

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF	)	
AltEn, LLC,	)	CASE NO. 3475
	)	
	)	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, LLC (hereinafter "AltEn") 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), Neb. Admin. Code, Title 119, Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination Section, and Neb. Admin. Code, Title 123, Rules and Regulations for the Design, Operation, and Maintenance of Wastewater Works.

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 AltEn, LLC, operator of the ethanol plant at 1344 County Road 10, Mead, Nebraska 68041. The legal description is N SW Section 12 Township N 14 Range E 08, Saunders County, Nebraska. AltEn, LLC, is a limited liability company registered to do business in Nebraska and incorporated in the state of Kansas.

5. AltEn has authorization to discharge storm water under the terms and conditions of the National Pollutant Discharge Elimination System (NPDES) Industrial Storm Water General Permit NER910000, pursuant to authorization number NER910444, issued by NDEQ on April 20, 2017.

6. AltEn was issued NPDES Permit Number NE0137634, effective July 1, 2017.

7. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules and regulations for the purpose of water pollution control, as expressed in Neb. Rev. Stat. §§ 81-1505(1), (8), (11), (12), (15), (16), (20), the Council adopted rules and regulations codified as Neb. Admin. Code, Title 119, Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination Section and Neb. Admin. Code, Title 123, Rules and Regulations for the Design, Operation, and Maintenance of Wastewater Works.

8. Neb. Admin. Code, Title 119, Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination Section, Chapter 14, Section 001.01, states that:

“Duty to comply. The permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the Federal and State Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.”

9. Neb. Admin. Code, Title 123, Rules and Regulations for the Design, Operation, and Maintenance of Wastewater Works, Chapter 11 states:

“008 The operation and maintenance of wastewater lagoons shall be conducted in the following manner:

008.01 Lagoon dikes shall be maintained with grass to minimize soil erosion, except for areas protected by rip rap or other stabilization methods. The grassed dikes shall be mowed to prevent growth of trees or woody plants. Cattails, reeds and other emergent vegetation shall be removed from the lagoons promptly as they appear.

...  
008.05 Damage to lagoon dikes and liners caused by muskrats or other rodents, erosion, tree roots, animal hooves, or any other source shall be promptly repaired.

008.06 The liners of wastewater lagoons shall be maintained so that wastewater seepage does not exceed the rate approved by the Department in the construction plans and specifications. Where no record of approved plans and specifications exist, the lagoon liner shall be maintained to meet the seepage rate prescribed by the Department for the specific wastewater being treated. The owner shall perform seepage testing when requested by the Department.

008.07 Wastewater lagoons shall be operated so that the water level is not maintained in the area designed for freeboard.”

10. AltEn is required to dispose of all solid wastes and sludges in accordance with State and Federal Regulations pursuant to Part III.E. and F of NPDES Permit Number NE0137634 and the Construction and Development Point Source Category Effluent Limitation Guidelines at 40 CFR 450.

11. AltEn is required meet the Control Measures listed in Part 2.1 of NPDES Industrial Storm Water General Permit NER910000.

12. A Notice of Violation (NOV) was issued by NDEQ on July 23, 2018, and received by AltEn on July 28, 2018, finding AltEn in violation of the following requirements:

- A. Failure to utilize construction storm water control best management practices (BMPs) required by Part III.E. and F of NPDES Permit Number NE0137634 and

the Construction and Development Point Source Category Effluent Limitation Guidelines at 40 CFR 450, as evidenced by the following observations:

- a. Sediment discharges from the site are not minimized.
- b. Controls are not implemented for disturbed slopes.
- c. Temporary construction control BMPs are not installed.
- d. Notice of Intent (NOI) and Storm Water Pollution Prevention Plan (SWPPP) are not posted or available when requested.

B. Failure to utilize and maintain industrial storm water control best management practices as required by part 2.1 of NPDES Industrial Storm Water General Permit NER910000, as evidenced by the following observations:

- a. Berm used to control wet cake runoff is breached and discharging into neighboring property.
- b. SWPPP not provided when requested.

13. The July 23, 2018, NOV required AltEn to:

- A. Immediately implement and maintain temporary or permanent stabilization measures for disturbed portions of the site as required by the NPDES Permit Number NE0137634. Implement the required corrective action for the removal of offsite accumulations of sediment.
- B. Immediately submit the construction storm water pollution prevention plan (SWPPP) to the NDEQ.
- C. Within 15 days of the NOV, submit in writing a description of the corrective actions implemented to mitigate the above reference violations of NPDES Permit Number NE0137634.
- D. Immediately implement and maintain NPDES Industrial Storm Water General Permit NER910000 best management practices around the BioChar wet cake storage area.
- E. Within 15 days from the receipt of this notification, submit in writing a description of the corrective actions implemented to mitigate the above referenced NPDES Industrial Storm Water General Permit NER910000 violations. Include photo documentation of the corrective actions.

14. As of today's date, AltEn has failed to respond to the July 23, 2018, NOV.

15. On August 1, 2018, NDEQ inspectors conducted sampling at AltEn. During an examination of the outdated seed corn storage, the inspectors found other types of seed, including Sudan grass and sorghum.

16. On October 11, 2018, an NDEQ inspector and an engineer conducted a site visit at AltEn and noted the following: missing industrial storm water (ISW) inspection

reports, SWPPP not updated with NPDES Industrial Storm Water General Permit NER910000, improper good housekeeping measures, chemicals not stored in proper containment, uncontrolled storm water discharges, starch totes not properly labelled and improper cleaning of spills and leaks. Two storage lagoons were found to have operated within the area for freeboard, and there were tears in the lagoon liners and dike erosion noted.

17. The items noted in Paragraph 16 above are violations of Neb. Admin. Code, Title 119, Chapter 14, Section 001.01 and Title 123, Chapter 11, Sections 008.01, 008.05, 008.06, and 008.07.

18. On October 25, 2018, two NDEQ inspectors and an engineer conducted a site visit and sampling at AltEn. Strong odors associated with manure, chemical cleaner, and ethanol were noted. They also found the two storage lagoons have extensive liner damage, extensive vegetative growth, burrowing animals, and a layer of solids floating on the surface that appears to be in a septic state. The emergency lagoon has holes and tearing in the liner, a layer of solids, and is operating within the area designated for freeboard. Sample results indicated an overloading of the two storage lagoons.

19. The stormwater inspection revealed passively discharged material from a manhole entering the lagoons, starch totes leaking on the north and south sides of the facility, uncontrolled contaminated stormwater discharging tar like material, and thin stillage discharging from a black pipe entering the digesters.

20. AltEn could not produce discharge monitoring reports (DMRs) or records of ISW inspections, sampling, and training.

21. The items noted in Paragraphs 18, 19, and 20 above are violations of Neb. Admin. Code, Title 119, Chapter 14, Section 001.01 and Title 123, Chapter 11, Sections 008.01, 008.05, 008.06, and 008.07.

22. 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**

23. AltEn 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. Within thirty (30) days, submit in writing a description of the corrective actions implemented to mitigate the referenced General NPDES Permit Number NER910000 violations. Photographic documentation of the corrective actions must be submitted to NDEQ.

B. Within thirty (30) days, submit to the NDEQ all missing storm water inspections and training records from July 2017 to the present. Provide a corrective action report identifying the condition triggering the need for corrective action. The report shall include control measures used to ensure that facility inspections and employee training is being completed, documented and filed for inspection.

C. Within thirty (30) days, submit to the NDEQ an updated SWPPP that references the General NPDES Permit Number NER910000.

D. Within fifteen (15) days, submit to the NDEQ the required Best Management Practices (BMPs) for land application. The BMPs must include all requirements set forth in Part II. of the NPDES Permit Number NE0137634.

E. Within fifteen (15) days, submit to the NDEQ the laboratory results for land application from July 2017 to the present. The results must include documentation that no measureable residues of pesticides from seed corn remain in ethanol by-products that are used for agronomic practice. Notify NDEQ at least 48 hours prior to doing future land applications.

F. Within ninety (90) days, submit to the NDEQ an independent professional engineering evaluation for the repair of the two-cell lagoon and emergency lagoon liners along with a timeline for the repair completion. Also, provide documentation that vegetation has been removed, animal burrows repaired, and the lagoons are not operating within the area designated for freeboard.

G. Immediately stop the use of evaporator/misters in the storage lagoon system until receiving written approval from the NDEQ.

H. Within one hundred twenty (120) days, submit to the NDEQ a ground water monitoring plan of the facility including the storage lagoons. The facility must identify the chemicals that are present in the seed coating prior to ethanol production. The facility must continue to monitor for these chemicals.

24. 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.

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

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

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

26. This Order shall become final, pursuant to Neb. Rev. Stat. § 81-1507(1), unless Respondents file 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.

27. 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**

28. Whether or not Respondents request 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.

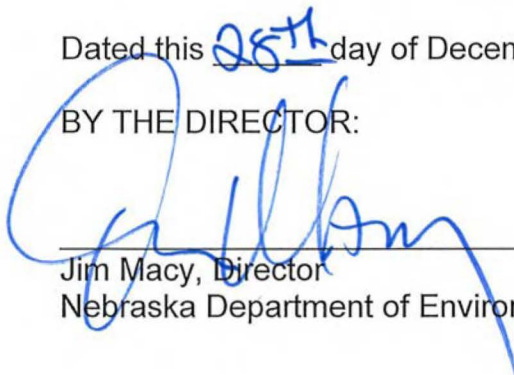
29. A request for settlement conference does not extend the thirty (30) day period during which a written answer and request for hearing must be submitted or otherwise delay the final effective date of this Order.

## **VI. INJUNCTIVE RELIEF AND PENALTY PROVISIONS**

30. 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 28<sup>th</sup> day of December, 2018.

BY THE DIRECTOR:



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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 28th day of December, 2018, upon the Respondents listed below at their registered agents and office addresses:

AltEn, LLC  
Capitol Corporate Services, Inc.  
1125 S. 103<sup>rd</sup> St., Suite 800  
Omaha, NE 68124

  
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Susan M. Ugai