

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
PATRICK W. RICE, Acting Director,)
NEBRASKA DEPARTMENT OF)
ENVIRONMENTAL QUALITY,)

Case No. CJ14-911 *m*

Plaintiff,)

COMPLAINT

v.)

PARK VISTA COMMERCE CENTER)
ASSN.,)

Defendant.)

LANCASTER COUNTY
2014 MAR 17 PM 4 05
CLERK OF THE
DISTRICT COURT

COMES NOW Patrick W. Rice, Acting Director of the Department of Environmental Quality, who institutes this action through Jon C. Bruning, Attorney General, on behalf of the State of Nebraska, and alleges as follows:

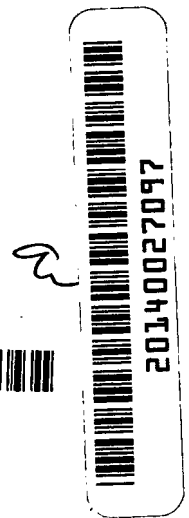
FIRST CLAIM

1. The Plaintiff, the Nebraska Department of Environmental Quality ("NDEQ"), is at all times material herein the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504 (Reissue 2008) to administer and enforce the Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 2008) and all rules, regulations, and permits issued thereunder.

2. The Defendant, Park Vista Commerce Center Association, is a non-profit corporation organized under the laws of the State of Nebraska and operating in Lancaster County, Nebraska. At all times material herein, the Defendant owned and operated a commerce park in Lancaster County, Nebraska, which includes a system for wastewater collection and a non-discharge lagoon treatment system.



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3. Neb. Rev. Stat. § 81-1506 (1) (Reissue 2008) is in effect at all times material herein and states that it is unlawful for any person to “(a) cause pollution of any air, waters, or land of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution to any air, waters, or land of the state...”

4. Neb. Rev. Stat. § 81-1508.02 (1) (b) (Reissue 2008) is in effect at all times material herein and states that it is unlawful to violate any regulations promulgated under the Environmental Protection Act.

5. Pursuant to Neb. Rev. Stat. § 81-1505 (Reissue 2008, Cum. Supp. 2012), the Nebraska Environmental Quality Council adopted the *Rules And Regulations Pertaining To The Issuance Of Permits Under The National Pollutant Discharge Elimination System*, promulgated at Title 119 of the Nebraska Administrative Code, which is in effect at all times material herein.

6. 119 Neb. Admin. Code, Ch. 2, § 001 states: “No person shall discharge any pollutant into any waters of the state from a point source without first having obtained a permit from the [NDEQ] for such discharge”

7. On or about March 22, 2010, the Defendant discharged from its wastewater lagoon to a culvert near Highway 77, a water of the state. At no time has the Defendant possessed or sought a permit for the discharge.

8. Pursuant to Neb. Rev. Stat. § 81-1508.02 (Reissue 2008), a civil penalty not to exceed ten thousand dollars (\$10,000.00) per day per violation is provided in cases of violation of the Environmental Protection Act and any rules or regulations adopted and promulgated pursuant to such Act.

SECOND CLAIM

9. The Plaintiff hereby incorporates by reference the allegations contained in its First Claim.

10. Neb. Rev. Stat. § 81-1508.02 (Reissue 2008) is in effect at all times material herein and provides that it is unlawful for any person to “(b) violate... any order of the director.”

11. On December 23, 2010, the Plaintiff and Defendant entered into a Consent Order. Paragraph 7 of the Consent Order provided as follows:

- a. On or before January 1, 2011, Respondent shall employ a certified Direct Responsible Charge (DRC) operator at the Class L level or higher to operate the wastewater treatment facility in accordance with Nebraska Administrative Code Title 197, *Rules And Regulations For Certification Of Wastewater Treatment Operators In Nebraska*.
- b. On or before March 1, 2011, the Respondent shall submit to NDEQ a facility evaluation, including a water balance evaluation. The Department must approve the scope and methodology of the evaluation prior to execution by a qualified professional engineer.
- c. The Department shall examine and interpret the results of the evaluation in order to prescribe the proper remedial action. If the Department finds that the wastewater treatment facility is inadequate, Respondent shall submit to NDEQ on or before May 1, 2011, construction plans and specifications to make all necessary modifications to the wastewater system in order for operation of the system to comply with all relevant laws and regulations including Title 119, 123, and 197. If the Department finds that the wastewater treatment facility is adequate for current use, but will become inadequate in the future based on development projections, Respondent agrees to reserve adequate land for additional future wastewater treatment, including, as needed, additional lagoon capacity, and shall inform the Department of the location and size of the reserved land on or before May 1, 2011.
- d. On or before May 1, 2012, the Respondent shall complete construction of the necessary modifications in accordance with the

approved plans and specifications, if required by subparagraph c. above.”

12. The Defendant did not hire a certified operator by January 1, 2011, as required in Paragraph 7(a) of the Consent Order. The Defendant did submit a facility evaluation, but it was not received by the March 1, 2011, deadline, nor did the Defendant give NDEQ the opportunity to “approve the scope and methodology of the evaluation prior to execution” as required by Paragraph 7(b) of the Consent Order. As such, the facility evaluation was inadequate and NDEQ was unable to prescribe necessary corrective action as described in Paragraph 7(c).

13. Pursuant to Neb. Rev. Stat. § 81-1508.02 (Reissue 2008), a civil penalty not to exceed ten thousand dollars (\$10,000.00) per day per violation is provided where there has been a violation of an order of the director.

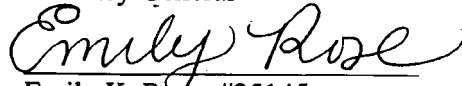
WHEREFORE, the Plaintiff requests that the Court enter an injunction pursuant to Neb. Rev. Stat. § 81-1508 (2) (Reissue 2008) enjoining the Defendant from further violations of the Consent Order and requiring the Defendant to come into timely compliance with the Consent Order.

WHEREFORE, the Plaintiff prays that judgment on its claim be entered herein against the Defendant in the form of a civil penalty as provided under Neb. Rev. Stat. § 81-1508.02 (Reissue 2008), an injunction as provided under Neb. Rev. Stat. § 81-1508 (2), and that all costs of this action be taxed to the Defendant.

Respectfully submitted this 17 day of March, 2014

STATE OF NEBRASKA, ex rel.,
PATRICK W. RICE, Acting Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY, Plaintiff

By: Jon C. Bruning, #20351
Attorney General

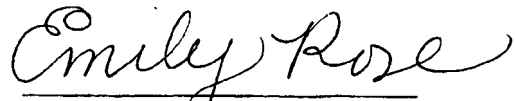
By: 
Emily K. Rose, #25145
Assistant Attorney General
2115 State Capitol Building
P.O. Box 98920
Lincoln, Nebraska 68509-8920
Tel. (402) 471-2683
emily.rose@nebraska.gov

Attorneys for Plaintiff.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Complaint has been served upon the Defendant by regular United States mail, first class postage prepaid on this 17 day of March, 2014 addressed to the Defendant's attorney as follows:

Nancy L. Loftis
5533 South 27th Street, Suite 203
Lincoln, Nebraska 68512



Emily K. Rose
Assistant Attorney General