

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

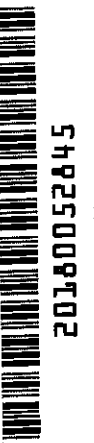
IN THE MATTER OF	)	CASE NO. 3454
BIG OX ENERGY – SIOUXLAND, LLC,	)	
	)	CONSENT ORDER
FID # 105921	)	
	)	
Respondent.	)	

**I. INTRODUCTION**

1. The Nebraska Department of Environmental Quality (Department) and the Respondent, Big Ox Energy – Siouxland, LLC ("Big Ox"), voluntarily enter into this Consent Order to resolve the allegations and concerns in the June 20, 2018, Notice of Violation ("NOV") and the June 22, 2018, Emergency Complaint and Order, Case No. 3454 ("ECO") and to incorporate and implement corresponding improvements to monitoring and environmental management controls at the Big Ox facility. This Consent Order requires Big Ox to complete the activities and schedules specified in Section V. The Department and Big Ox agree that settlement of this matter is in the public interest to protect the environment and the lands and waters of the State. This Consent Order supersedes Section II of the Emergency Complaint and Order, Case No. 3454, issued by the Department on June 22, 2018.

**II. JURISDICTION**

2. The Department is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504(1), to exercise exclusive general



supervision of the administration and enforcement of the Act, and all permits, rules and regulations and orders promulgated under the Act.

3. The Director of the Department has the authority pursuant to Neb. §81-1507(1) to order specific corrective action be taken within a reasonable time in response to a violation of the Act. The Department has the power and duty to “require proper maintenance and operation of disposal systems” at Big Ox pursuant to Neb. Rev. Stat. §81-1504(12).

4. The Respondent is a foreign domesticated LLC, which owns and operates a biologically-based, renewable natural gas production facility located in South Sioux City, Nebraska. Big Ox is a person as defined in Neb. Rev. Stat. §81-1502(10).

5. Pursuant to General NPDES Permit Number NER910000 (“ISW Permit”), Big Ox is authorized for storm water discharges from industrial activity to waters of the State of Nebraska. The ISW Permit was issued by and is enforced by the Department. Big Ox agrees to undertake all actions required by the terms and condition of this Consent Order, and to comply with the terms and conditions in its ISW Permit. Big Ox agrees, without waiving any future rights, to the Department’s jurisdiction over the subject matter of this Consent Order. Big Ox further agrees to and will not challenge the jurisdictional allegations of this Consent Order or the Department’s authority to issue and enforce this Consent Order. Big Ox waives its right to a hearing as provided in Neb. Rev. Stat. §81-1507(2). Big Ox agrees it will not contest the basis or validity of this Consent Order in any proceeding by the Department to enforce this Consent Order.

### **III. PARTIES**

6. The parties to this Consent Order are the Department and Big Ox, and their employees, successors, and assigns. Big Ox shall ensure that all contractors hired to perform work required by this Consent Order are informed of applicable requirements.

### **IV. ADDITIONAL FACTS**

7. This consent order addresses the violations alleged in the NOV and the ECO and subsequent digester discharges from Big Ox as of the effective date of this Consent Order.

8. The Department acknowledges Big Ox operates under a pre-treatment permit issued by the State of Iowa for wastewaters discharged for treatment by the Sioux City Iowa-based publicly owned treatment works ("POTW").

9. As part of its ISW Permit, Big Ox also operates under an approved Stormwater Pollution Prevention Plan ("SWPPP"). That plan sets forth Spill Prevention and Response Procedures and training for BOE employees to manage and control process-waters and "nutrient-feedstocks" that may be exposed to stormwater runoff when located outside Big Ox's enclosed process-buildings. (See Section 6.1 of the Big Ox SWPP).

10. Big Ox acknowledges the discharges from the digesters at Big Ox's facility occurred in a manner that triggered the Department's authority to control pollution under the Nebraska Environmental Protection Act ("NEPA"), Neb. Rev. Stat. §81-1501 et seq. and Title 119, as well for the Department to initiate potential remedial actions under the ISW Permit issued to Big Ox by the Department.

11. Big Ox continues to work with the Department to implement remedial measures to respond to both the digester discharges and stormwater response.

## **V. COMPLIANCE ORDER AND SCHEDULE**

### **IT IS HEREBY AGREED THAT:**

12. Big Ox continues to implement interim measures to stop the discharge of waste material from its digesters, including a reduction of operations. Big Ox has reported that the facility has cleaned and reinstalled three digester mixers, repaired electric issues with the temporary mixer, upgraded and made improvements to the centrifuge equipment and solids removal process, and installed foam control spray balls on the digesters.

13. Big Ox will continue immediate efforts to repair any malfunctioning or damaged equipment and make such operational changes or alterations at the facility, as Big Ox deems necessary, to cease the discharges of waste material from its facility through upset of the digesters.

14. Big Ox will continue to use any methods necessary to mitigate and control the release of foam, digester contents, and gases, such as dosing the digester system with anti-foaming agents and operation of the flaring equipment.

15. Big Ox will continue to control, capture, and contain digester discharges and will dispose of discharged material through reuse in the facility process, discharge to the facility pretreatment unit in compliance with the Iowa permit, or disposal at a permitted disposal facility.

16. Big Ox will implement those available and practical measures and controls (including operational controls and feedstock-improvements) to reduce the risks of

upsets that result in discharges of Big Ox process materials, exceeding 10 gallons in any 60 minute period, from Big Ox's enclosed digesters onto external surface areas of the Big Ox facility. Provided that Big Ox immediately captures, collects, and properly manages any such minor discharges on-site the Department will consider these discharges to be under the threshold release reporting amount of 25 gallons or 100 pounds that cannot be immediately captured and contained. Big Ox will provide immediate notification (through filing an Exception Report including corresponding collection-measures) to the Department of any future discharges that exceed a rate of 10 gallons in any 60 minute period.

17. Big Ox will provide to the Department all information required by *Neb. Admin. Code* Title 129, Chapter 35, and its Air Quality Construction Permit, CP17-033 related to excess emissions of any pollutants which have occurred since June 8, 2018 and as may occur in the future. These excess emission reports for past unreported releases will be submitted not later than fifteen days after the signing of this consent order. Any future excess emissions reports will be submitted in accordance with Title 129, Chapter 35. This will be a continuing obligation for future excess emission. This information shall be sent to:

Kevin Stoner  
Air Division Administrator  
Nebraska Department of Environmental Quality  
PO Box 98922  
1200 N St., Suite 400  
Lincoln, NE 68509-8922  
(402) 471-2186

18. Big Ox will continue to use its best efforts to capture and control released digester materials and trapped stormwater in accordance with their ISW Permit.

19. Big Ox will clean up the entirety of the released waste, including all impacted areas of Big Ox's facility and property, building surfaces exposed to stormwater, and any off-property areas where discharges have come to be located. Big Ox has contracted with an environmental remediation company to clean-up the site as soon as possible, which work has commenced.

21. Big Ox will provide the Department with verification from an environmental engineer that the actions ordered above are being implemented and will be implemented to prevent further harm to the environment.

22. By August 15, 2018, Big Ox will provide a detailed report to the Department assessing the cause(s) of the digester overflows at its South Sioux City, Nebraska facility, including sampling and analysis; operational data collected before, during, or after the spill; modeling data; influent characterization that support conclusions; and improvements in monitoring, equipment, and operations to prevent future discharges. As part of this submission, Big Ox will conduct a thorough "root cause" evaluation of its operations and various feedstocks, and take immediate steps to repair any malfunctioning or damaged equipment and will implement operational improvements, as necessary, to cease and prevent unpermitted discharges.

23. By August 31, 2018, Big Ox will develop and submit to the Department an improved and expanded Spill Emergency Response/Operations Plan and Big Ox agrees to implement, install or construct specified improvements to its operations, process equipment and collection and containment structures to reduce the risk

discharges to the environment. The plan will become a part of the Big Ox's Storm Water Pollution Prevent Plan (SWPPP) and include, but is not limited to, the following:

- a. Process monitoring systems and inspection expediting determination of risk, onset or detection of problematic conditions.
- b. Analysis and specification control/containment structures to preclude or minimize release.
- c. Management and employee response protocols to upset/discharge and related training programs.
- d. Emergency contact information.
- e. Emergency cleanup plans and procedures
- f. Emergency operating protocols of the digester and changes necessary to control or stop the discharges.

#### **VI. SUBMITTALS**

24. All other documents required to be submitted to the Department pursuant to this Consent Order shall be sent to:

Shelley Schneider  
Water Permits Division Administrator  
Nebraska Department of Environmental Quality  
PO Box 98922  
1200 N St., Suite 400  
Lincoln, NE 68509-8922  
(402) 471-2186

25. Big Ox may assert a business confidentiality claim with respect to all or part of any information submitted pursuant to this Consent Order, or requested pursuant

to a Department or US EPA inspection, at the time of submittal in accordance with Title 115, Rules of Practice and Procedure, Chapter 4. In accordance with Neb. Rev. Stat. §81-1527 and applicable federal statutes and regulations, emissions data and effluent data are not eligible for confidential treatment. See 40 C.F.R. §§2.301 and 2.302.

## **VII. SATISFACTION AND COMPLIANCE WITH OTHER LAWS**

26. Big Ox shall perform and conduct all actions required by this Consent Order in accordance with all applicable local, state, and federal laws, regulations, and permits.

## **VIII. RESERVATION OF RIGHTS**

27. Nothing in this Consent Order shall be construed to sanction any violation of 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 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 underlying violations alleged herein, including penalties or injunctive relief.

## **IX. NEGATION OF AGENCY RELATIONSHIP**

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

## **X. AMENDMENT**

29. This Consent Order may be modified and amended in writing by mutual agreement of the Department and Big Ox.



### XI. EFFECTIVE DATE

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

### XII. SEVERABILITY

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

### XIII. SIGNATURES

For the Respondent, Big Ox: The undersigned representative of Big Ox certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to bind the Respondent.

By: 

Title: Manager on the Board of Managers

Date: 7-26-18

For the Department: IT IS ORDERED and agreed this 30<sup>th</sup> day of July, 2018.

By: 

Jim Macy  
Director  
Department of Environmental Quality