

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF ASCENTIA REAL
ESTATE INVESTMENT COMPANY and
WEST PARK PLAZA MOBILE HOME
PARK, LLC

GRAND ISLAND, NEBRASKA

NDEQ ID # 55028

Respondent

CASE NO. 3394

COMPLAINT, COMPLIANCE ORDER,
AND NOTICE FOR OPPORTUNITY FOR
HEARING

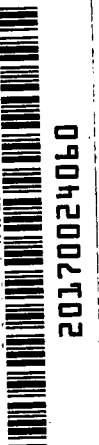
1. INTRODUCTION

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, Neb. Rev. Stat. §§ 81-1501 to 81-1532 (Reissue 2014; Cum. Supp. 2016). The Complainant is Jim Macy, Director of the Nebraska Department of Environmental Quality (Department).

2. The Respondents are Ascentia Real Estate Investment Company and West Park Plaza Mobile Home Park, LLC, both foreign corporations registered to do business in Nebraska. The principal office address of both Respondents is 2 W. Dry Creek Circle, Suite 200, Littleton Colorado 80120 and their registered agent in Nebraska is CT Corporation System, 5601 South 59th Street, Lincoln, Nebraska 68516.

3. The Department is the agency of the state of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504(1), of exercising exclusive general supervision, administration, and enforcement of the Nebraska Environmental Protection Act, Neb. Rev. Stat. §§ 81-1501 to 81-1532 and all rules, regulations, and orders promulgated thereunder.

4. The Department is charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504(12) to require the proper maintenance and operation of wastewater disposal systems.



5. Neb. Rev. Stat. § 81-1506(1) makes it unlawful to cause pollution of any 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 water or land of the state; or to discharge or emit any wastes into any waters or land of the state which reduce the quality of such waters or land below established standards.

6. Neb. Rev. Stat. § 81-1506(2) makes it unlawful to operate a wastewater lagoon without obtaining the necessary authorization or permits from the Department.

7. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules and regulations for the purpose of setting standards for the land application of domestic effluent and the operation of wastewater lagoons, as expressed in Neb. Rev. Stat. § 81-1505(1) and § 81-1505(8), the Council adopted and promulgated rules codified as Neb. Adm. Code, *Title 119 – Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System* and Neb. Adm. Code, *Title 123 – Rules and Regulations for the Design, Operation and Maintenance of Wastewater Works*.

8. Title 119, Ch. 12 requires Department authorization for the land application of domestic effluent; prohibits the land application of domestic effluent or sewage sludge that has not met certain minimum treatment standards, requires treated effluent to be applied at agronomic rates, and prohibits the ponding of effluent.

9. Title 123, Ch. 11 requires that wastewater lagoons be maintained in proper operating condition; that damaged dikes be promptly repaired; and that the wastewater level in lagoons be kept out of the area designed for freeboard.

10. The Complaint below establishes the violations of the Respondents, and the Compliance Order establishes a schedule for corrective actions to be taken by the Respondents.

2. COMPLAINT

11. The Respondents are persons as defined in Neb. Rev. Stat. § 81-1502(10).

12. At all times material herein the Respondents have owned and/or operated a wastewater lagoon that receives domestic waste from the West Park Plaza Mobile Home Park (West Park Plaza) located at 129 Melody Ln, Grand Island, Hall County, NE 68803. The wastewater lagoon services approximately 90 mobile homes within West Park Plaza, which is located inside the Grand Island city limits.

13. On or about May 4, 2015, the Department received a complaint regarding over-filling, odors and discharge associated with the West Park Plaza wastewater lagoon. The Department's resulting investigation observed that the wastewater level in the lagoon was above allowable freeboard; the lagoon had significant erosion problems and that effluent had been applied to fields using flood irrigation resulting in ponding of the effluent.

14. On or about June 9, 2015, the Department issued Respondent Ascentia Real Estate Investment Company a Notice of Violation (NOV) for failure to comply with wastewater operation and maintenance regulations and for discharging pollutants.

15. On or about December 28, 2015, the Department received a complaint that the West Park Plaza wastewater lagoon was discharging onto neighboring property. The Department's resulting investigation observed that the wastewater lagoon had odor and erosion problems and appeared to be overloaded with wastewater.

16. On or about February 24, 2016, the Respondent Ascentia Real Estate Investment Company replied to the NOV by stating that they had made some repairs to the wastewater lagoon and that they would develop an erosion plan and seek Department permission prior to any future discharges.

17. On or about May 12, 2016, Department personnel visited the West Park Plaza wastewater lagoon and observed that the wastewater level in the lagoon was in the freeboard area.

18. On or about January 4, 2017, Department personnel visited the West Park Plaza wastewater lagoon and observed that the wastewater level in the lagoon was in the freeboard area.

19. On or about February 13, 2017, the Department received a complaint from the Hall County Sheriff's Department that the West Park Plaza wastewater lagoon was extremely close to overflowing. The resulting Department investigation observed that the wastewater lagoon system, which was originally designed as three separate lagoons, had eroded to just two lagoons. The Department also observed that the wastewater level in the lagoon was within the freeboard area and that the lagoon had a strong odor.

20. Respondents as owners and/or operators of West Park Plaza have land applied untreated domestic effluent and allowed the effluent to pond on the surface without authorization or permits from the Department in violation of Neb. Rev. Stat. § 81-1506(1) and Title 119, Ch. 12.

21. Respondents as owners and/or operators of West Park Plaza have failed to maintain the wastewater lagoon in proper working order; have failed to repair damaged dikes; and have allowed the water level in the lagoon to be in the freeboard area without authorization by the Department in violation of Neb. Rev. Stat. § 81-1506(2) and Title 123, Ch.11.

3. COMPLIANCE ORDER

25. It is hereby ORDERED that the Respondents shall:

- a. Immediately cease and desist land application of effluent or sludge from the West Park Plaza wastewater lagoon without prior written approval from the Department.
- b. Transport the West Park Plaza effluent to the City of Grand Island Publicly Owned Treatment Works (POTW) or a city sewer in a manner and location approved by the City of Grand Island as necessary in order to maintain the water level in all three cells

below the level of the interior dikes and isolate the primary cell from the secondary cells.

- c. By July 14, 2017, submit for Department approval and implement a Best Management Plan (BMP) for the West Park Plaza wastewater lagoon that provides details on the operation and maintenance procedures that will be implemented in order to:
 - i. Maintain the lagoon wastewater levels in such a way to be above the 2 foot minimum requirement and below the designed freeboard;
 - ii. Dispose of sludge to a licensed landfill facility;
 - iii. Remove all solid waste, floatables, trash, grit, screenings, grease, scum and similar material from the West Park Plaza wastewater lagoon; store the removed material in suitable containers; and properly dispose of the removed material at a licensed landfill facility in accordance with State and local requirements.
- d. By September 1, 2017, submit for Department approval an engineering plan to complete the upgrades and repairs necessary to bring the West Park Plaza wastewater lagoon into compliance with Title 119 and Title 123 requirements; or alternately submit engineering plans to connect West Park Plaza to the City of Grand Island POTW.
- e. Respond in writing within seven (7) working days to all requests for information requested by the Department.

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

22. This Order shall become final, pursuant to Neb. Rev. Stat. § 81-1507(1), unless the Respondents file an answer and request, 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.

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

Jim Macy, 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

24. Whether or not the Respondents request a hearing, an informal settlement conference may be requested by writing to Thomas O'Connor, Attorney, Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or have your attorney make such a request.

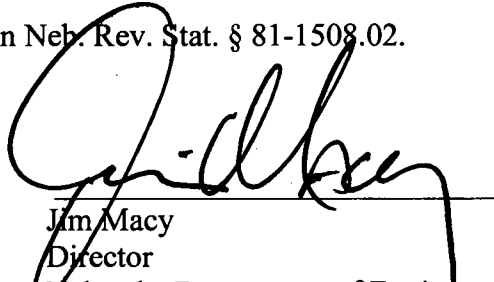
25. A request for settlement conference does not extend the thirty (30) day period during which a written answer and request for hearing must be submitted or otherwise delay the final effective date of this Order.

VI. RESERVATION OF RIGHTS AND PENALTY PROVISIONS

26. The Department reserves the right to require the Respondent to complete additional work or take additional actions as necessary to achieve compliance with all applicable laws and regulations. Further, the Department 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 Department from pursuing such enforcement. Failure to obey this order may result in fines up to \$10,000 per violation per day, as set out in Neb. Rev. Stat. § 81-1508.02.

MAY 30, 2017
Date




Jim Macy
Director
Nebraska Department of Environmental Quality

VII. CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complaint, Compliance Order, and Notice of Opportunity for Hearing was served by certified United States mail, postage prepaid; return receipt requested this 30th day of May 2017 upon the Respondents listed below:

Ascentia Real Estate Investment Company
C/O C T Corporation System
5601 South 59th Street
Lincoln, NE 68516

West Park Plaza Mobile Home Park, LLC
C/O C T Corporation System
5601 South 59th Street
Lincoln, NE 68516


Thomas O'Connor
Attorney