

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

|                                 |   |                     |
|---------------------------------|---|---------------------|
| IN THE MATTER OF                | ) | CASE NO. 3454       |
| BIG OX ENERGY – SIOUXLAND, LLC, | ) |                     |
|                                 | ) | EMERGENCY COMPLAINT |
| FID # 105921                    | ) | AND ORDER           |
|                                 | ) |                     |
| Respondent.                     | ) |                     |

This Emergency Complaint and Order is issued by the Deputy Director – Air and Land of the Department of Environmental Quality (hereinafter referred to as “Department”) pursuant to Neb. Rev. Stat. § 81-1507(4) of the Environmental Protection Act (Act), Neb. Rev. Stat. § 81-1501 et seq. (Reissue 2014, Supp. 2016) to require immediate action to protect the public health and welfare. The Deputy Director is authorized to issue this Order in the absence of physical presence of the Director pursuant to a delegation of authority. 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 Environmental Protection Act, and all rules and regulations and orders promulgated under the Act. The Respondent is Big Ox – Siouxland, LLC, a foreign domesticated LLC, which owns and operates a biologically-based, renewable natural gas production facility located in South Sioux City, Nebraska.

The complaint below sets out the facts establishing the existence of an emergency, and the order specifies the immediate action that must be taken to abate the emergency. This Emergency Complaint and Order is effective immediately. The Respondent shall be afforded the opportunity for a hearing upon application in writing to



the director of the Department, such hearing to take place as soon as possible but not later than ten days after a request is made.

## **I. COMPLAINT**

1. On or about June 10, 2018, Respondent emailed a notification to the Department that the facility in South Sioux City, Nebraska had a digester(s) overflow that occurred late Friday night, June 8, 2018. The Department received subsequent complaints regarding a discharge to the environment of malodorous black or dark brown liquid or sludge material that was ponding and running off the Respondent's property onto neighboring property and into a wetland area. The Department conducted an investigation on June 14, 2018 and verified the discharge and documented violations which have been reported to the Respondent in a Notice of Violation (NOV) dated June 20, 2018. The Department estimated the quantity of the discharge is 200,000 to 400,000 gallons. The NOV required all unauthorized discharges at the facility to immediately cease, collection and analysis of a composite sample of the released waste, and clean-up of all impacted areas exposed to stormwater and off-property within 72 hours of receipt of the NOV. The NOV was emailed to the Respondent on June 20, 2018 and mailed by certified mail the same date.

2. On June 22, 2018, a Department inspector was in the immediate vicinity of the Respondent's facility and observed a discharge occurring from the digester(s) at the Respondent's facility, which discharge was continuing. At the time of the inspector's observation, the inspector recorded an air quality reading, taken in relatively calm weather conditions, of Hydrogen Sulfide (H<sub>2</sub>S) using a hand-held Jerome monitor.

3. The discharge on or about June 8 and continuing for some unknown period of time, and the discharge on June 22, 2018, which appears to be continuing, both constitute unauthorized discharges of wastes to the environment and are causing, have caused, and continue to cause, pollution to the air, waters, and land of the state in violation of Neb. Rev. Stat. §81-1506(1)(a). Neb. Rev. Stat. §81-1506(1)(a) makes it “unlawful for any person to 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.”

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

5. The Department has the power and duty to “require proper maintenance and operation of disposal systems” pursuant to Neb. Rev. Stat. §81-1504(12).

6. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules and regulations for the issuance of NPDES permits in Neb. Rev. Stat. §81-1505(11), the Council adopted and promulgated Neb. Admin. Code, Title 119, Rules and Regulations Pursuant to the Issuance of Permits under the National Pollutant Discharge Elimination System (NPDES). Neb. Rev. Stat. §81-1506(2)(a) further makes it unlawful for any person to discharge any pollutant into waters of the state without obtaining a permit as required by the NPDES program and Title 119, Chapter 2, Section 001. Air, water, and land pollution are defined in Neb. Rev. Stat. §81-1502(1), (19), and (20) respectively.

7. The Deputy Director finds that the discharge from the digester(s) at the Respondent's facility has placed the Respondent in violation of the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §81-1501 et seq. and Title 119.

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

9. The Deputy Director finds 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.

10. The Respondent is operating its facility in a manner that presents an emergency and imminent and substantial threat to human health and the environment, has caused and is likely to continue to cause pollution to the air, waters, and land of the state in violation of state law, rules and regulations. The Deputy Director further finds that the equipment failure at the facility must be immediately repaired to prevent further injury and exposure to the public and the environment.

## **II. COMPLIANCE ORDER**

### **IT IS HEREBY ORDERED THAT:**

11. Respondent shall immediately cease discharging waste material from its digesters up to and including a reduction of operations to prevent further damage and harm to the environment.

12. Respondent shall take immediate steps to repair malfunctioning equipment or operations at the facility as necessary to cease the discharges of waste material from its facility through upset of the digesters.

13. Respondent shall clean up the entirety of the released waste, including all impacted areas of Respondent's facility and property, building surfaces exposed to stormwater, and off-property discharges.

14. Respondent shall provide the Department with verification that the actions ordered above are being taken and will be taken to prevent further harm to the environment. Said verification 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

15. Nothing in this Emergency Order shall be construed by the Respondent to authorize any further or other violation of law and the Department reserves all rights to take any further action as may be necessary to protect human health and the environment.

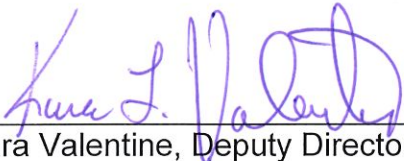
### **III. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

16. In accordance with Neb. Rev. Stat. §18-1507(4) this Emergency Complaint and Order shall become effective immediately. The Respondent is required to comply with the Emergency Order upon receipt.

17. The Respondent may request a hearing by submitting a written request to the Director. The 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. Such hearing shall be scheduled as soon as possible but not later than ten days after the request is made. The Emergency Complaint and Order shall remain in effect pending any hearing and shall not relieve the Respondent from immediate compliance.

18. This Emergency Complaint and Order does not preclude the Department from pursuing additional enforcement by administrative order for injunctive relief and penalties based on violations of the Act. The Department further reserves the right to impose additional obligations to abate or eliminate the emergency or pollution caused by the Respondent.

Dated this 22nd day of June, 2018.

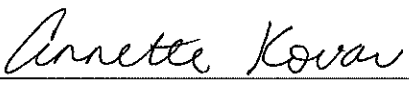


Kara Valentine, Deputy Director – Air and Land  
Nebraska Department of Environmental Quality

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Emergency Order and Complaint, was sent by certified United States mail, postage prepaid, return receipt requested on this 25<sup>th</sup> day of June, 2018, upon the Respondent listed below at their mailing address:

Northwest Registered Agent Service, Inc.  
Suite 100  
530 S. 13<sup>th</sup> Street  
Lincoln, NE 68508

  
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Annette Kovar