

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF
PARK VISTA COMMERCE
CENTER ASSOCIATION,
Respondent.

Case No. 3022
COMPLAINT, COMPLIANCE ORDER, AND
NOTICE OF OPPORTUNITY FOR
HEARING

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. § 81-1507(1) of the Nebraska Environmental Protection Act § 81-1501 to -1532 (Reissue 2008). The Complainant is Michael J. Linder, Director of the Nebraska Department of Environmental Quality (referred to hereinafter as NDEQ or Department). The Respondent is Park Vista Commerce Center Association, a non-profit corporation organized under the laws of the State of Nebraska and operating in Lancaster County, Nebraska.

2. The Complainant, NDEQ, is the agency of the state of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504(1) & (4) (Reissue 2008), of exercising exclusive general supervision, administration, and enforcement of the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 to -1532, and all rules, regulations, and permits promulgated thereunder. The authority of NDEQ to require compliance measures is expressed in Neb. Rev. Stat. §§ 81-1504 (7) and -1507 (Reissue 2008).

3. The Respondent owns and operates a commerce park in Lancaster County, Nebraska, which includes a system for wastewater collection and a non-discharging lagoon treatment system.

FIRST CLAIM

4. Neb. Rev. Stat. § 81-1506(1)(a) declares that it is unlawful for any person to “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 of any air, waters, or land of the state.” Subsection (2)(a) of this statute further states that it is likewise unlawful for any person to “[d]ischarge any pollutant into waters of the state without obtaining a permit as required by [state and federal law].” Nebraska Administrative Code

20100057013

Title 119, *Rules And Regulations Pertaining To The Issuance Of Permits Under The National Pollutant Discharge Elimination System*, was promulgated pursuant to Neb. Rev. Stat. § 81-1505. Title 119, 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 Department for such discharge”

5. On or about March 24th, 2010, Respondent discharged from its wastewater lagoon to a culvert near Highway 77, a water of the state. At no time has Respondent possessed or sought a permit for this discharge.

6. The Director finds that Respondent has violated Neb. Rev. Stat. § 81-1506 and Title 119.

7. The Director of the NDEQ is authorized pursuant to Neb. Rev. Stat. § 81-1504(7) & (10) to issue this order requiring submission of plans and appropriate modification of the wastewater works as necessary to prevent, control, or abate pollution.

SECOND CLAIM

8. Complainant hereby incorporates by reference each and every allegation contained in paragraphs 1 through 3 above.

9. Nebraska Administrative Code Title 123, *Rules And Regulations For The Design, Operation And Maintenance Of Wastewater Works*, was promulgated pursuant to Neb. Rev. Stat. § 81-1505. Title 123, Ch. 11, 002 states that “[a]ll wastewater works shall be operated and maintained by a competent, designated operator”

10. On or about March 2010, the Department determined that Respondent’s wastewater facility requires a properly certified wastewater operator; on or about July 7, 2010, the Department determined that Respondent was ineligible for an exemption from this requirement. At all times material to this complaint, Respondent has operated its wastewater works without a designated operator.

11. The Director finds that Respondent has violated Title 123.

12. The Director of the NDEQ is authorized pursuant to Neb. Rev. Stat. § 81-1504(12) to issue this order requiring proper maintenance and operation of a wastewater system.

COMPLIANCE ORDER

13. IT IS THEREFORE ORDERED that the Respondent shall perform, within the following time frames, the following activities:

- a. On or before November 1, 2010, 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 December 1, 2010, the Respondent shall submit to NDEQ a complete facility evaluation, the terms of which shall be approved by the Department prior to execution by a qualified professional engineer. The evaluation shall include assessment of all wastewater sources connected or contributing to the system and measurement of the depth of the sludge blanket within the lagoon cell.
- c. On or before February 1, 2011, Respondent shall submit to NDEQ construction plans and specifications which 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.
- d. On or before November 1, 2011, the respondent shall complete construction of the necessary modifications in accordance with the plans and specifications submitted to NDEQ.

14. Once constructed, respondent shall operate its wastewater treatment facility in accordance with all NDEQ rules and regulations, including the requirements of Titles 119, 123, and 197.

15. Information to be submitted under this Order shall be sent to:

Steve Goans
Wastewater Section Supervisor, Water Quality Division
Nebraska Department of Environmental Quality
P.O. Box 98922
Lincoln, Nebraska 68509-8922
Telephone number: (402) 471-2186

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

16. This Order shall become final, pursuant to Neb. Rev. Stat. § 81-1507(1), unless Respondent files an answer and requests, in writing, a hearing no later than thirty days after receipt of this Order. Failure to answer within thirty days shall be deemed an admission of the allegations of the Complaint.

17. A written answer to the Complaint, Compliance Order, and Notice of Opportunity for Hearing must conform to the requirements of Neb. Admin. Code Title 115, *Rules of Practice and Procedure*, Chapter 7. The answer and request for hearing may be filed by mail to:

Michael J. Linder, Director
Nebraska Department of Environmental Quality
P.O. Box 98922
Lincoln, Nebraska 68509-8922

or may be delivered to the Department's Lincoln office located at 1200 N Street, Suite 400, Lincoln, Nebraska.

V. SETTLEMENT CONFERENCE

18. Whether or not Respondent requests a hearing, an informal settlement conference may be requested by writing to Lydia Fiedler, Attorney, Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or have your attorney make such a request.

19. A request for settlement conference does not extend the thirty (30) day period during which a written answer and request for hearing must be submitted or otherwise delay the final effective date of this Order.

VI. INJUNCTIVE RELIEF AND PENALTY PROVISIONS

20. The NDEQ reserves the right to pursue enforcement in the proper court of law for injunctive relief or to seek civil or criminal penalties for any violations that are the subject of this Complaint, Compliance Order and Notice of Opportunity for Hearing. Nothing in this Complaint, Compliance Order and Notice of Opportunity for Hearing precludes the NDEQ from pursuing such enforcement. Failure to obey this order may result in fine up to \$10,000 per day as set out in Neb. Rev. Stat. § 81-1508.02.

August 12, 2010

Date

/s/ Michael J. Linder

Michael J. Linder, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complaint, Compliance Order and Notice of Opportunity for Hearing, with attachments, was served by certified United States mail, postage prepaid, return receipt requested this 13th day of August 2010 upon the Respondent listed below:

Steven E. Miers, Registered Agent
Park Vista Commerce Center Association
6000 South 56th St.
Lincoln. NE 68516

/s/ Lydia Fiedler

Lydia Fiedler
Staff Attorney