



BEFORE THE DEPARTMENT OF AGRICULTURE
STATE OF NEBRASKA

IN THE MATTER OF THE)
AltEn SOIL CONDITIONER)
MEAD, NEBRASKA)

STOP-USE
STOP-SALE
ORDER

TO: Scott Tingelhoff, General Manager
AltEn, LLC
1344 County Road 10
Mead, NE 68041

Dean Settje, President
Settje Agri-Services and Engineering
15460 NW 48th St.
Raymond, NE 68428

Pursuant to the Nebraska Commercial Fertilizer and Soil Conditioner Act, (Act) Neb. Rev. Stat. §§81-2,162.01 to 81-2,162.28, the Department of Agriculture (Department) is responsible for the administration and enforcement of the Act. AltEn, LLC. (AltEn) has registered with the Department a soil conditioner for distiller's grain under the Act which is further distributed by Settje Agri-Services and Engineering (Settje).

Evidence available to the Department indicates that AltEn's distiller's grain soil conditioner is a by-product of ethanol production using seeds treated with pesticides. AltEn did not include information that treated seeds were being used to produce the soil conditioner in its application to the Department for the registration of the distiller's grain soil conditioner. The label for Mycogen Seeds found at AltEn, for seed treated with pesticides including thiamethoxam, states that excess treated seed may be used for ethanol production only if no measurable residues of pesticide remains in the ethanol by-products that are used for agronomic practice. A sample taken of the distiller's grain soil conditioner at AltEn's ethanol production facility near Mead, Nebraska on March 29, 2019 was found to contain pesticide residues, including thiamethoxam and clothianidin. A copy of the analysis report done by the South Dakota Agricultural Laboratories is attached and made a part of this Order.

Evidence available to the Department also indicates that Settje recommends an application rate of 20 tons per acre for the distiller's grain soil conditioner. Such application creates a situation where pesticides would be applied at rates much higher than those typically found during the planting of corn seed or an application of the pesticides to a corn crop. The United States Environmental Protection Agency (EPA) approved clothianidin pesticide labeling states that the pesticide is toxic to birds and

aquatic invertebrates. AltEn's distiller's grain soil conditioner applied at 20 tons per acre, with a clothianidin concentration of 427,000 ppb, would result in 17.08 lbs of active clothianidin applied per acre which is 85 times the maximum annual field load allowed by a typical registered pesticide label.

EPA has informed the Department that based on the estimated application rates and the concentrations present in the March 29, 2019 sample, EPA concludes that it is likely that land application of the material will result in application of these ingredients to farm lands at rates that far exceed the registered application rates for which EPA has conducted safety assessments for pesticide products.

Section 81-2,162.26 of the Act provides that no person shall distribute an adulterated soil conditioner. Section 81-2,162.26 further states that a soil conditioner is adulterated if it contains any toxic materials, other than pesticides registered pursuant to law, in quantities injurious to plant or animal health. Section 81-2,162.14 provides that the Department may issue and enforce a written stop-sale or stop-use order to the owner or custodian of any soil conditioner and may require the owner or custodian to hold any lot at a designated place when the Department has reason to believe the product is being offered for sale in violation of any of the provisions of the Act until the law has been complied with and such product is released in writing by the director or the violation has been otherwise legally disposed of by written authority.

Pursuant to §81-2,162.14 of the Act, AltEn and Settje are hereby issued a Stop-Use and Stop-Sale Order on AltEn's distiller's grain soil conditioner. AltEn and Settje are ordered to stop distributing AltEn's distiller's grain soil conditioner as a soil conditioner.

To bring the AltEn's distiller's grain soil conditioner into compliance, evidence must be provided to the Department that the soil conditioner is no longer adulterated and is in compliance with all treated seed labeling used as an ingredient in the soil conditioner. AltEn may request a hearing pursuant to §81-2,162.16. If AltEn's distiller's grain soil conditioner is not in compliance with the Act within thirty days of receiving this Order, the Department will seek a court ordered seizure of the soil conditioner pursuant to §81-2,162.15 of the Act.

To resolve the matter without the Department pursuing any further action under the Act, AltEn may voluntarily ask the Department to cancel the registration of this distiller's grain soil conditioner.

Dated at Lincoln, Nebraska, this 17th day of May, 2019.

DEPARTMENT OF AGRICULTURE



Steve Wellman, Director