

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY,)
Plaintiff,)
v.)
SWEETGRASS PRAIRIE, LLC,)
Defendant.)

Case No. C100-4619

CONSENT DECREE

LANCASTER COUNTY
2006 NOV 30 PM 2 14
CLERK OF THE
DISTRICT COURT

COME NOW the parties, Plaintiff, the Department of Environmental Quality (hereinafter "NDEQ"), proceeding on its Complaint filed herein and appearing through its counsel, Jon C. Bruning, Attorney General, and the Defendant Sweetgrass Prairie, LLC, appearing through its counsel Stephen D. Mossman, and each party having consented to the making and entering of this Consent Decree without trial, the Court finds that the Consent Decree should be and hereby is entered.

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 Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 1999, Cum. Supp, 2004, Supp. 2005), the Nebraska Environmental Protection Act, and all rules and regulations and orders promulgated thereunder.
2. The Complaint filed herein constitutes a justiciable cause of action against the Defendant.
3. In its Complaint, Plaintiff alleges that the Defendant constructed a residential sewer system without the proper permit in violation of Neb. Rev. Stat. §81-1506(2)(b) and Title 123, Chapter 3, Section 001; and failed to implement proper storm water controls,

including temporary or permanent seeding and the development and implementation of the residential sewer system during construction of the residential hosing development, in violation of the general NDEQ National Pollutant Discharge Elimination System ("NPDES") General Permit for Storm Water Discharges from Construction Sites, Permit Number NER100000 and Neb. Rev. Stat. §81-1508.02(1)(b).

4. The parties agree that settlement of these matters 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 the Defendant with respect to such issues. The Defendant agrees to the form and entry of this Consent Decree for the purposes of settlement only. Therefore, and for only the purposes of this Consent Decree, the parties agree to the entry of this Consent Decree by the Court.

5. This Consent Decree shall be in full satisfaction of all claims alleged in the complaint filed herein and any claims arising out of the same transaction or occurrences asserted therein, provided that such claims were known to the State of Nebraska, or were reasonably ascertainable from information in the State's possession, as of the date of the filing of the Consent Decree.

6. This Consent Decree will have no effect on any enforcement action brought by Plaintiff against Defendant for future violations of any statutes or regulations.

7. The undersigned consent without further notice to the form and entry of the foregoing Consent Decree.

8. IT IS THEREFORE ORDERED that the Defendant shall pay to the Clerk of the District Court a civil penalty in the amount of ten thousand dollars (\$10,000.00),

pursuant to Neb. Rev. Stat. § 81-1508.02, together with court costs herein in the amount of seventy-nine dollars (\$79.00). Said penalty is to be handled pursuant to Article VII, Section V, of the Nebraska Constitution.

- A. \$5,000 (five thousand dollars) of said penalty will be paid in three equal installments, with the first installment due no later than December 31, 2006; the second payment due no later than January 31, 2007; and the third payment due no later than February 28, 2007.
- B. \$5,000.00 (five thousand dollars) of said penalty will be due and owing twelve months following the approval of this Consent Decree by the Court. In the event that said Defendant achieves and maintains compliance with the following obligations and provisions, during the time period between the approval of this Consent Decree by the District Court and twelve months following that approval, the \$5,000.00 (five thousand dollars) of civil penalties will be waived:
 - i. Comply with the Environmental Protection Act, Neb. Rev. Stat. §81-1501 *et seq*;; and
 - ii. Comply with Title 123 of the Nebraska Administrative Code, "Rules and Regulations for Design, Operation, and Maintenance of Wastewater Treatment Facilities;" and
 - iii. Comply with the general NDEQ National Pollutant Discharge Elimination System ("NPDES") General Permit for Storm Water Discharges from Construction Sites, Permit Number NER100000.

C. To qualify for the \$5,000.00 waiver of civil penalties as stated in paragraph 8(B), Defendant shall file a showing with the Court within 30 (thirty) days following the due date of the civil penalties establishing that it has maintained compliance as required. If the Defendant does not receive a Notice of Violation from Plaintiff and is not a party to a legal action initiated by the Plaintiff disputing compliance with the statutes and regulatory provisions in paragraph 8(B) during the relevant time period, Plaintiff shall file a Satisfaction of Judgment in the case within ten days of receipt of Defendant's showing. If Defendant receives a Notice of Violation from Plaintiff, or is a party to legal action initiated by the Plaintiff disputing compliance with the statutes and regulatory provisions in paragraph 8(B) during the relevant time period, Plaintiff shall file an objection to Defendant's showing and determination of this waiver provision will be stayed pending ongoing enforcement proceedings.

D. Upon sale of individual lots in the Sweetgrass Prairie subdivision, currently owned by Sweetgrass Prairie, LLC, to a new owner or owners, the NDEQ will sign a Satisfaction of Judgment as to the lot sold, applicable only to the lot containing the corresponding legal description in the Satisfaction of Judgment, and only as to the new owner(s) of that specific lot. "New owner(s)" is defined, for purposes of this Consent Decree, as the purchaser of a lot in the Sweetgrass Prairie subdivision, who is independent from and unrelated to Sweetgrass Prairie, LLC or its members. The Satisfaction of Judgment will serve to release the new owner(s) from liability under this

Consent Decree and its terms and conditions; any deferred penalties under paragraph 8(B) and 8(C) of this consent decree do not pass to the new owner(s). The new owner(s), however, may be under independent responsibilities under the statutes and rules and regulations of the NDEQ; those responsibilities are not herein released, however, they are not related to this Consent Decree, but to the general responsibilities which fall under the purview of the NDEQ. The Consent Decree will remain in full force and effect as to the remaining lots retained by Sweetgrass Prairie, LLC.

9. IT IS FURTHER ORDERED that the Defendant shall pay, as a voluntary supplemental environmental project, the sum of ten thousand dollars (\$10,000.00) into the Attorney General's Environmental Protection Fund to be used for environmental safety, training, public awareness, or other related uses as permitted by state law, at the sole discretion of the Nebraska Attorney General. This sum shall be paid as a lump-sum payment due no later than February 28, 2007.

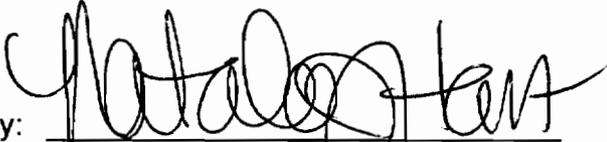
DATED THIS 30 day of November, 2006, in Lancaster County, Nebraska.

BY THE COURT:


District Judge

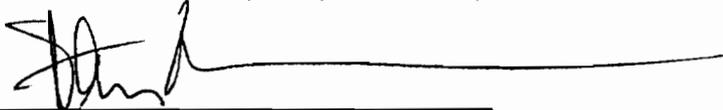
STATE OF NEBRASKA ex rel.,
MICHAEL J. LINDER, Director
Department of Environmental
Quality, Plaintiff,

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