

IN THE DISTRICT COURT FOR LANCASTER COUNTY, NEBRASKA

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

Plaintiff,

v.

PARK VISTA COMMERCE CENTER
ASSOCIATION,

Defendant.

Case No. C-14-911

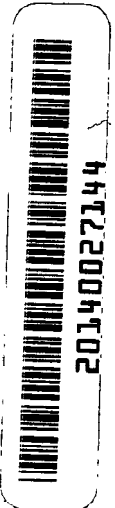
CONSENT DECREE

LANCASTER COUNTY
2014 APR 1 PM 4:44
CLERK OF THE
DISTRICT COURT

COMES NOW the parties, Plaintiff, Patrick W. Rice, Acting Director of the Nebraska Department of Environmental Quality (hereinafter "NDEQ"), proceeding on its Complaint filed herein and appearing through his Counsel, Jon C. Bruning, Attorney General, and Defendant, Park Vista Commerce Center Association (hereinafter "Park Vista"), and each party having consented to the making and entering of this Consent Decree without trial, request the entry of this Consent Decree.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

1. The Court has jurisdiction of the parties and the subject matter of this action pursuant to the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 2008), and all rules, regulations, and orders promulgated thereunder.
2. In the Complaint, the Plaintiff alleged, in pertinent part, that the Defendant discharged from its wastewater lagoon into a culvert near Highway 77, a water of the State, and failed to adequately comply with a Consent Order issued by NDEQ on December 23, 2010 that required Park Vista to bring their wastewater treatment facility into



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compliance, in violation of the Nebraska Environmental Protection Act, and certain rules and regulations adopted and promulgated pursuant to such Act.

3. The parties agree that settlement of this matter is in the public interest and that entry of this Consent Decree is the most appropriate means of resolving their dispute. The parties desire to conclude this case without trial or adjudication of any issues of fact or law, without this Consent Decree constituting an admission by Park Vista, with respect to such issues.
4. This Consent Decree shall be in full satisfaction of all claims between the parties alleged in the Plaintiff's Complaint.
5. IT IS THEREFORE ORDERED that Park Vista shall pay a civil penalty under Neb. Rev. Stat. § 81-1508.02 (Reissue 2008), in the amount of twenty five thousand dollars (\$25,000.00) as well as court costs in the amount of eighty two dollars (\$82.00), to the District Court for Lancaster County, Nebraska. The civil penalty shall be handled as provided by Article VII, Section V, of the Constitution of the State of Nebraska.
 - a. Fifteen thousand dollars (\$15,000.00) of the civil penalty shall be paid within thirty (30) days from the entry of this Consent Decree by the Court, and is payable to the Clerk of this Court.
 - b. Ten thousand dollars (\$10,000.00) of the civil penalty shall be paid no more than four hundred and fifty five (455) days from the entry of this Consent Decree by the Court. However, payment of this \$10,000.00 civil penalty shall be waived if the Defendant:
 - i. Comes into compliance with the Nebraska Environmental Protection Act, and any rule or regulation adopted and promulgated pursuant to such Act,

including, but not limited to Titles 123 and 197 of the Nebraska Administrative Code, through the timely completion of the following actions:

1. Employ a permanent certified Direct Responsible Charge (DRC) operator (hereinafter "certified operator") of the Class "L" Level or higher to continuously operate the wastewater treatment facility in accordance with Title 197 of the Nebraska Administrative Code, within thirty (30) days from the entry of this Consent Decree.
 - a. The Defendant shall provide NDEQ with the employment contract of the certified operator within thirty (30) days from the entry of this Consent Decree.
 - b. The Defendant shall remove all cattails, reeds, trees, and other vegetation, in and around the wastewater lagoon pursuant to 123 Neb. Admin. Code, Ch. 11, § 008.01, within thirty (30) days from the entry of this Consent Decree.
2. Submit for NDEQ's approval, a proposal that outlines the methodology and scope of a facility evaluation, which shall include the installation of flow measurement devices to verify the water balance of the wastewater lagoon, within sixty (60) days from the entry of this Consent Decree.

3. Submit for NDEQ's approval, design plans for the permanent flow measurement and totalizing equipment within sixty (60) days from the entry of this Consent Decree.
 - a. Install the permanent flow measurement and totalizing equipment at the wastewater facility within one hundred and twenty (120) days from the entry of this Consent Decree and keep three (3) years of flow records from the date of installation.
4. Submit to NDEQ a facility evaluation, including a water balance evaluation, within two hundred and forty (240) days from the entry of this Consent Decree.
 - a. The facility evaluation shall be executed by a professional engineer according to the NDEQ approved methodology and scope.
5. Within thirty (30) days of receipt of the facility evaluation, NDEQ shall issue a Comment Letter to the Defendant that identifies remedial actions, if any, which are necessary to bring the wastewater treatment facility into compliance.
 - a. If NDEQ determines, upon examination of the results of the facility evaluation, that the wastewater treatment facility is inadequate and requires modification, the Defendant shall submit construction plans and specifications to make all necessary modifications to the wastewater system, within

three hundred and sixty five (365) days from the entry of this Consent Decree.

- i. The Defendant shall complete construction of the necessary modifications, in accordance with the NDEQ approved plans and specifications, within four hundred and fifty five (455) days from the entry of this Consent Decree.
- b. If upon examination of the Defendant's facility evaluation, NDEQ determines that the wastewater treatment facility is adequate for current use, but will become inadequate in the future based on development projections, the Defendant agrees to reserve adequate land for additional future wastewater treatment, including, as needed, additional lagoon capacity. The Defendant shall inform NDEQ as to the location and size of the reserved land within three hundred and sixty five (365) days from entry of this Consent Decree.
- c. To qualify for the ten thousand dollar (\$10,000.00) waiver of civil penalties as stated in Paragraph 5(b), the Defendant shall file with the Court and serve upon the Plaintiff a showing within fifteen (15) days prior to the due date of the civil penalties. The showing must certify that the Defendant has maintained compliance with all requirements listed in Paragraph 5(b)(i)(1)-(5). The Plaintiff shall file a satisfaction of judgment within ten (10) days of receipt of the

Defendant's showing. If the Defendant violates the requirements in Paragraph 5(b)(i)(1)-(5) during the four hundred and fifty five (455) days following the entry of this Consent Decree, the Plaintiff, in its sole discretion, may file an objection to the Defendant's showing. If the Plaintiff files an objection to the Defendant's showing, the determination of this waiver provision shall be stayed pending ongoing enforcement proceedings.

6. IT IS FURTHER ORDERED that in the event the Defendant fails to comply with the requirements set forth in Paragraph 5(b)(i)(1)-(5) of this Consent Decree, by the time specified, the Defendant shall pay stipulated penalties of one hundred dollars (\$100.00) per day for the first to thirtieth day of delay and two hundred dollars (\$200.00) per day for each day of delay thereafter.
7. IT IS FURTHER ORDERED that upon NDEQ's request, the Defendant shall submit reports on the progress of the completion of the tasks referred to in Paragraph 5(b)(i)(1)-(5) of this Consent Decree, in a manner to be specified by NDEQ.
8. IT IS FURTHER ORDERED that the Defendant shall not connect any other users to the current wastewater treatment facility until the Defendant is in full compliance with the Nebraska Environmental Protection Act and any rule or regulation adopted and promulgated pursuant to such Act, including, but not limited to Titles 119, 123, and 197 of the Nebraska Administrative Code.
9. The requirements of this Consent Decree are subject to force majeure.
 - a. Force majeure for the purposes of this Consent Decree means any event arising from circumstances beyond the reasonable control of the Defendant or any entity controlled by the Defendant, including contractors and subcontractors, which

delay or prevent the timely completion of the requirements set forth in Paragraph 5(b)(i)(1)-(5) in this Consent Decree or the performance of any obligation under this Consent Decree. The Defendant shall exercise their best efforts to anticipate any potential force majeure event and mitigate its resulting delay to the greatest extent possible. The Defendant shall bear the burden to prove that any failure to comply with this Consent Decree was attributable to a force majeure event under this Paragraph.

- b. Economic circumstances shall not be considered a force majeure event, nor shall the failure of a contractor, subcontractor, material man, or agent (collectively referred to as "Contractors") to whom responsibility for performance is delegated to meet contractually imposed deadlines, be a force beyond the control of the Defendant, unless the cause of the Contractors' late performance was also beyond the Contractors' control.

10. If any event occurs that is likely to delay the completion of the tasks outlined in Paragraph 5(b)(i)(1)-(5) of this Consent Decree, whether or not caused by force majeure, the Defendant shall notify NDEQ in writing within seven (7) calendar days of learning of the delay of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which the Defendant intends to implement these measures.

11. If NDEQ agrees that the delay is attributable to a force majeure event, the time for performance of the work shall be extended for a period of time not to exceed the actual duration of the delay. Such request for extension shall not be unreasonably withheld, conditioned or delayed by NDEQ.

12. Failure of the Defendant to comply with the notice requirements of this Consent Decree shall constitute a waiver of the Defendant's right to request an extension of time for compliance with the requirements of this Consent Decree.
13. Notice to NDEQ under Paragraph 10 and any progress reports requested by NDEQ under Paragraph 7 of this Consent Decree shall be directed to Emily K. Rose, Assistant Attorney General, 2115 State Capitol Building, P.O. Box 98920, Lincoln, Nebraska 68509-8920, Telephone # (402) 471-1813 and Steven J. Moeller, Attorney, Nebraska Department of Environmental Quality, 1200 "N" Street, Suite 400, P.O. Box 98922, Lincoln, Nebraska 68509-8922, Telephone # (402) 471-0276.
14. This Consent Decree shall have no effect on any enforcement action brought by NDEQ against the Defendant for future violations of any statutes or regulations.
15. The undersigned consent without further notice to the form and entry of this Consent Decree.

DATED THIS 6th day of ^{April}~~March~~, 2014, in Lancaster County, Nebraska.

BY THE COURT:


~~Distret Judge of Lancaster County, Nebraska~~
PAUL D. MERRITT, JR.

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

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Attorney General

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