

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF)	CASE NO. 3481
BIG OX ENERGY – SIOUXLAND, LLC,)	
)	
FID # 105921)	CONSENT ORDER
)	
Respondent.)	

I. INTRODUCTION

1. The Nebraska Department of Environmental Quality (Department) and Big Ox Energy – Siouxland, LLC (Respondent) voluntarily enter into this Consent Order to incorporate and implement corresponding improvements to monitoring and environmental management controls at the Respondent's facility. This Consent Order requires Respondent to comply with the activities and schedules specified in Section V, (Compliance Order and Schedule) below in accordance with the Nebraska Environmental Protection Act (the "Act"), Neb. Rev. Stat. §81-1501, et seq. (Reissue 2014) and rules and regulations and orders promulgated under the Act. The Department and Respondent agree that settlement of this matter is in the public interest to ensure compliance with state laws, rules and regulations, and permits that have been adopted and issued to protect the environment.

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 Respondent is Big Ox Energy – Siouxland, LLC, a foreign domesticated LLC, which owns and operates a biologically-based, renewable natural gas production/sewage treatment facility located in South Sioux City, Nebraska. Respondent agrees to undertake all actions required by the terms and condition of this Consent Order. Respondent admits to the Department's jurisdiction over the subject matter of this Consent Order. Respondent 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. Respondent waives its right to receive a formal complaint and to hearing requirements as provided in Neb. Rev. Stat. §81-1507(2). Respondent 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

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

IV. COMPLAINT

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

6. On April 14, 2016, NDEQ issued Air Quality Construction Permit CP15-008 to Respondent. On April 9, 2018, NDEQ issued Air Quality Construction Permit CP17-033 to Respondent, which completely replaces CP15-008.

7. Permit Condition I.(D) of CP17-033 states: "Any owner or operator who failed to submit any relevant facts or who submitted incorrect information in a permit

application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information."

8. Neb. Admin. Code Title 129, Chapter 17 states: "006 Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information."

9. The Department conducted an inspection of Respondent's facility on October 10, 2018, and discovered an exhaust pipe which bypasses control devices and vents uncontrolled biogas to atmosphere during startup of flare (EU06) operation. This emission point was not identified in previous construction permit applications or subsequent communications with the NDEQ. This violation was reported to the Respondent in a Notice of Violation (NOV) dated November 7, 2018.

10. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules and regulations for the issuance of air quality permits in Neb. Rev. Stat. § 81-1505(12), the Council adopted and promulgated Neb. Admin. Code, Title 129, Nebraska Air Quality Regulations. Neb. Rev. Stat. §81-1506(4)(a) further makes it unlawful for any person to discharge any pollutant into the air of the state without obtaining a permit as required by the air quality program and Title 129. Air, water, and land pollution are defined in Neb. Rev. Stat. §81-1502(1), (19), and (20) respectively.

11. The Department has not issued a permit to the Respondent authorizing any discharges to the environment as described in this complaint.

12. The Department has alleged that the Respondent, by the actions cited above,

has failed, is failing, and continues to fail, to operate its facility in a manner to prevent unauthorized releases to the environment.

V. COMPLIANCE ORDER AND SCHEDULE

13. The Department and Respondent agree to the following:

A. Immediately after signing of this Consent Order, Respondent may begin construction to repair the exhaust pipe which bypasses control devices and vents uncontrolled biogas to atmosphere during startup of flare (EU06) operation.

Respondent will make repairs which conform to the plans submitted to NDEQ during the week of March 4, 2019. Construction shall be completed within ten days of the signing of this order.

B. Within thirty days of the signing of this Consent Order, Respondent will file a complete major modification application for CP17-033, including application fees. This application shall include emission modeling, which should have been part of the original application for CP-033, pursuant to Neb. Admin. Code Title 129, Chapter 17, 008. This application shall also include monitors for the new construction which continuously monitor and record the flow and the composition and quantity of H₂S exiting the new construction and the by-pass.

VI. SUBMITTALS

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

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

15. Respondent 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. 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

16. Respondent 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

17. 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

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

X. AMENDMENT

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

XI. EFFECTIVE DATE

20. This Consent Order shall become effective on the date it is signed by the Director of the Department.

XII. SEVERABILITY

21. 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: The undersigned representative of Big Ox Energy – Siouxland, LLC 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: CEO

Date: 03-18-19

For the Department: IT IS ORDERED and agreed this 20th day of March, 2019.

By: 


Jim Macy
Director

Department of Environmental Quality

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Consent Order, were served by certified United States mail, postage prepaid, return receipt requested this 20th day of March, 2019, upon the Respondent listed below:

Big Ox Energy – Siouxland, LLC
Northwest Registered Agent Service, Inc.
Suite 100, 530 S. 13th St.
Lincoln, NE 68508



Lauren Triplett
Staff Assistant - Legal Division