

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF  
ALTEN, LLC,

FID # 84069

Respondent.

)  
)  
)  
)  
)  
)

CASE NO. 3483

CONSENT ORDER

**I. INTRODUCTION**

1. The Nebraska Department of Environmental Quality (Department) and AltEn, 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. This Consent Order supersedes Administrative Order, Case No. 3475, issued by NDEQ on December 28, 2018.

**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. 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. 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. 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. This permit authorizes AltEn to discharge wastewater under the National Pollutant Discharge Elimination System.

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. On October 11, 2018, an NDEQ inspector and an engineer conducted a site visit at AltEn and noted the following: 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.

13. On October 25, 2018, two NDEQ inspectors and an engineer conducted a site visit and sampling at AltEn. 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. 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. The stormwater inspection revealed passively discharged material from a manhole entering the lagoons.

14. The items noted in Paragraphs 12 and 13 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.

#### **V. COMPLIANCE ORDER AND SCHEDULE**

15. The Department and Respondent agree that 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 fifteen (15) days of the signing of this consent order, submit to the NDEQ the land application site requirements and set-back information required by Part II. B. 1. and 8. of the NPDES Permit Number NE0137634.

B. Within sixty (60) days of the signing of this consent order, submit to the NDEQ an independent professional engineering evaluation for the repair of the north cell of the two-cell lagoon, the south cell of the two-cell lagoon, and the emergency lagoon liners along with a timeline for the repair completion. Since the original engineering was completed by Settje Agri-Services and Engineering, Inc., this independent professional engineering evaluation shall include an additional review by another independent engineering firm. Also, provide documentation that vegetation has been removed, animal burrows repaired, and the lagoons are not operating within the area designated for freeboard.

C. Within thirty (30) days of receiving approval of the plan for the south cell of the two-cell lagoon repair and the emergency lagoon repair, respondent shall enter into a binding contract to begin implementation of the repair plan.

D. Within thirty (30) days of receiving approval of the plan for the north cell of the two-cell lagoon repairs, respondent shall make a determination if they will repair the north cell of the two-cell lagoon and/or utilize another method of water treatment or storage will be utilized.

E. Within sixty (60) days of the signing of this consent order, submit to the NDEQ a ground water monitoring plan of the facility including the storage lagoons. The ground water monitoring plan must be submitted to the NDEQ for review and approval and include at a minimum, identification of the location and installation of four (4) monitoring wells (at least

one upgradient well), identification of all constituents to be monitored for, and quarterly monitoring. The facility must identify the chemical constituents that are present in the seed coating (for seed corn and other seed products used as feedstock) prior to ethanol production. More guidance for the plan may be found at: <http://deg.ne.gov/publica.nsf/PubsForm.xsp?documentId=A08DCD3ACC143EFE8625748300563548&action=openDocument>

F. Both the south cell of the two-cell lagoon and the emergency lagoon repairs and the ground water monitoring plan shall be fully implemented by October 1, 2019.

G. The north cell of the two-cell lagoon repairs and/or the utilization of an alternative water treatment or storage method completion date shall be determined at the time a final decision and plan is accepted by NDEQ. This timeline must be approved by NDEQ.

H. All time frames contained within this consent order may be amended with good cause and if mutually agreed upon by both parties.

16. 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.

## **VI. SUBMITTALS**

17. All documents required to be submitted to the Department pursuant to this Consent Order shall refer to FID # 84069 and shall be sent to:

NDEQ Water Quality Division  
Nebraska Department of Environmental Quality  
PO Box 98922  
1200 N St., Suite 400  
Lincoln, NE 68509-8922

## **VII. SATISFACTION AND COMPLIANCE WITH OTHER LAWS**

18. 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**

19. 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**

20. 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**

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

## **XI. EFFECTIVE DATE**

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

## **XII. SEVERABILITY**

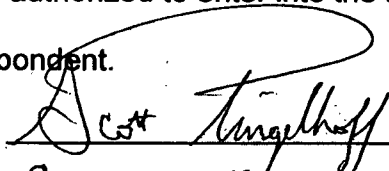
23. If any provision or authority of this Consent Order or the application of the Consent Order to any party or circumstances is held by any judicial or administrative authority to be

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 AltEn, 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:

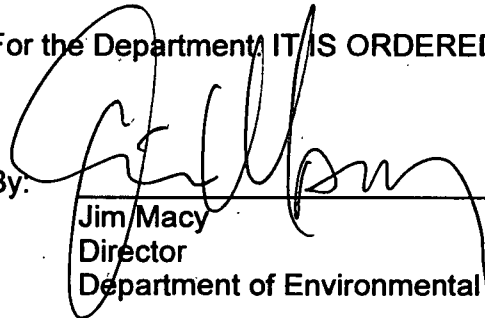
General Manager / Vice President, AltEn, LLC

Date:

4-24-19

For the Department, IT IS ORDERED and agreed this 24<sup>th</sup> day of April, 2019.

By:



Jim Macy  
Director  
Department of Environmental Quality