

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF)	
AltEn Operating Company, LLC,)	CASE NO. 3476
)	
)	COMPLAINT, COMPLIANCE
FID # 84069)	ORDER AND NOTICE OF
)	OPPORTUNITY FOR HEARING
Respondent.)	

I. INTRODUCTION

1. This Complaint, Compliance Order and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. § 81-1507 (Reissue 2014). The Complainant is the Director, State of Nebraska Department of Environmental Quality (hereinafter “NDEQ” or “Department”). The Respondent is AltEn Operating Company, LLC (hereinafter “Operator”) whose facility # 84069 is located in Mead, Saunders County, Nebraska. Complainant has determined that the Respondent is in violation of the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. § 81-1501 et. seq. (Reissue 2014, Cum. Supp. 2016) and Title 129, Nebraska Air Quality Regulations.

2. The Department is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504, of exercising exclusive general supervision, administration, and enforcement of the Nebraska Environmental Protection Act, and all rules and regulations and orders promulgated under such act.

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



II. COMPLAINT

4. Respondent is Operator, operator of the biochar unit at 1344 County Road 10, Mead, Nebraska 68041. The owner of the biochar unit is Greencycle Solutions, LLC ("Greencycle"), and the subject of NDEQ Case No. 3469. The legal description is N SW Section 12 Township N 14 Range E 08, Saunders County, Nebraska.

5. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules and regulations for the purpose of air pollution control, as expressed in Neb. Rev. Stat. §§ 81-1505(1), (12), the Council adopted rules and regulations codified as Neb. Adm. Code, Title 129, Nebraska Air Quality Regulations.

6. Nebraska Administrative Code, Title 129, Nebraska Air Quality Regulations, Chapter 20, Section 004, states that:

"No person shall cause or allow emissions, from any source, which are of an opacity equal to or greater than twenty percent (20%), as evaluated by an EPA-approved method, or recorded by a continuous opacity monitoring system operated and maintained pursuant to 40 CFR Part 60 Appendix B except as provided for in section 005 of this chapter."

7. Nebraska Administrative Code, Title 129, Nebraska Air Quality Regulations, Chapter 30, Section 001, states that "No person shall cause or allow any open fires."

8. On July 7, 2017, an email was sent from NDEQ staff to Tanner Shaw at tshaw@mrgkc.com. The email requested additional information regarding VOC/HAP emissions from the WDG dryer and whether the potential emissions from the dryer were evaluated by Mead Cattle Company, LLC; AltEn; or Greencycle. Data from dryers have shown to have emissions in the range of 2.5 lb/hr individual HAP and 108 lb/hr VOC, very significant emissions.

9. On July 14, 2017, an email was sent from NDEQ staff to Tanner Shaw at tshaw@mrgkc.com. The email again requested additional information originally requested in the email cited in Paragraph #8 above. The July 14, 2017, email also questioned the potential CO emissions from this unit.

10. A Notice of Violation ("NOV") was issued by NDEQ on August 9, 2018, and received by Greencycle on August 10, 2018, finding Greencycle in violation of the following requirements:

"1. Causing or allowing emissions from a source at an opacity equal to or greater than twenty percent (20%), as evaluated by an EPA-approved method [Title 129 - Chapter 20 - 004]. On July 13, 2018 opacity of emissions from Greencycle's biochar emission stack, which is operated by AltEn, were determined to have an average opacity of 30.4%, according to EPA Method 9 testing.

2. Causing or allowing an open fire without the written permission of the Director [Title 129 – Chapter 30]. The Department documented smoldering of biochar product during a facility tour on July 19, 2018."

11. The August 9, 2018, NOV required Greencycle, within 60 days of receipt of the NOV, to:

"1. Submit a timeline for proposed emission testing for the biochar emission unit using test methodologies found in Title 129, Chapter 34, to determine emission rates for particulate matter with an aerodynamic diameter less than or equal to 10 micrometers (PM₁₀), volatile organic compounds (VOC), and hazardous air pollutants (HAPs).

Testing must be performed under worst-case conditions, which the Department believes to be while charging fresh wet cake into the biochar emission unit for all test runs.

2. Perform maintenance on the biochar unit and submit a record of corrective and preventive actions taken to ensure the emission unit is in compliance with Title 129 – Chapter 20 opacity limits."

12. As of today's date, Greencycle has failed to respond to the July 7 and July 14, 2017, emails and to comply with the August 9, 2018, NOV.

13. The Director of the NDEQ is authorized pursuant to Neb. Rev. Stat. § 81-1504(1), (7), and (13) to issue this order requiring enforcement of the Nebraska Environmental Protection Act.

III. COMPLIANCE ORDER

14. Within 30 days of receipt of this order, Operator shall bring their facility into compliance with all requirements of the Nebraska Environmental Protection Act and all rules and regulations and orders promulgated under such acts, including, but not limited to completing the following:

A. Conduct emission testing on the biochar unit for PM₁₀, CO, mass of VOC, and speciated HAPs while operating under worst-case conditions (while charging fresh wet cake into the biochar emission unit for all test runs). Testing must be performed within 60 days of receipt of this order or the next time the unit is operated. Notice must be given to the NDEQ 30 days prior to the testing pursuant to Neb. Admin. Code Title 129, Chapter 34, Section 003.

B. Provide documentation of maintenance and/or other corrective actions performed on the biochar unit required by the NOV, as well as maintenance records back to the date of installation.

C. Submit information requested in facility correspondence on July 7 (email to Tanner Shaw) and July 14, 2017 (email to Tanner Shaw).

D. Provide documentation on date of installation of the biochar unit.

15. Respondents shall report to NDEQ within 30 days of receipt of this order, documenting how compliance with paragraph 14 of this Order has been achieved.

16. Respondents shall report to NDEQ within 60 days of receipt of this order, documenting how compliance with paragraph 14(A) of this Order has been achieved.

17. Respondents shall respond promptly to any written communication by the NDEQ. Any delay in responding to such communication shall be construed as non-compliance with this Order.

18. Information to be submitted under this Order shall refer to FID # 84069 and shall be sent to:

Air Quality Division
Nebraska Department of Environmental Quality
PO Box 98922
Lincoln, NE 68509-8922

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

19. This Order shall become final, pursuant to Neb. Rev. Stat. § 81-1507(1), unless Respondent files 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.

20. 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, State of 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

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

22. 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

23. 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.

Dated this 21st day of December, 2018.

BY THE DIRECTOR:



Jim Macy, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Complaint, Compliance Order and Notice of Opportunity for Hearing, with attachments, were served by certified United States mail, postage prepaid, return receipt requested this 21st day of December, 2018, upon the Respondent listed below at their registered agent's office address:

AltEn Operating Company, LLC
Capitol Corporate Services, Inc.
1125 S 103rd St., Suite 800
Omaha, NE 68124



Lauren Triplett, Staff Assistant
Legal Division