

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

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| |) | Case No. 2992 |
| THE CASE OF |) | |
| Midwest Renewable Energy, LLC |) | COMPLAINT, COMPLAIANCE |
| Sutherland, Lincoln County, Nebraska |) | ORDER, AND NOTICE OF |
| F.I.D. # 34651 |) | OPPORTUNITY FOR HEARING |
| Respondents |) | |
| |) | |

PRELIMINARY STATEMENT

This Complaint, Compliance Order, and Notice of Opportunity for Hearing is issued by the Director of the Nebraska Department of Environmental Quality (hereinafter referred to as “Department” or “NDEQ”) pursuant to Neb. Rev. Stat. § 81-1507(1) of the Environmental Protection Act (Act), Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 2008). The Respondent is Midwest Renewable Energy, LLC. The Complaint below establishes the violations, the Compliance Order sets out what is required of the Respondent, and the Notice of Hearing sets out how the Respondent may ask for a hearing in this matter.

COMPLAINT

1. Respondent Midwest Renewable Energy, LLC is the owner and operator of a dry-mill ethanol plant at 27532 West Hwy 30, Sutherland, Lincoln County, Nebraska.
2. Pursuant to Neb. Rev. Stat. § 81-1506(1)(a) (Reissue 2008), “It shall be unlawful for any person...[t]o 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.”

3. Pursuant to Neb. Rev. Stat. § 81-1506(2)(a)–(b) (Reissue 2008), “It shall be unlawful for any person to: (a) Discharge any pollutant into waters of the state without obtaining a permit as required by the National Pollutant Discharge Elimination System created by the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., and by rules and regulations adopted and promulgated pursuant to section 81-1505; (b) Construct, install, modify, or operate any disposal system or part thereof or any extension or addition thereto without obtaining necessary permits from the department.”

4. Pursuant to Neb. Rev. Stat. § 81-1508.02(1)(e) (Reissue 2008), it is unlawful for any person to violate any rule or regulation adopted and promulgated pursuant to the Environmental Protection Act.

5. Title 119, *Rules And Regulations Pertaining To The Issuance Of Permits Under The National Pollutant Discharge Elimination System*, Chapter 2, Section 001, states that “[n]o 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 unless exempted under Chapter 3 of this Title.”

6. Title 123, *Rules and Regulations for The Design, Operation And Maintenance Of Wastewater Works*, Chapter 3, Section 001, states that “[n]o person shall construct, install, modify, or make additions to a wastewater works until a construction permit is issued authorizing the project.”

7. On or about April 23, May 20, and November 17, 2009, Respondent discharged wastewater consisting of non-contact utility water without a permit in a manner which was likely to cause pollution of the waters or land of the state.

8. The Respondent is a “person” as defined in Neb. Rev. Stat. § 81-1502(10).

9. The Director finds that Respondent has violated Neb. Rev. Stat. § 81-1506(1)(a) & (2)(a) and Title 119, Chapter 2, Section 001.

10. Prior to May 24, 2005, Respondent modified its wastewater works without a construction permit and has since operated the wastewater works with the unpermitted modification.

11. The Director finds that Respondent has violated Neb. Rev. Stat. § 81-1506(2)(b) and Title 123, Chapter 3, Section 001.

ORDER

IT IS HEREBY ORDERED THAT:

12. Respondent shall:

- a. Immediately cease any unpermitted discharge of wastewater, including wastewater diverted by any unpermitted valves to any unpermitted locations.
- b. Immediately cease operating the wastewater discharge pumping equipment at a flow rate in excess of the 72 gallon per minute design flow rate of the wastewater discharge pipe without the Department’s written consent.
- c. No later than June 1, 2010, remove all unpermitted valves and discharge pipes; permanently cap the branches of all unpermitted pipe tee fittings on the wastewater pipe which lead

to any unpermitted discharge points. Respondent shall notify the Department at least 48 hours prior to performing these actions.

- d. No later than August 1, 2010, submit to the Department an engineering report prepared by a professional engineer, licensed to practice in the State of Nebraska, that describes the existing wastewater facilities, including all authorized or unauthorized modifications that have been made to wastewater tanks, piping, valves, pumping equipment, instrumentation, controls, and other components approved under the Department's Construction Permit #04-0047. The engineering report shall also describe changes and improvements in facilities and operations that are needed to meet Respondent's wastewater discharge requirements, eliminate recurring wastewater pipe breaks and unpermitted discharges, and enable Respondent to operate their wastewater facilities in compliance with all Department rules and regulations. By this date, Respondent shall also submit to the Department detailed plans and specifications for construction and/or modification of wastewater facilities in order to comply with all Department rules and regulations including the requirements of Titles 119 and 123.

- e. No later than October 1, 2010, obtain all required wastewater facility construction permits and begin construction of all necessary wastewater facilities in accordance with plans approved by the Department.
- f. No later than February 1, 2011, complete construction and/or modification of wastewater facilities in accordance with plans approved by the Department and begin operating the wastewater facilities in accordance with all Department rules and regulations including the requirements of Titles 119 and 123.

13. 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

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

14. In accordance with Neb. Rev. Stat. § 81-1507(1), this Order shall become final unless the Respondent files an answer and requests a hearing in writing no later than 30 days after receipt of the Complaint, Compliance Order, and Notice of Opportunity for Hearing.

15. If the Respondent decides to contest this Order, a written answer to the Complaint, Compliance Order, and Notice of Opportunity for Hearing must conform to the requirements of Title 115, Chapter 7. The answer and request for

hearing must be filed with the Director, Department of Environmental Quality,
P.O. Box 98922, Lincoln, Nebraska 68509-8922.

16. Failure to answer shall be deemed an admission of the facts of the Complaint. Violation of this Order may result in penalties of up to \$10,000 per day.

17. This Complaint, Compliance Order, and Notice of Opportunity for Hearing does not preclude the Department of Environmental Quality from pursuing enforcement in the proper court for injunctive relief and penalties based on violations of state statutes or regulations.

Dated this 9th day of April, 2010.

/s/ Michael J. Linder
Michael J. Linder
Director
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 was served by certified United States mail, postage prepaid, return receipt requested this 12th day of April 2010 upon the Respondent listed below:

James G. Jandrain
3619 Dodge Street, Suite 212
Omaha, NE 68131

/s/ Lydia Fielder
Lydia Fiedler
Staff Attorney