing factual and legal determinations, pursuant to its authority under §25-8-602 and 605, C.R.S., and in satisfaction of the civil penalties associated with the alleged violations cited herein and in the Notice of Violation / Cease and Desist Order / Clean-up Order (Number: MO-080509-1), the Division orders Meridian to comply with all provisions of this Consent Order, including all requirements set forth below.
22. Meridian agrees to the terms and conditions of this Consent Order. Meridian agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§ 25-8-602 and 605, C.R.S., and is an enforceable requirement of the Act. Meridian also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Meridian against the Division:
  - a. The issuance of this Consent Order;
  - b. The factual and legal determinations made by the Division herein; and
  - c. The Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.
23. Notwithstanding the above, Meridian does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Meridian pursuant to this Consent Order shall not constitute evidence of fault by Meridian with respect to the conditions of the Facility. It shall also not constitute an admission of failure to timely obtain site application approval and/or design approval, or that construction commenced prior to such approval.

### CIVIL PENALTY

24. Based upon the application of the Division's Civil Penalty Policy (May 1, 1993), and consistent with Departmental policies for violations of the Act, Meridian shall pay Twelve Thousand One Hundred Ninety Six Dollar (\$12,196.00) in civil penalties. The Division intends to petition the Executive Director, or his designee, to impose the Twelve Thousand One Hundred Ninety Six Dollar (\$12,196.00) civil penalty for the above violation(s) and Meridian agrees to make the payment at the time of delivery to the Division of an executed copy of this Consent Order. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

Ginny Torrez  
Colorado Department of Public Health and Environment  
Water Quality Control Division  
Mail Code: WQCD-CADM-B2  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

### SCOPE AND EFFECT OF CONSENT ORDER

25. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the violations cited herein and a full and final settlement of the civil penalties associated with the violations alleged herein and in the May 9, 2008 Notice of Violation / Cease and Desist Order (Number: MO-080509-1).
26. This Consent Order is subject to the Division's "Public Notification of Administrative Enforcement Actions Policy," which includes a thirty-day public comment period. The Division and Meridian each reserve the right to withdraw consent to this Consent Order if comments received during the thirty-day period result in any proposed modification to the Consent Order. In the event consent is withdrawn by the Division, the payment made by Meridian will be returned within thirty (30) days.
27. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or his designee imposes the civil penalty following the public comment period.
28. Notwithstanding paragraph 23 above, the violations described in this Consent Order will constitute part of Meridian's compliance history for purposes where such history is relevant. This includes considering the violations described above in assessing a penalty for any subsequent violations against Meridian. Meridian agrees not to challenge the use of the cited violations for any such purpose.

### LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

29. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to the specific instances of violations cited herein and with respect to civil penalties for the specific instances of violations cited herein and in the May 9, 2008 Notice of Violation / Cease and Desist Order (Number: MO-080509-1).

30. This consent Order does not grant any release of liability for any violations not specifically cited herein.
31. Nothing in this Consent Order shall preclude the Division from imposing additional requirements in the event that new information is discovered that indicates such requirements are necessary to protect human health or the environment.
32. Upon the effective date of this Consent Order, Meridian releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims arising from, or relating to, the violations of the Act specifically addressed herein.
33. Meridian shall not seek to hold the State of Colorado or its employees, agents or representatives liable for any injuries or damages to persons or property resulting from acts or omissions of Meridian, or those acting for or on behalf of Meridian, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. Meridian shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by Meridian in carrying out activities pursuant to this Consent Order. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, or Meridian, its employees, agents or representatives.

#### NOTICES

34. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division:

Colorado Department of Public Health and Environment  
Water Quality Control Division / WQCD-CADM-B2  
Attention: Ginny Torrez  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530  
Telephone: 303.692.3612  
E-mail: [gabby.torrez@state.co.us](mailto:gabby.torrez@state.co.us)

For Meridian:

Mr. Robert R. Gabriel, Deputy General Manager  
Meridian Metropolitan District  
12111 E. Belford Avenue  
Englewood, CO 80112  
Telephone: 303-790-0345  
E-mail: [randy.gabriel@sheaproperties.com](mailto:randy.gabriel@sheaproperties.com)

**MODIFICATIONS**

35. This Consent Order may be modified only upon mutual written agreement of the Parties.

**NOTICE OF EFFECTIVE DATE**

36. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or his designee imposes the civil penalty. If the penalty as described in this Consent Order is not imposed, or an alternate penalty is imposed, this Consent Order becomes null and void.

**BINDING EFFECT AND AUTHORIZATION TO SIGN**

37. This Consent Order is binding upon Meridian and its elected officials, employees, agents, representatives, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

**FOR THE MERIDIAN METROPOLITAN DISTRICT:**

  
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Date: 2.2.2009  
Doug Scott, General Manager

**FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, WATER QUALITY CONTROL DIVISION:**

  
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Date: 2/12/09  
Lori M. Gerzina, Section Manager  
Compliance Assurance and Data Management Section  
WATER QUALITY CONTROL DIVISION