

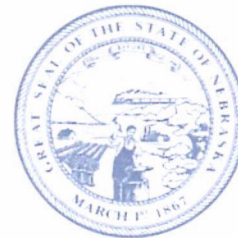
# NEBRASKA

Good Life. Great Resources.

DEPT. OF ENVIRONMENT AND ENERGY

FILE COPY

OCT 02 2020



Pete Ricketts, Governor

**Return Receipt Requested**

Tanner Shaw, President  
Capital Corporate Services, Inc.  
Suite 800  
1125 South 103<sup>rd</sup> Street  
Omaha, NE 68124

**Letter of Noncompliance (LNC)**

**RE: AltEn, LLC**

**NDEE ID: 84069**

**Program ID: NE0137634, NER910444**

Dear Mr. Shaw:

This Letter of Non-Compliance is being issued to AltEn, LLC, for documented violations of Title 119 - *Rules and Regulations Pursuant to the Issuance of Permits under the National Pollutant Elimination System (NPDES)* and for violations of Title 123 - *Rules and Regulations for the Design, Operation, and Maintenance of Wastewater Works*. The violations were determined during a site visit and file review conducted on September 11, 2020. The site visit report is enclosed. Moreover, there are violations of the Consent Order dated April 24, 2019, and Notice of Violation dated September 13, 2019, that still need to be mitigated.

This Letter of Non-Compliance replaces the Notices of Violation and Letters of Warning previously issued by NDEE.

**I. Continuing Violation of the Consent Order Dated April 24, 2019**

- i. Paragraph 15B., requires an engineering evaluation of the north (also referred to as northeast) lagoon cell, with an additional review completed by an independent engineering firm other than Settje Agri-Services and Engineering, Inc. Although a proposal for repairs completed by Settje Agri-Services and Engineering, Inc. was submitted to the Department on June 21, 2019, a review performed by another independent engineering firm was not submitted. This was supposed to have been submitted within 60 days of April 24, 2019. Moreover, the review submitted by Settje Agri-Services was a one-page bid proposal that did not provide detailed engineering concerns related to the northeast lagoon.

**II. Continuing Violations outlined in the Notice of Violation Dated September 13, 2019**

- i. Requested Action 5. states, "Immediately, cease land application of lagoon wastewater." AltEn employee, Scott Tingelhoff, told NDEE inspectors that AltEn has been land applying lagoon wastewater in violation of this Notice of Violation.

Department of Environment and Energy

P.O. Box 98922  
Lincoln, Nebraska 68509-8922

Jim Macy, Director

OFFICE 402-471-2186 FAX 402-471-2909  
ndee.moreinfo@nebraska.gov



- ii. Violation B.5. states, "The wastewater in the treatment lagoons contains pesticides from the use of treated seed corn feed stock in the ethanol production process. These pollutants are not addressed by the Best Management Practices (BMP) plan to prevent short-term and long-term surface water and groundwater contamination as required by Part II.B.6 of NPDES Permit NE0137634." As part of this Notice of Violation, the Department has requested a BMP for the land application of wastewater that includes sampling and analysis for Azoxystrobin, Clothianidin, Glyphosate, Thiabendazole, and Thiamethoxam. The BMP must include how the agronomic rate for each of these compounds will be met to protect ground and surface water contamination. Although wastewater sample results were received by the Department on October 18, 2019, the data for Azoxystrobin was marked "N.A" due to quality control issues within the lab. The facility response received by the Department on October 18, 2019, mentioned that an addendum to the current land application BMP was being completed by Andy Scholting, an agronomist. However, this has not been submitted to the Department as requested. This was supposed to have been submitted within 30 days of September 13, 2019.

During the inspection on September 11, 2020, the Department documented the following new violations:

**A. Failure to comply with operation and maintenance requirements.**

1. The northeast lagoon liner is badly damaged. This includes damage from vegetation, as well as numerous "whales" and tears. This is a violation of Title 123, Chapter 11, Sections 001, 008.05, and 008.06.
2. The northwest lagoon liner has several "whales". Moreover, the edge of the liner is visible at the ground surface in some areas on the east side of the northwest lagoon. This is supposed to be anchored two feet below the ground, per plans and specifications submitted to the Department prior to the construction of the northwest lagoon. This is a violation of Title 123, Chapter 11, Sections 001, 008.05, and 008.06.

**B. Failure to meet conditions of the Industrial Storm Water General Permit NER910000 (ISW-GP) and NPDES Permit NE0137634.**

1. Industrial storm water control best management practices (BMPs) are not in use or maintained to meet the Non-Numeric Technology Effluent Limits in ISW-GP, Section 2.1.2.
  - a. There are no BMPs installed to control distiller's grain runoff from the distiller's grain staging area.
  - b. Silt fencing is not installed around the Biochar process as described in the facility Storm Water Pollution Prevention Plan (SWPPP).
  - c. Torn and leaking bags of Biochar product were observed.
  - d. The potential for distiller's grain runoff from in and around the Biochar process into the storm water conveyance system was observed.



- e. Unlabeled totes, a fuel tank, and multiple unsecured hoses were observed throughout the plant.
  - f. Two liquid spills were observed. The first spill was a teal-colored liquid located east of the grain unloading area, see Observation Area 3, Map 1. The second spill was thin stillage located at the manhole north of the tank farm berm, see Observation Area 5, Map 1.
  - g. One granular material spill was observed. There was a red granular substance spilled on the north side of the north tank farm. There is also granular material stored in unlabeled totes inside the north tank berm containment.
2. The wastewater in the treatment lagoons contains pesticides from the use of treated seed corn feed stock in the ethanol production process. These pollutants are not addressed by the Best Management Practices (BMP) plan to prevent short-term and long-term surface water and groundwater contamination as required by Part II.B.6 of NPDES Permit NE0137634.

These are violations of Title 119, Chapter 14, Section 001.01.

Regulations that have been referenced are available online at the Department's website:

<http://dee.ne.gov>

In order to cease and/or mitigate these violations, the Department requests that you:

1. **Violations I.i, A.1, and A.2 – Immediately**, submit to the NDEE an independent professional engineering evaluation for the repair of the northeast cell of the three-celled lagoon system and the northwest cell of the three-celled lagoon system. Since the original engineering was completed by Settje Agri-Services and Engineering, Inc., this independent professional engineering evaluation should include an additional review by another independent engineering firm. The Department will review this evaluation prior to the repairs being made.
2. **Violation B.1.a – Immediately**, install BMPs to control runoff containing distiller's grain residue from the distiller's grain staging area. Provide photographic documentation of the BMP installation and update the SWPPP to include this BMP.
3. **Violation B.1.b – Immediately**, install the Biochar silt fence described in your SWPPP. Provide photographic documentation that this has been completed.
4. **Violations B.1.c, d, e, f, and g – Immediately**, implement Section 5.1 Good Housekeeping Measures, 5.4 Spill Prevention, and 5.6.2 Corrective Action Reporting (CAR). **Immediately**, provide the separate CARs for the documented spills included in the attached report. The CARs must identify the substance spilled, date, time and duration of the spill, location of the release, person or persons causing and responsible for the release, type and amount, environmental damage caused by the release, actions taken to respond, contain and clean up the release, location and method of ultimate disposal, actions being taken to prevent a reoccurrence of a release, and any known or anticipated chronic health risks associated with the release.

5. **Violations II.i, II.ii, and B.2. – Immediately**, cease land application of lagoon wastewater. Wastewater should not be land applied per a Notice of Violation sent by the Department on September 13, 2019. Submit a BMP for the land application of wastewater that includes how the agronomic rate for Azoxystrobin, Clothianidin, Glyphosate, Thiabendazole, and Thiamethoxam will be met to protect ground and surface water contamination. This should be submitted by a certified agronomist. Please submit all land application information from September 2019 through the present, including land application dates, land application sites, and the amount of wastewater applied at each site. Please also provide the wastewater sampling locations and all lab analysis results for each of the five compounds above. This request does not preclude you from the requirements of NPDES Permit NE0137634. Land application of lagoon wastewater may not occur until the Department has provided written approval as previously set forth in the Notice of Violation dated September 13, 2019. This approval will be contingent upon the review of the requested information and AltEn's ability to demonstrate that wastewater containing pesticides can be land applied at an agronomic rate, and that doing so will not contaminate ground or surface water.

These violations may be considered for further enforcement action. Enforcement action may include issuance of an administrative order, or referral to the Attorney General for penalties of up to \$10,000 per day per violation, and/or injunctive relief.

Please direct all contacts and any written response to this LNC to:

Mark Pomajzl, Inspector  
NDEE Water Permits Division  
1200 N Street, Suite 400  
P.O. Box 98922  
Lincoln, NE 68509-8922  
Phone 402-471-2936

Hillary Stoll, Environmental Engineer  
NDEE Water Permits Division  
1200 N Street, Suite 400  
P.O. Box 98922  
Lincoln, NE 68509-8922  
Phone: 402-471-4252

Sincerely,



Shelley Schneider  
Water Permits Division Administrator  
Nebraska Department of Environment and Energy

ss/mp/hjs

enclosures

cc: Scott Tingelhoff, Plant Manager  
Mary Tingelhoff, Environmental Coordinator