UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 Renner Boulevard
Lenexa, Kansas 66219

December 20, 2018

VIA EMAIL AND FIRST CLASS MAIL
jvondrak@sioux-city.org

Mr. Justin Vondrak
Assistant City Attorney
City of Sioux City
405 6th Street
Sioux City, Iowa 51102

Re: **Request for Information Pursuant to Section 308 of the Clean Water Act**
Response Requested by January 18, 2019

Dear Mr. Vondrak:

The U.S. Environmental Protection Agency is issuing this Request for Information to the city of Sioux City, Iowa, pursuant to Section 308(a) of the Clean Water Act, 33 U.S.C. § 1318(a), in order to obtain information regarding the city's wastewater treatment plant and discharges from Big Ox Energy, LLC, an industrial user of the city's WWTP. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes the EPA to require the submission of any information necessary to carry out the objectives of the CWA, 33 U.S.C. § 1251, *et seq*.

The City has identified concerns with regard to loadings by Big Ox Energy to the city's WWTP. In order for the EPA to collect adequate information regarding the City's WWTP and discharges from Big Ox Energy, the EPA hereby requests, under the authority of Section 308 of the CWA, that the City of Sioux City provide the information requested in **ENCLOSURE A** by January 18, 2019.

Guidance on How to Respond

Please read the instructions and definitions included in ENCLOSURE A carefully before preparing your response. Answer each question as clearly and completely as possible. Please understand that all responses must be made truthfully and completely, and that all response are subject to the provisions of 18 U.S.C. § 1001 regarding false statements.

Information submitted pursuant to this Section 308 information request should be received by the EPA by January 18, 2019. The EPA advises that you mail your response in a manner that allows you to track and confirm delivery. Your response should be addressed and sent to:

Paul Marshall, Pretreatment Coordinator
Water Enforcement Branch
U.S. Environmental Protection Agency, Region 7
11201 Renner Blvd.
Lenexa, Kansas 66219

We appreciate your cooperation and prompt attention to his matter. If you have any questions regarding this information request, please contact Mr. Paul Marshall, the EPA Region 7 Pretreatment Coordinator, at (913) 551-7419, or Patricia Gillispie Miller in the Office of Regional Counsel at (913) 551-7283.

Sincerely,

Jeffery Robichaud
Director
Water, Wetlands and Pesticides Division

Enclosures

cc: Ed Tormey, Iowa Dept. of Natural Resources, via electronic copy
Ted Petersen, Iowa Dept. of Natural Resources, via electronic copy
Ken Hessenius, Iowa Dept. of Natural Resources, FO3, via electronic copy

ENCLOSURE A

<u>REQUEST FOR INFORMATION AND INSTRUCTIONS</u>

RESPONSE DUE WITHIN 30 DAYS OF RECIEPT OF THIS REQUEST

The U.S. Environmental Protection Agency (EPA) requests submission of information, as described below, pursuant to Section 308 of the Clean Water Act, 33 U.S.C. § 1318.

I. Instructions

<u>Contact Information.</u>

1. In each submission required by this Request for Information, identify the person to contact regarding your submission, including title, address and email and/or phone number.

2. Your responses to this Request for Information are to be provided by a qualified professional. For each response required below, provide the name and credentials of the person(s) providing information in response to this Request for Information.

<u>Responses Format.</u>

3. Please provide a separate response to each and every numbered request set forth below. Please label each response in a manner that identifies the number of the question or document request.

4. Except for a cover letter or memorandum and the Statement of Certification, only copies, and not original documents, should be submitted pursuant to this request. Documents and data may be submitted electronically by email or by mail (e.g., on a compact disc or flash drive) in PDF, Word, Excel or other widely available electronic format. *NOTE: as discussed below, any information claimed as confidential business information (CBI) should be submitted by mail and properly labeled.*

<u>Complete Responses and New or Corrected Information.</u>

5. If any response cannot be provided in full, provide the response to the extent possible along with an explanation of why the response cannot be provided in its entirety and, if applicable, when the remainder of the response will become available and be submitted.

6. If information or documents not known or not available to you as of the date of submission of your response to this request should later become known or available to you, you must supplement your response to the EPA within fourteen (14) calendar days of when the information or documents become known or available. Moreover, should you find, at any time after the submission of your response, that any portion of the submitted information is inaccurate, false or misrepresents the truth, you must notify the EPA of this fact immediately and provide a corrected response within fourteen (14) calendar days of when you find the information is inaccurate, false or misrepresents the truth.

<u>Accurate and Truthful Information Required.</u>

7. Please be advised that the failure to respond accurately, or the submission of false information, may subject you to civil or criminal penalties under Section 309 of the CWA, 33 U.S.C. § 1319, and/or 18 U.S.C. § 1001. Please be aware that the issuance of this letter and your response with the requested information does not relieve you of any responsibility under the CWA, including, but not limited to seeking, maintaining, or complying with an applicable NPDES permit.

Certification.

8. The Statement of Certification found in ENCLOSURE B must be submitted along with your responses every time a submission is made pursuant to this Request for Information. This statement must be made by a person authorized to sign reports pursuant to 40 CFR § 122.22(a) and (b). For your convenience, the text of these provisions is included on ENCLOSURE B.

Confidential Business Information (CBI).

9. Information requested by this letter must be submitted to the EPA regardless of a claim of confidentiality. If you believe any of the requested information is confidential, you may assert a business confidentiality claim under the provisions of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), 18 U.S.C. § 1905, and the regulations at 40 CFR Part 2, and in the manner described at 40 CFR § 2.203(b). Information that you claim confidential will be held as such pending a determination of applicability by the EPA.

   a. *Procedures to claim confidential treatment for information requested or demanded by the EPA.*
      i. You may assert a business confidentiality claim covering part or all of the information requested or demanded by the EPA in the manner described by paragraph (b), below. Information covered by such a claim will be disclosed by the EPA only to the extent, and by means of the procedures, allowed by 40 CFR Part 2, Subpart B.
      ii. If no such claim accompanies the information when it is received by the EPA, it may be made available to the public by the EPA without further notice to the business.
      iii. The regulations applicable to a claim of CBI are at 40 CFR Part 2, Subpart B, 41 FR 36902, Sept. 1, 1976, as amended at 43 FR 40000, Sept. 8, 1978; 50 FR 51661, Dec. 18, 1985.

   b. *Method and time of asserting business confidentiality claim.* A business which is submitting information to the EPA may assert a business confidentiality claim covering the information by placing on (or attaching to) the information, at the time it is submitted to the EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as *trade secret, proprietary,* or *company confidential.* Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by the business, and may be submitted separately to facilitate identification and handling by the EPA. If the business desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state.

   c. To claim protection for information submitted to the EPA, you must request that the information be held CONFIDENTIAL and be prepared to substantiate your claim in writing by demonstrating that the information meets the requirements in 40 CFR Part 2, Subpart B, including but not limited to the following criteria (40 CFR § 2.208):
      i. Your business has taken measures to protect the confidentiality of the information, and it intends to continue to take such measures.
      ii. No statute specifically requires disclosure of the information.
      iii. Disclosure of the information would cause substantial harm to your business's competitive position.

   d. Please refer to 40 CFR § 2.302, *special rules governing certain information obtained under the Clean Water Act*, regarding limitations on the confidential treatment of effluent data and standards or limitations.

Submission of Response to Request for Information.

10. All responses to this Request for Information must be submitted within the timeframes identified in Section III, below. Each response should be submitted in a manner that allows you to track delivery, and must be submitted to:

Paul Marshall, Pretreatment Coordinator
Water Enforcement Branch
U.S. Environmental Protection Agency, Region 7
11201 Renner Blvd.
Lenexa, Kansas 66219

II. Definitions

All terms used in this request, which are not defined below shall be defined as they are defined at 33 U.S.C. § 1362 and 40 C.F.R. §§122.2 and 403.3. Unless otherwise indicated, the following definitions shall apply strictly for the purposes of this Information Request:

A. "Big Ox Energy, LLC" or "BOE" shall mean the Big Ox Energy, LLC, facility located at 1616 D Avenue, South Sioux City, Nebraska 68776

B. "City" shall mean the City of Sioux City, Iowa.

C. "Publicly Owned Treatment Works" or "POTW" shall mean a publicly owned treatment works or POTW as defined in 40 C.F.R. § 403.3 (o).

D. "Waste Water Treatment Plant" or "WWTP" shall mean, for purposes of this Information Request, the portion of the City's physical, chemical and/or biological wastewater treatment processes from the headworks to the point of discharge.

III. Requested Information

Preliminary Information and Instructions

1. Identify the person to contact regarding your response, including title, address and phone number.

2. Your responses to the questions are to be provided by a qualified city employee or an official agent of the City, such as a consulting engineer. Provide the name and credentials of the person(s) providing information in response to this Information Request.

Specific Information Requested

Except as otherwise stated, the time period of interest for your responses is from August 1, 2016, to the present.

3. Provide copies of all Big Ox Energy, LLC, wastewater sample results taken by the City from August 2016 to the present. Please include lab sheets and chain of custody forms. If available, also include a tabulation of the sampling results, such as in spreadsheet format.

4. Provide copies of all emails to and from the City and BOE regarding wastewater discharges from BOE to the City, including those containing sample results and daily operating summaries transmitted by BOE.

5. Provide any spreadsheets created or maintained by the City regarding BOE discharges, including pollutant sampling results, flow data and other reported information.

6. Provide copies of all Pretreatment permit applications submitted by BOE to the City, copies of Pretreatment permits issued by the City to BOE, and fact sheets developed by the City to support those permits.

    a. Please provide a copy of each public notice regarding any Pretreatment permit issued by the City to BOE and a copy of each comment received; and

    b. Please indicate whether there have been any challenges to a Pretreatment permit proposed or issued by the City to BOE, and if so, provide a copy of the petition or appeal and any resulting actions taken by the City in response to such challenge.

7. Provide a copy of the City's current Sewer Use Ordinance and, if the SUO has by revised since BOE submitted its Pretreatment permit application, copies of each prior SUO.

8. Provide copies of all records, statements and correspondence regarding fees, surcharges and fines assessed by the City to BOE.

9. Provide copies of all correspondence or other communications, and their attachments, from the City to BOE regarding BOE's discharges to the City's WWPT, including but not limited to, letters of warning, notices of violation, orders, agreements, contracts or enforcement actions.

10. Provide copies of all correspondence or other submittals made by or on behalf of BOE to the City, including their attachments.

11. Provide a table (in Excel, if possible) of all influent and effluent samples taken of the City's WWTP. Please include lab sheets for all effluent samples that demonstrate a violation of any pollutant parameter.

12. Provide copies of all discharge monitoring reports for the City's WWTP. If the City uses e-reporting to submit DMRs to IDNR, provide a copy of the submitted reports.

13. Provide a narrative description of how excess TSS received by the City affects the City's WWTP's ability to meet ammonia limits.

14. Provide a narrative description of how low flows from BOE on weekends are believed to affect the TSS load coming from BOE, including a description of how the City's compliance status is affected.

15. Please provide any other information and copies of documents that you believe would be helpful in understanding the nature, history and effect of discharges from BOE to the City's WWTP.

ENCLOSURE B

STATEMENT OF CERTIFICATION

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations.

_____ _____

Signature Date

_____

Printed Name

_____

Title

40 CFR § 122.22 Signatories to permit applications and reports.

(a) *Applications.* All permit applications shall be signed as follows:

(1) **For a corporation**. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

Note: EPA does not require specific assignments or delegations of authority to responsible corporate officer identified in Sec. 122.22(a)(1)(i). The Agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions under Sec. 122.22(a)(1)(ii) rather than to specific individuals.

(2) **For a partnership or sole proprietorship**. By a general partner or the proprietor, respectively; or

(3) **For a municipality, State, Federal, or other public agency**. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

(b) All reports required by permits, and other information requested by the Director shall be signed by a person described in paragraph (a) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in paragraph (a) of this section;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company, (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and,

(3) The written authorization is submitted to the Director.