

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

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

NDEQ ID # 55028

CASE NO. 3394

ORDER FOR COMPLIANCE
ON CONSENT

Respondents

I. INTRODUCTION

1. The Nebraska Department of Environmental Quality (Department) and Ascentia Real Estate Investment Company and West Park Plaza Mobile Home Park, LLC (Respondents), voluntarily enter into this Order for Compliance on Consent (Consent Order). The Consent Order establishes a schedule of corrective actions necessary to achieve and maintain compliance with the Nebraska Environmental Protection Act (Act), Neb. Rev. Stat. §§ 81-1501 to 81-1532 (Reissue 2014; Cum. Supp. 2016) and all rules and regulations promulgated under such Act.

2. The Respondents are the owners and operators of the West Park Plaza Mobile Home Park (West Park Plaza) located at 129 Melody Ln, Grand Island, Nebraska, including a wastewater treatment lagoon that receives domestic waste from the West Park Plaza sanitary sewer system.

3. The City of Grand Island is completing a Sanitary Sewer District No. 540T sanitary sewer main extension in the vicinity of West Park Plaza and the Respondents are in negotiation with the City of Grand Island to finalize a permanent connection of the West Park Plaza sewer to the city's sanitary sewer system. This connection cannot occur until the City of



Grand Island completes construction of the sanitary sewer extension and the Board of Equalization approves tap fees and related costs.

II. JURISDICTION

4. 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 Act, and all rules, regulations, and orders promulgated thereunder. This Consent Order is issued under the authority vested in the Director of the Department by Neb. Rev. §§ 81-1504(25) and 81-1507(1).

5. The Department made certain allegations in a Complaint, Compliance Order and Notice of Opportunity for Hearing dated May 30, 2017.

6. In response to the Complaint, Respondents filed an Answer and Request for Hearing, dated July 3, 2017. The parties agree that compliance with this Consent Order will satisfy the complaint.

7. The Respondents neither admit or deny the allegations in the Complaint, but agree to not contest the Department's jurisdiction to enforce this Consent Order in any subsequent enforcement proceedings, either administrative or judicial. The Respondents further agree, without making any admissions to liability, to undertake all corrective actions required by and agreed to in this Consent Order.

8. The Department and the Respondents acknowledge that this Consent Order has been negotiated in good faith and will remedy the underlying violations of the complaint. Upon the parties' execution of this Consent Order, the parties agree that the requirements set out in the Consent Order shall supersede the requirements in the complaint and the Respondents shall withdraw their Request for a Hearing for a contested case in this matter.

III. PARTIES

9. This Consent Order is binding on the Respondents and their employees, agents, contractors, consultants, successors and assigns. Any change in ownership or corporate status of the Respondents, including, but not limited to, any transfer of assets or property, shall not alter Respondents responsibilities and obligations under this Consent Order.

10. The Respondents shall ensure that any contractors and subcontractors implementing any provision of this Consent Order receive a copy of this Consent Order. Respondents shall be responsible for ensuring that their contractors and subcontractors perform work in accordance with this Consent Order.

IV. STATUTORY AND REGULATORY FRAMEWORK

11. 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.

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

13. 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 construction and operation of wastewater lagoons, as expressed in Neb. Rev. Stat. § 81-1505, 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.

V. COMPLIANCE ORDER

The Respondents agree to complete the following actions within the timeframe specified:

14. By January 30, 2019, Respondents agree to submit for Department approval a construction permit application for the connection of the West Park Plaza sewer system to the City of Grand Island Sanitary Sewer District No. 540T sanitary sewer main and to complete construction of the approved connection within 12 months of the date the City of Grand Island approves the one-time assessment for West Park Plaza for Sanitary Sewer District No. 540T.

15. Prior to connection to Sanitary Sewer District No. 540T sanitary sewer main, Respondents agree to discharge treated wastewater in accordance with temporary discharge agreements with the City of Grand Island, or land-apply treated wastewater in accordance with the Department's rules and regulations.

16. Respondents agree to abandon the West Park Plaza wastewater lagoon in accordance with Title 123, Ch. 10 requirements.

17. Prior to abandonment of the West Park Plaza wastewater lagoon, Respondents agree to maintain the wastewater lagoon in proper operating condition in accordance with Title 123, Ch. 11 requirements, including:

- i. Removing all solid waste, floatables, trash, grit, screenings, grease, scum and similar material from the West Park Plaza wastewater; store the removed material in suitable containers; and proper disposal of the removed material at a licensed landfill facility in accordance with State and local requirements.

ii. Keeping gates locked and promptly repairing all erosion damage and repairing or replacing damaged fencing and signs.

iii. Operating the wastewater lagoon in such a manner to eliminate or reduce to the extent practical odors and noxious fumes.

18. The Respondents agree to respond in writing within seven (7) working days to all requests for information requested by the Department. Information to be submitted under this Consent Order shall be sent to the Department's counsel by the Respondents' counsel, or to:

Water Permits Division
Nebraska Department of Environmental Quality
P.O. Box 98922 (1200 N St., Suite 400)
Lincoln, NE 68509-8922
Telephone: 402-471-2186

VI. SATISFACTION AND COMPLIANCE WITH OTHER LAWS

19. The Respondents shall perform and conduct all actions required by this Consent Order in accordance with all applicable local, state, and federal laws, regulations and permits.

20. Respondent's performance of the activities set forth in Section V shall be excused if and to the extent that performance is prevented by any cause reasonably beyond its control and without fault, such as and not by way of limitation: fire, floods, windstorms, strikes, work stoppage, riots and acts of God ("Event of Force Majeure"). In the event of any delay or nonperformance caused by an Event of Force Majeure, Respondent shall within forty-eight (48) hours, notify the Department verbally and within five (5) days provide the Department written confirmation of the nature and anticipated duration of such delay or nonperformance. Respondent shall use its best efforts to resume the performance of its obligations with the least possible delay, provided that this shall not require Respondent to enter into settlement of labor or other disputes against its best interests.

21. Upon completion of the activities required by this Consent Order to the satisfaction of the Department, a Satisfaction of Compliance Order stating the Consent Order has been satisfied will be filed by the Department.

VII. RESERVATION OF RIGHTS

22. Nothing in this Consent Order shall be construed to sanction any violation of local, State or Federal law or limit the power and authority of the Department to take or order any action necessary to protect public health, welfare, or the environment or to enforce any provision of the Nebraska Environmental Protection Act and any rules, regulations, orders, or permits issued pursuant to the Act. The Department reserves the right to pursue any other remedies to which it is entitled for violations of this Consent Decree or the Nebraska Environmental Protection Act, including penalties or injunctive relief.

VIII. NEGATION OF AGENCY RELATIONSHIP

23. Nothing contained in this Consent Order shall be construed to create, either expressly or by implication, the relationship of agency between the Department and the Respondents.

IX. AMENDMENT

24. This Consent Order may be modified and amended in writing by mutual agreement of the Department and the Respondents.

X. EFFECTIVE DATE

25. This Consent Order shall become effective on the date it is signed by the Director of the Department or his designee.


XI. SEVERABILITY

26. If any provision or authority of this Consent Order or the application of this Consent Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other party or circumstances and the remainder of the Consent Order shall remain in force and shall not be affected thereby.


XII. SIGNATURES

For the Respondents: The undersigned certifies that they are fully authorized to enter into the terms and conditions of this Consent Order and to bind the Respondents.

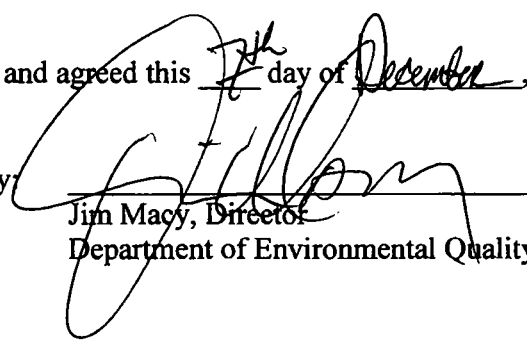
For Ascentia Real Estate Investment Company:

By:  Date: 12/14/18
Marko Vukovich, VP of Asset Management
[Name, Title]

For West Park Plaza Mobile Home Park, LLC:

By:  Date: 12/14/18
Marko Vukovich, VP of Asset Management
[Name, Title]

For the Department: IT IS ORDERED and agreed this 17th day of December, 2018.

By: 
Jim Macy, Director
Department of Environmental Quality