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DEPT. OF ENVIRONMENT AND ENERGY



Pete Ricketts, Governor

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JAN 30 2020

Notice of Violation

Tanner Shaw
President, AltEn
Capital Corporate Services, Inc.
Suite 800
1125 S. 103rd Street
Omaha, NE 68124

RE: September 23, 2019, Notice of Violation Response
NDEE ID: 84069
Program ID: NE0204447

Dear Mr. Shaw,

The Nebraska Department of Environment and Energy (Department) received a letter from Mr. Scott Tingelhoff dated October 25, 2019, in response to the Department's September 23, 2019, Notice of Violation (NOV) which was issued to AltEn, LLC (AltEn) based upon violations of Nebraska State Statutes and Title 132- Integrated Solid Waste Management Regulations. After reviewing Mr. Tingelhoff's letter, the Department has determined that AltEn has failed to adequately address the violations listed in the NOV and continues to be in violation of the following:

1. Disposal of solid waste after October 1, 1993, at a location other than a solid waste management facility holding a current permit issued by the Department pursuant to the Integrated Solid Waste Management Act (Neb. Rev. Stat §81-1506(3)(d)).
2. Operating a solid waste management facility without a permit issued by the Department (Title 132 - Chapter 2, 001).

Mr. Tingelhoff's response failed to adequately address all of the action items listed in the September 23, 2019, NOV. The Department has the following comments in response to Mr. Tingelhoff's responses:

1. **With regard to violations 1 and 2 of the NOV, AltEn contends that the wet cake (old and new), super sacks of starch, and super sacks of Biochar have value and are therefore not solid wastes.**



Department of Environment and Energy

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Lincoln, Nebraska 68509-8922

Jim Macy, Director

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AltEn has not provided any evidence that there is a viable market or use for these materials. Furthermore, significant quantities of these materials have been located on site for long periods of time without any effort made to protect the material from exposure to the weather (rain, snow, wind, etc.). AltEn has stored and managed these materials as waste and not as items of value.

Currently, the only documentation available to the Department for any material stored on site is a May 17, 2019 Stop-Use Stop-Sale Order from the Nebraska Department of Agriculture that prohibits land application of the wet cake as a soil conditioner. Therefore, in the absence of any supporting documentation indicating value along with AltEn not using these materials for extended periods of time (years), the Department has determined they meet the definition of solid waste as defined in Title 132 and must be treated as such and disposed at a permitted solid waste management facility. It is the Department's understanding that the starch is being used in the fermentation process to manufacture ethanol. If this is the case AltEn may continue to process the starch in this manner and should provide details on how it is being used (daily usage rate, estimated time to process all starch, etc.)

2. **With regard to Action request 1 and 2, AltEn contends that all materials in question can be land applied, with or without composting, at rates specified by Agronomists. AltEn also contends that the chemical application rates for the compounds found in the distillers grain (wet cake) only apply to seed corn when it is planted, and the EPA specified application rates do not apply to seed corn therefore land application is a viable use. AltEn believes the distiller's grain can be utilized as a resource energy and sold to a third party. AltEn states that they will continue to run a portion of distiller's grain through the Biochar unit as allowed. Lastly, AltEn contends that super sacks of starch will be used in either the production of ethanol and/or in the digesters. In addition, AltEn claims that third parties are interested in acquiring the starch for their use.**

First, as noted in response 1 above, the Department considers all materials to be solid waste. Per the Stop-Use Stop-Sale Order issued by the Nebraska Department of Agriculture, AltEn is prohibited from land applying the wet cake as a soil conditioner. The Department is amenable to approving the use of a waste to energy disposal system, provided AltEn can demonstrate the specific system can reasonably process all of the waste materials by the end of March 2021.

Furthermore, as of the date of this letter, AltEn, as the operator of the Biochar unit, has not met all of the conditions outlined in Nebraska Department of Environmental Quality Complaint, Compliance Order, Case No.3469. Therefore, using the biochar unit to process wet cake or starch is not a viable disposal option.

Second, AltEn's initial composting permit applications to the Department and the application for a soil conditioner label to the Nebraska Department of Agriculture did not indicate that any of the chemicals of concern would be found in the wet cake or that any sort of agronomic review was conducted for pesticides, herbicides, and fungicides. Typically, agronomic reviews only look at the concentrations of nutrients such as nitrogen and

phosphorous. If AltEn has agronomic reviews conducted by a professional, independent third party that address pesticides, herbicides, and fungicides, the Department wants to review the data.

Action request 2 listed in the September 23, 2019, NOV allowed for composting of old wet cake stockpiled at the site for the purposes of volume reduction prior to disposal at a permitted solid waste management facility. Before composting could begin, AltEn needs to repair the compost pad as discussed in previous correspondence.

Additionally, none of the material reviewed by the Department indicated that delivery method mattered when considering acceptable land application rates. If there is data that specifies application methodology matters, please submit to the Department for additional review. If these chemicals do have specific delivery methods that must be followed, AltEn needs to provide documentation that their presence in the wet cake/compost is an acceptable use for the chemicals. Otherwise, applying the wet cake/compost with these chemicals would be an improper disposal of the chemicals, not land application for beneficial use.

Finally, Action request 1 required AltEn to provide a response describing how materials will be disposed including: the type and quantity (expressed in tons and cubic yards) of each waste material onsite, a schedule for disposal, an expected starting date, an expected completion date, any interim measures that can be taken to mitigate odors and environmental hazards, and estimated cost of activities. While Mr. Tingelhoff did respond to the NOV, the response failed to satisfactorily address all the requirements of this Action request.

3. **With regard to Action request 3, AltEn disagrees that it should be prohibited from stockpiling or composting any new wet cake generated from the use of treated seed corn in the ethanol production process. AltEn contends that it has non-disclosure agreements with each of its seed corn vendors and other types of treated seed which prohibits disclosure to any third parties.**

As discussed above, the Department is treating all materials generated onsite as solid waste requiring disposal at a permitted solid waste management facility. This includes any wet cake generated after receipt of the September 23, 2019, NOV which was to be taken to a permitted solid waste management facility upon generation.

In the September 23, 2019 NOV, AltEn was to provide a summary of each type of waste that is generated each day onsite. The summary was to include the type and the maximum quantity (tons and cubic yards) AltEn is capable of generating (e.g. 150 tons, 100 yd³). This summary was not received by the Department within the requested 30 days after receiving the NOV. Mr. Tingelhoff's response failed to include any of this information.

In addition, the September 23, 2019 NOV requested AltEn provide the following records within 30 days of receiving the letter: records of vendors providing the treated seed corn and any other types of treated seed varieties used, the product label associated with each type of seed, and the safety data sheet for each product and/or chemicals used to treat the seed. This written response was also not received by the Department within the requested 30

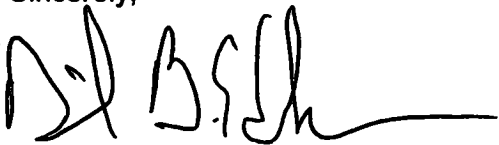
days after receiving the NOV and Mr. Tingelhoff's response failed to include any of this information.

If AltEn wishes to make a claim of confidentiality, you need to follow the confidentiality process outlined in Title 115 Chapter 2 and Neb. Rev. Stat. §81-1527 and §84-712.05. Please note that the confidential status of the information does not alleviate your obligation to provide the documents as required by the September 23, 2019 NOV. If you need assistance with the confidentiality request, please contact the Department for additional guidance.

The Department has determined that AltEn must immediately comply with the requirements of the September 23, 2019 NOV. Furthermore, AltEn must provide a detailed plan for disposing all solid waste, including wet cake, **within 15 days of receipt of this letter**. Disposal of waste materials must begin no later than March 1, 2020, and all material must be removed from the site no later than March 1, 2021.

If you have any questions regarding this letter, please feel free to contact Jeff Edwards at (402) 471-8309 or Daniel LeMaistre at (402) 471-4495.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. B. Haldeman', with a long horizontal flourish extending to the right.

David B. Haldeman, Administrator
Land Management Division

Cc: Steve Mossman: Mattson Rickets Law Firm
134 S. 13th Street, Suite #1200, Lincoln, NE 68508