

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF)
Park Vista Commerce Center Association) CASE NO. 3022
Lancaster County, Nebraska)
Respondent.) CONSENT ORDER

COME NOW the parties, Petitioner, the Nebraska Department of Environmental Quality (“NDEQ” or “Department”), proceeding on its Complaint, Compliance Order, and Notice of Opportunity for Hearing filed herein and appearing through its counsel, Lydia Fiedler, and the Respondent, Park Vista Commerce Center Association, a non-profit corporation organized under the laws of the State of Nebraska and operating in Lancaster County, Nebraska, appearing through its counsel, Nancy L. Loftis. Each party having consented to the making and entering of this Consent Order without trial, the Director finds that the Consent Order should be and hereby is entered.

1. The Director has jurisdiction over the parties and the subject matter of this action. The Complaint, Compliance Order, and Notice of Opportunity for Hearing filed herein constitute a justiciable cause of action against the Respondent.

2. In an August 12, 2010 Complaint, Compliance Order, and Notice of Opportunity for Hearing, the Petitioner alleged that the Respondent (a) discharged from its wastewater lagoon to a culvert near Highway 77, a water of the state, without a permit, on or about March 24th, 2010; and (b) has operated its wastewater works without a certified operator following a determination by the Petitioner in March 2010 that the Respondent’s facility required an operator and a subsequent determination by the Petitioner on July 7, 2010 that the Respondent was ineligible for an exemption from the requirement to have an operator. On September 14, 2010, Respondent filed a

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Response and Request for Hearing which materially denied the above allegations by Petitioner.

3. The parties agree that settlement is in the public interest and that entry of this Consent Order is the most appropriate means of resolving their dispute.

4. The parties desire to conclude this case without trial or adjudication of any issues of fact or law concerning the Complaint, Compliance Order, and Notice of Opportunity for Hearing, without this Consent Order constituting an admission by the Respondent with respect to such issues contained in the Complaint, Compliance Order, and Notice of Opportunity for Hearing.

5. The Respondent agrees to the form and entry of this Consent Order for the purposes of settlement only. The Department reserves the right to pursue any other action including additional enforcement in the proper court for injunctive relief and penalties, and/or an administrative order based on violations of the Nebraska Environmental Protection Act, Neb. Rev. Stat. §§ 81-1501 to -1532 (Reissue 2008). The Department further reserves the right to impose additional obligations to abate or eliminate the violation by further order or action by the Director. In addition, the Department specifically reserves its right to pursue either criminal or civil enforcement for any violations not covered by the Consent Order.

6. Therefore, and only for the purposes of this Consent Order, the parties agree to the entry of this Consent Order by the Director to resolve the contested case asked for on the Complaint, Compliance Order, and Notice of Opportunity for Hearing.

7. IT IS THEREFORE AGREED TO 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 Titles 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.
8. The Parties further agree that the request for contested case shall be dismissed and the undersigned consent without further notice to the form and entry of the foregoing Consent Order.

Park Vista Commerce Center Association,
By its Attorney:

/s/ Nancy L. Loftis

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Nebraska Department of Environmental
Quality, By:

/s/ Lydia Fiedler

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BY THE NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY:

December 23, 2010
Date

/s/ Michael J. Linder

Michael J. Linder, Director, Nebraska
Department of Environmental Quality