

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE CASE OF
MIDWEST RENEWABLE
ENERGY, LLC,

A Nebraska LLC,
Facility ID 34651,

Respondent.

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CASE NO. 3361

CONSENT ORDER

I. INTRODUCTION

1. The Nebraska Department of Environmental Quality (Department) and Midwest Renewable Energy, LLC (MRE) voluntarily enter into this Consent Order. The Consent Order establishes a schedule for actions necessary to achieve and maintain compliance with MRE's Air Quality Construction Permit Number CP10-035 dated June 12, 2011, in accordance with the Nebraska Environmental Protection Act (Act), Neb. Rev. Stat. §§ 81-1501 et seq. (Reissue 2014 and 2015 Supp.) and *Title 129, Neb. Admin. Code, Nebraska Air Quality Regulations* (Title 129). This Consent Order requires MRE to comply with the activities and schedules specified in Section VI.

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), of exercising exclusive general supervision, administration, and enforcement of the Act. This Consent Order is issued under the authority vested in the Director of the Department by Neb. Rev. Stat. §§ 81-1504(25) and 81-1507(1).

3. MRE agrees to undertake all actions required by the terms and conditions of this Consent Order. MRE admits to and agrees not to contest the jurisdictional allegations referenced herein. MRE waives its right to receipt of a complaint and all notice and

hearing requirements provided in Neb. Rev. Stat. § 81-1507 for the violations alleged herein. MRE agrees that it will not contest the basis or validity of this Consent Order in any proceedings by the NDEQ to enforce this Consent Order.

III. PARTIES

4. The parties to this Consent Order are the Nebraska Department of Environmental Quality and Midwest Renewable Energy, LLC. MRE is a Nebraska Limited Liability Corporation qualified and in good standing to do business in Nebraska. This Consent Order is binding on MRE, and its employees.

5. MRE shall ensure that any contractors hired to perform the work required by this order, receive a copy of this Consent Order. MRE shall be responsible for any noncompliance with this Consent Order.

6. MRE owns and operates an ethanol manufacturing plant located at 27532 West Highway 30, Sutherland, Nebraska 69165.

IV. FINDINGS OF FACT

7. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules for the issuance of construction and operating permits for the purpose of air pollution control, as expressed in Neb. Rev. Stat. § 81-1505(12), the Council adopted a rule codified as *Title 129*.

8. MRE, at all times material herein, has been subject to the terms and conditions of Construction Permit # CP10-035 issued pursuant to Neb. Rev. Stat. § 81-1504(11) on June 12, 2011.

9. MRE failed to maintain emissions below the 10 tons of any individual HAP (hazardous air pollutant) on a 12 consecutive month basis, as required in condition

II(D)(1) of Air Construction Permit CO10-035 issued June 12, 2011.

10. MRE failed to maintain VOC emissions below 3.36 lbs/hr as required in condition III(B)(2) of Air Construction Permit CP10-035 issued June 12, 2011. Stack testing results dated October 22, 2015, indicated VOC emissions were 6.55 lbs/hr.

11. MRE failed to continuously monitor chemical addition to the CO₂ scrubber as required in condition III(B)(3)(b)(iii)(4) of Air Construction Permit CP10-035 dated June 12, 2011.

12. A Notice of Violation was issued to MRE on August 4, 2014, for violations of Title 129, Chapters 34 and 35 and Construction Permit # CP-11-035.

13. Seventeen violations were cited in the August 4, 2014, Notice of Violation, including failure to provide NDEQ notification of shutdown and startup of plant for facility-wide shutdown on February 11, 2012, and restart on April 17, 2013; failure since April 17, 2013, to perform calculations of emissions and keep required records; failure since April 17, 2013, to document ethanol production on a monthly or each 12 consecutive calendar-month period; failure to keep records of visual emission surveys for the grain receiving area; failure to control all emissions from the fermentation process by CE 3 (CO₂ scrubber) as evidenced by leaking from the pressure relief valve on fermentation tanks ## 1 and 4 (EUs 17 and 21); failure to perform TDS sampling from April 17, 2013, through April 2014; failed to complete LDAR testing, keep LDAR testing records, and submit testing records for January through February 11, 2012, and April 17, 2013, through August 2013; failure to pave haul roads as required by CP10-035; failure to complete visible emission surveys of plant property; failure to document

use of fugitive dust control measures on haul roads; failure to keep records of haul road visible emissions checks taken daily during operation.

14. The Department acknowledges, for purposes of this Consent Decree, MRE agrees to the installation of monitoring equipment as outlined in Paragraph # 21 and has taken action to resolve the alleged violations noted in the August 4, 2014, Notice of Violations.

15. The Act at Neb. Rev. Stat. §81-1506(4)(b) makes it unlawful for any person to "violate any term or condition of an air pollution permit or any emission limit set in the permit."

16. MRE is a "person" as defined in Neb. Rev. Stat. § 81-1502(10) of the Act. MRE's failure to comply with the permit condition to control emissions through the scrubber is a violation of the Act.

V. STIPULATION

17. MRE admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law referenced within Section IV herein.

18. MRE agrees to undertake all actions required by the terms and conditions of this Consent Order and agrees not to contest the basis or validity of this Consent Order in any proceedings by the Department to enforce this Consent Order.

19. MRE shall be responsible for any noncompliance with this Consent Order.

20. The Director of the Department is authorized pursuant to Neb. Rev. Stat. §§ 81-1504(25) and 81-1507(1) to enter into this Consent Order requiring MRE to implement

the activities necessary to achieve and maintain compliance with their permit as described in Section VI of this Consent Order.

VI. COMPLIANCE ORDER AND SCHEDULE

21. MRE agrees to perform the following:

A. By October 31, 2016, install and operate a Fourier transform infrared spectroscopy (FTIR), VOC, HAP and Flow Continuous Emissions Monitoring Systems (CEMS) at the facility fermentation scrubber (EP#4) or conduct a stack test for establishing water and chemical addition rates set points and establish an emission factor.

B. By December 31, 2016, install and operate a Fourier transform infrared spectroscopy (FTIR), VOC, HAP and Flow Continuous Emissions Monitoring Systems (CEMS) at the facility fermentation scrubber (EP#4) and certify the CEMS in accordance with Appendix B of 40 C.F.R. Part 60.

C. By October 31, 2016, install a device to continually measure chemical addition to the facility's CO₂ scrubber, as required in Construction Permit CP10-035 dated June 12, 2011.

D. By October 1, 2016, submit a minor permit revision request in accordance with Title 129, Chapter 15.003, to revise Air Quality Construction Permit Number CP10-035 dated June 12, 2011, to allow MRE to use CEMS for compliance demonstration.

E. All terms and references used in this Consent Order shall have the same meaning as in the Permit. No other terms or conditions of the Permit are affected by this Consent Order.

23. Information to be submitted under this Consent Order shall be sent to:

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

VII. SATISFACTION AND COMPLIANCE WITH OTHER LAWS

24. MRE 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

25. 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.

IX. NEGATION OF AGENCY RELATIONSHIP

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

X. AMENDMENT

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

XI. EFFECTIVE DATE

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

XII. SEVERABILITY

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

XII. SEVERABILITY

29. 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.

XIII. SIGNATURES

30. For the Respondent, MRE: The undersigned representative of MRE 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

Date: 9/9/16

For the Department: IT IS ORDERED and agreed this 9th day of September, 2016.

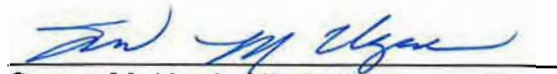
By: 

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 12th day of September, 2016, upon the Respondent at:

JAMES G. JANDRAIN
ATTN: TOM WILSON
SUITE 212
3610 DODGE STREET
OMAHA, NE 68131



Susan M. Ugai, Attorney
Nebraska Department of Environmental Quality