Filed in Saunders District Court
*** EFILED ***
Case Number: D06CI210000036
Transaction ID: 0012832532
Filing Date: 03/01/2021 09:06:51 AM CST

IN THE DISTRICT COURT OF SAUNDERS COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel., JIM MACY, Director, NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY,	)	Case No. _____
Plaintiff,	)	**COMPLAINT**
v.	)	
ALTEN, LLC,	)	
Defendant.	)	

COMES NOW Jim Macy, Director of the Nebraska Department of Environment and Energy, who institutes this action through Douglas J. Peterson, Nebraska Attorney General, on behalf of the State of Nebraska, as Plaintiff, and alleges as follows:

PARTIES AND INTERESTS

1. Plaintiff Nebraska Department of Environment and Energy ("Department")[1] is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504, to administer and enforce the Nebraska Environmental Protection Act ("NEPA"), Neb. Rev. Stat. § 81-1501 *et seq.*, the Integrated Solid Waste Management Act ("ISWMA"), Neb. Rev. Stat. § 13-2001 *et seq.*, and all rules, regulations, orders, and permits issued pursuant to NEPA.[2]

2. Under NEPA, the Department is further charged with the duty to "act as the water pollution, air pollution, and solid waste control agency for all purposes of the Clean Water Act [("CWA")], as amended, 33 U.S.C. [§] 1251 *et seq.*, the Clean Air Act [("CAA")], as amended, 42 U.S.C. [§] 7401 *et seq.*, [and] the Resource Conservation and Recovery Act [("RCRA")], as

[1] In 2019, the Nebraska Department of Environmental Quality became the Nebraska Department of Environment and Energy. For the sake of simplicity, "Department" will be used throughout.
[2] A glossary of acronyms used in this Complaint is hereto attached to this Complaint as **Attachment A**.

ED_006145_00000172-00001

amended, 42 U.S.C. [§] 6901 *et seq*." Neb. Rev. Stat. § 81-1504(4). The Department is also charged with the duty to issue, revoke, modify, or deny permits consistent with rules and regulations. Neb. Rev. Stat. § 81-1504(11).

3. Defendant AltEn, LLC ("AltEn") is a Kansas limited liability company with its principal office in Shawnee, Kansas. AltEn is registered as a foreign limited liability company in Nebraska. AltEn owns and operates an ethanol plant in and/or near Mead, Nebraska ("Facility"). An overview of the Facility is hereto attached to this Complaint as **Attachment B**. Another overview showing the location of relevant areas and buildings at the Facility is hereto attached to this Complaint as **Attachment C**.

4. AltEn is considered a "person" for purposes of NEPA. Neb. Rev. Stat. § 81-1502(10).

JURISDICTION AND VENUE

5. The District Court has jurisdiction over the subject-matter of this action, pursuant to Neb. Rev. Stat. § 24-302, and over the parties to this action.

6. Venue is proper pursuant to Neb. Rev. Stat. § 25-403.01, as AltEn's Facility is located in Saunders County and the events at issue took place in Saunders County.

LEGAL BACKGROUND

A. General.

7. The Department administers NEPA, ISWMA, and the rules and regulations implementing those Acts. Neb. Rev. Stat. § 81-1504(1). NEPA also provides the Department with the power to act as the state water, air, and waste pollution control agency for all purposes of the CWA, CAA, and RCRA. *Id*. § 81-1504(4). The Department has authority to, *inter alia*, issue air construction and air operating permits, National Pollutant Discharge Elimination

ED_006145_00000172-00002

System ("NPDES") permits, permits for solid waste management facilities, and permits for wastewater works, such as lagoons.

8. Pursuant to its authority under Neb. Rev. Stat. § 81-1505, the Nebraska Environmental Quality Council ("council") promulgated the following relevant rules and regulations:

a. Title 119 of the Nebraska Administrative Code, *NPDES Regulations*;

b. Title 123 of the Nebraska Administrative Code, *Nebraska Department of Environment and Energy Regulations ("Department Regulations")*;

c. Title 129 of the Nebraska Administrative Code, *Nebraska Air Quality Regulations*; and

d. Title 132 of the Nebraska Administrative Code, *ISWMA Regulations*.

9. A primary purpose of NEPA is to protect the water, land, and air of the state from pollution. Neb. Rev. Stat. § 81-1501. NEPA achieves this purpose by prohibiting pollution of the State's resources, as well as empowering the Department to administer permit programs and pursue environmental enforcement of violations. *See* Neb. Rev. Stat. § 81-1504.

10. Under NEPA, it is unlawful for any person "[t]o cause pollution of any air, waters, land of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, waters, or land of the state." Neb. Rev. Stat. § 1506(1).

11. "Land pollution" means "the presence upon or within the land resources of the state of one or more contaminants or combinations of contaminants, including, but not limited to, refuse, garbage, rubbish, or junk, in such quantities and of such quality as will or are likely to (a) create a nuisance, (b) be harmful, detrimental, or injurious to public health, safety, or welfare, (c) be injurious to plant and animal life and property, or (d) be detrimental to the economic and

ED_006145_00000172-00003

social development, the scenic beauty, or the enjoyment of the natural attractions of the state." Neb. Rev. Stat. § 81-1502(19).

12. "Water pollution" means "the manmade or man-induced alteration of the chemical, physical, biological, or radiological integrity of water." Neb. Rev. Stat. § 81-1502(20).

13. NEPA makes it unlawful "[t]o violate … any permit or license condition or limitation, any order of the director, or any monitoring, reporting, or record-keeping requirements contained in or issued or entered into pursuant to [NEPA], [ISWMA] … or the rules and regulations adopted and promulgated pursuant to such acts." Neb. Rev. Stat. § 81-1508.02(1)(b); *see also* Neb. Rev. Stat. § 81-1506(4)(b) (making it unlawful to violate "any term or condition of an air pollution permit or any emission limit set in the permit").

14. NEPA also makes it unlawful "[t]o violate any other provision of or fail to perform any other duty imposed by [NEPA, ISWMA], rules, or regulations." Neb. Rev. Stat. § 81-1508.02(1)(e); *see also* Neb. Rev. Stat. § 81-1506(3)(c) (making it unlawful to violate "any rule or regulation adopted and promulgated by the council pursuant to [NEPA] or [ISWMA]").

B. Solid Waste.

15. NEPA and ISWMA work in tandem to ensure solid wastes that represent potential hazards to the environment and public health and welfare are disposed of properly. *See* Neb. Rev. Stat. §§ 13-2002 & 81-1504.

16. Under NEPA, it is "unlawful for any person to … [c]onstruct or operate a solid waste management facility without first obtaining a permit required under [NEPA] or under [ISWMA] and the rules and regulations adopted and promulgated by the council pursuant to the acts." Neb. Rev. Stat. § 81-1506(3)(a); *see also* 132 Neb. Admin. Code § 2-001. It is also

ED_006145_00000172-00004

"unlawful for any person to … [a]fter October 1, 1993, dispose of any solid waste at any location other than a solid waste management facility holding a current permit issued by the [Department] pursuant to [ISWMA]." Neb. Rev. Stat. § 81-1506(3)(d).

17. A "solid waste management facility" is defined as "any site owned or operated or utilized by any person for the collection, source separation, storage, transportation, transfer, processing, treatment, or disposal of solid waste and shall include a solid waste landfill." Neb. Rev. Stat. § 13-2010.

18. "Wastes" mean "sewage, industrial waste, and all other liquid, gaseous, solid, radioactive, or other substances which may pollute or tend to pollute any air, land, or waters of the state." Neb. Rev. Stat. § 81-1502(14).

19. "Solid waste" means "any garbage, refuse, or sludge … and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, and mining operations and from community activities." Neb. Rev. Stat. § 81-1502(26).

C. Water.

General

20. In addition to NEPA's general prohibition on causing pollution of any waters of the state, it is also unlawful to "[d]ischarge any pollutant into waters of the state without obtaining a permit as required by the [NPDES] created by the [CWA] … and by rules and regulations adopted and promulgated pursuant to section 81-1505." Neb. Rev. Stat. § 81-1506(2)(a); *see also* 119 Neb. Admin. Code § 2-001.

21. "Waters of the state" mean "all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, wetlands, watercourses,

ED_006145_00000172-00005

waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, situated wholly or partially within or bordering upon the state." Neb. Rev. Stat. § 81-1502(21).

22. The Department has authority to issue and enforce NPDES permits, which are required for, *inter alia*, discharges of storm water and discharges of wastewater from industrial activities. *See* 119 Neb. Admin. Code §§ 2-002, 6-002, 8-001, 10-002 & 10-003. NPDES permits can either be general or individual permits.

23. It is unlawful to violate any NPDES permit condition or limitation. Neb. Rev. Stat. § 81-1508.02(1)(b).

Storm Water Discharges

24. Under Title 119–*NPDES Regulations*, "[n]o person shall discharge storm water containing any pollutant except as authorized by a NPDES permit." 119 Neb. Admin. Code § 10-002.01.

25. The Department has authority to issue and enforce individual and general NPDES storm water permits for construction activities and industrial activities. *See, e.g.*, Neb. Rev. Stat. §§ 81-1504(11), 81-1505(11) & 81-1505(20); 119 Neb. Admin. Code §§ 10-003.01 & 10-005.

26. "Storm water" means "storm water runoff, snow melt runoff, and surface runoff and drainage." 119 Neb. Admin. Code § 1-112.

27. "Storm water discharge associated with industrial activity" means "the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial facility." 119 Neb. Admin. Code § 1-113.

ED_006145_00000172-00006

28. "Storm water discharge associated with small construction activity" means "the discharge of storm water from … [c]onstruction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres." 119 Neb. Admin. Code §§ 1-114 & 1-114.01.

29. Generally, NPDES storm water permits require the permittee to prepare and implement a Storm Water Pollution Prevention Plan ("SWPPP") that identifies potential pollutant sources, minimizes erosion on disturbed areas and discharges of sediment and other pollutants in storm water runoff, describes controls to be used to reduce pollutants in storm water discharges, and assures compliance with permit conditions. *See, generally* 40 C.F.R. § 122.44. Best management practices ("BMPs") and pollution control measures used to minimize or prevent prohibited discharges of non-storm water or storm water mixed with pollutants must be implemented and maintained. *Id.* SWPPPs must be updated as necessary.

30. "BMPs" mean "schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State.… BMPs also include treatment requirements, operating and maintenance procedures, schedules of activities, prohibitions of activities, and other management practices to control plant site runoff, spillage, leaks, sludge or waste disposal or drainage from raw material storage." 119 Neb. Admin. Code § 1-016.

Wastewater Discharges and Land Application

31. The Department has authority to issue and enforce individual and general NPDES permits for discharge of wastewater and/or land application of wastewater effluent.

ED_006145_00000172-00007

32. Generally, NPDES permits for discharge of wastewater and/or land application of wastewater have discharge limitations and monitoring requirements, require BMPs for land application of wastewater effluent, and have other requirements and conditions.

33. Under Title 119–*NPDES Regulations*, "[t]he discharge of any pollutant not identified and authorized by the NPDES permit or the discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the permit shall constitute a violation of the terms and conditions of the permit." 119 Neb. Admin. Code § 14-003.

34. "Discharge" means "accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of pollutants into any waters of the State or in a place which will likely reach waters of the state." 119 Neb. Admin. Code § 1-038.

35. "Pollutant" means, *inter alia*, "solid waste … and industrial, municipal, and agricultural waste discharged into water." 119 Neb. Admin. Code § 1-087.

36. "Discharge of a pollutant" means "any addition of any pollutant or combination of pollutants to waters of the state from any point source. This includes discharge into waters of the state from surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality or other party which do not lead to treatment systems …." 119 Neb. Admin. Code § 1-040.

37. "Effluent" means "wastewater … discharging from a wastewater treatment works and/or cooling equipment, a boiler, or any manmade device that discharges or has the potential to discharge." 119 Neb. Admin. Code § 1-041.

38. "Land Application" means "the controlled application of effluent onto the land surface to achieve a designed degree of treatment through natural physical, chemical and biological processes within the plant-soil-water matrix." 119 Neb. Admin. Code § 1-058.

ED_006145_00000172-00008

Operation and Maintenance of Lagoon Systems

39. In some cases, NPDES permits include the use of a lagoon system for treatment and storage of wastewater. For example, a "control discharge lagoon" is "a discharging wastewater lagoon system operated to store wastewater for extended periods and to periodically discharge treated effluent in accordance with permits." 123 Neb. Admin. Code § 1-010. These lagoons have liners, meaning "the compacted soil or other material used to seal the bottom or sides of a wastewater lagoon … so that the seepage rate of liquids from the treatment unit into the surrounding soil is controlled." 123 Neb. Admin. Code § 1-026.

40. The construction, installation, modification, and alteration of lagoon systems require a construction permit authorized by the Department. 123 Neb. Admin. Code § 3-001.

41. Title 123–*Department Regulations* require liners of wastewater lagoons to be properly operated and maintained. *See* 123 Neb. Admin. Code § 11-001; *see also* 119 Neb. Admin. Code § 14-001.05. Proper operation and maintenance include promptly repairing damage caused by animals or vegetation and maintaining liners, so seepage does not exceed the rate approved by the Department. 123 Neb. Admin Code §§ 11-008.05 & 11-008.06. Wastewater lagoons must also "be operated so the water level is not maintained in the area designated for freeboard." 123 Neb. Admin. Code § 11-008.07.

42. Lagoon systems used to store and treat wastewater must also be "operated in a manner to meet all NPDES permit requirements and not result in a prohibited bypass or an unauthorized discharge." 123 Neb. Admin. § 11-001.

43. Under NEPA, it is unlawful for any person to "violate any … rules, or regulations," including the rules and regulations in Title 119 and Title 123. Neb. Rev. Stat. § 81-1508.02(1)(e).

ED_006145_00000172-00009

D. Air.

44. Under NEPA, it is unlawful to "[v]iolate any term or condition of an air pollution permit or any emission limit set in the permit; or … [v]iolate any emission limit or air quality standard established by the council." Neb. Rev. Stat. §§ 81-1506(4)(b) & (c); *see also* 129 Neb. Admin. Code § 8-007.01.

45. Generally, owners or operators of stationary sources must apply for air construction permits and air operating permits. *See* 129 Neb. Admin. Code § 5-001 *et seq*. & 129 Neb. Admin. Code § 17-001 *et seq*. A "stationary source" is "any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under [Title 129]." 129 Neb. Admin. Code § 1-154.

46. Applicants for these permits are under a continuing obligation to "promptly submit … supplementary facts or corrected information" in a permit application when the applicant becomes aware that relevant facts were not submitted or incorrect information was submitted. *See* 129 Neb. Admin. Code § 17-006.

47. Air construction permits contain general and specific conditions that are standard for stationary sources, as well as specific conditions related to, *inter alia*, emission points and control equipment used by the particular stationary source. For example, standard general conditions include prohibitions on open fires, timeline for commencement of construction, and compliance with Title 129 regulations and other local, state, or federal laws. *See, e.g.*, 129 Neb. Admin. Code § 30-001 *et seq*. (open fires). Standard specific conditions include required notifications regarding operational status and operational changes; recordkeeping; proper installation, operation, and maintenance of emission units and control equipment; performance tests; and maintenance of a site survey containing stack heights and other information. *See, e.g.*,

ED_006145_00000172-00010

129 Neb. Admin. Code §§ 34-001 *et seq*. & 35-001 *et seq*. Specific conditions for emission points and control equipment include emission limitations and testing requirements; reporting and recordkeeping requirements; and pavement of haul roads. *See, e.g.*, 129 Neb. Admin. Code §§ 34-001 *et seq*. & 35-001 *et seq*.

48. Air operating permits contain terms and conditions similar to air construction permits, but generally contain more terms and conditions. *See* 129 Neb. Admin. Code § 8-001 *et seq*.

E. Enforcement.

49. Under NEPA, the Department, through the Attorney General's Office, is empowered to file an enforcement action seeking civil penalties and/or injunctive relief. *See* Neb. Rev. Stat. §§ 81-1508 & 81-1508.02.

50. When the Director of the Department "has reason to believe any person, firm, or corporation is violating or threatening to violate any provision of the acts, any rule or regulation adopted and promulgated thereunder, or any order of the director, [the director] may petition the district court for an injunction." Neb. Rev. Stat. § 81-1508(2).

51. If the Director has "evidence that the handling, storage, treatment, transportation, or disposal of solid or hazardous waste is presenting an imminent and substantial endangerment to the health of humans or animals or to the environment, the director may petition the district court for an injunction to immediately restrain any person from contributing to the alleged acts, to stop such handling, storage, treatment, transportation, or disposal, and to take such other action as may be necessary." Neb. Rev. Stat. § 81-1508(3).

52. Each violation of NEPA subjects "a person to a civil penalty of no more than ten thousand dollars per day. In the case of a continuing violation, each day shall constitute a

ED_006145_00000172-00011

separate offense. In assessing the amount of the fine, the court shall consider the degree and extent of the violation, the size of the operation, and any economic benefit derived from noncompliance." Neb. Rev. Stat. § 81-1508.02(2).

FACTUAL BACKGROUND

A. General.

AltEn's Ethanol Manufacturing Process

53. AltEn operates a denatured anhydrous ethanol manufacturing plant that produces approximately 24,000,000 gallons of ethanol annually.

54. AltEn began ethanol manufacturing operations under its ownership on or about January 9, 2015.

55. At the time AltEn submitted an Air Construction Permit Modification Application to the Department on February 14, 2013, AltEn stated "Grain (mainly corn) will continue to be the primary raw material and the facility will keep the ability to produce wet distiller's grain and solubles … for animal feed."

56. Ethanol plants normally use grain, such as field corn, as the primary feedstock for ethanol production. Ethanol plants also normally produce byproducts known as thin stillage (process wastewater) and distiller's grain (spent grain from the ethanol process that is yellow or brown in color). The process wastewater generated by a normal ethanol plant using field corn may generally be treated and land applied or may be potentially reused. The distiller's grain generated by a normal ethanol plant using field corn may be used to feed animals, land applied, or landfilled depending on quality.

57. The Department discovered in 2015 that AltEn was using discarded seed corn that had been treated with pesticides as its feedstock rather than normal field corn. The Department,

ED_006145_00000172-00012

however, did not know until 2018 that the byproducts from AltEn's ethanol production could contain measurable residues of pesticides.

58. Discarded, treated seed corn contains pesticides in its seed coating, including but not limited to chemicals known as azoxystrobin, clothianidin, thiabendazole, and thiamethoxam.

59. A pesticide is generally a chemical that destroys insects or other organisms that are harmful to cultivated plants or animals. Pesticides include, but are not limited to, insecticides, herbicides, rodenticides, and fungicides.

60. AltEn generates both thin stillage (process wastewater) and distiller's grain as byproducts. Unlike the byproducts of a normal ethanol plant, AltEn's byproducts from using treated seed corn contain concentrations of pesticides, including azoxystrobin, clothianidin, glyphosate, thiabendazole, and thiamethoxam. The concentrations of these pesticides in AltEn's byproducts are elevated relative to the pesticides in the coating of the seed corn itself because the pesticides become more concentrated through ethanol production. The Department discovered AltEn's byproducts had elevated concentrations of these pesticides in 2019. Because of the treated seed corn, AltEn's process wastewater and distiller's grain are green in color unlike a normal ethanol plant.

61. Since May 2019, AltEn has been prohibited from land applying the distiller's grain as a soil conditioner and cannot otherwise land apply the distiller's grain due to, *inter alia*, elevated concentrations of pesticides present in the distiller's grain.

62. Since September 2019, AltEn has not been allowed to land apply the process wastewater due to the elevated concentrations of pesticides present in the wastewater.

ED_006145_00000172-00013

63. Upon information and belief, AltEn is the only ethanol plant in Nebraska that uses treated seed corn as an ethanol feedstock and one of two in the nation using treated seed corn as an ethanol feedstock.

Layout of AltEn's Facility

64. AltEn's ethanol plant functions similar to a normal ethanol plant in terms of its ethanol manufacturing process although AltEn uses treated seed corn as a feedstock and generates byproducts containing measurable residues of pesticides that restrict the use and usefulness of the byproducts.

65. Upon information and belief, AltEn generally hauls the treated seed corn from the hoop buildings (Landmarks 11 and 12 on Attachment C) to the grain receiving/unloading area (landmark 9 on Attachment C). From the grain receiving/unloading area, the treated seed corn is put into a hopper and used as a feedstock for ethanol production.

66. Upon information and belief, the thin stillage (process wastewater) generated by AltEn is transferred to a three-celled lagoon system, which includes the west cell ("west lagoon"), northeast cell ("northeast lagoon"), and southeast cell ("southeast lagoon"). An overview showing the Facility's lagoon system is hereto attached to this Complaint as **Attachment D**. The process wastewater is pumped by a lift station and transferred by pipe to the west lagoon in the system. *See* Attachment D. The lagoon system is interconnected. The process wastewater has the ability to travel from the west lagoon to the northeast lagoon and from the northeast lagoon to the southeast lagoon. *See* Attachment D.

67. Upon information and belief, the distiller's grain generated by AltEn is conveyed to a wet distiller's grain ("WDG") loadout (Landmark 14 on Attachment C). An overview showing the WDG loadout at the Facility is hereto attached to this Complaint as **Attachment E**.

From the WDG loadout area, AltEn hauls the distiller's grain out and piles it in various locations (Areas marked "WDG" on Attachment C).

68. Upon information and belief, AltEn puts a portion of its distiller's grain through an on-site biochar unit (Landmark 5 on Attachment C). The biochar unit heats the material to create another byproduct known as biochar. Biochar is generally a charcoal-like byproduct, which AltEn stores in large totes made of a flexible, woven fabric called super sacks.

69. AltEn has two digesters on site (Landmarks 7 and 8 on Attachment C), an emergency lagoon (Landmark 4 on Attachment C) next to the digesters, a cooling tower (Landmark 6 on Attachment C), and a compost area to the south (Landmark 13 on Attachment C). *See also* Attachment E.

70. Normal ethanol plants generally do not use digesters in the ethanol manufacturing process.

71. AltEn's ethanol manufacturing process is regulated by the Department. The Department regulates AltEn's air emissions through air permits, water discharges through NPDES permits, and the solid waste generated by AltEn as a result of the ethanol manufacturing process.

B. Waste.

72. On October 23, 2018, AltEn applied to the Nebraska Department of Agriculture ("NDA") to register its distiller's grain byproduct as a soil conditioner. AltEn received a label for use of its distiller's grain as a soil conditioner.

73. NDA collected a sample of AltEn's distiller's grain and submitted the sample to a laboratory to be analyzed for pesticide residues on March 29, 2019. The lab analysis report for the sample of distiller's grain was received in April 2019 and showed elevated concentrations of

pesticides known as azoxystrobin (2,340 ppb), clothianidin (427,000 ppb), and thiamethoxam (85,100 ppb).

74. Based in part on the lab results, NDA determined the registered soil conditioner was adulterated and issued a Stop-Use and Stop-Sale Order that prohibited the distribution of AltEn's distiller's grain as a soil conditioner on May 17, 2019. As set forth in the Order, NDA found, *inter alia*, that if 20 tons per acre of the distiller's grain were applied, as proposed, then the concentration of clothianidin would be 85 times higher than the maximum annual field load allowed by a typical registered pesticide label. AltEn voluntarily cancelled the registration of its distiller's grain as a soil conditioner on August 14, 2019.

75. On June 26, 2019, the Department informed AltEn it was aware of the Stop-Use and Stop-Sale Order and notified AltEn that the distiller's grain was a solid waste requiring disposal at a permitted solid waste management facility.

76. On July 31, 2019, the Department conducted an investigation at AltEn. Department inspectors observed piles of distiller's grain being stockpiled in areas east and north of the hoop buildings and west of the compost pad. There were approximately 26,000 tons of the distiller's grain onsite at the time.

77. On September 23, 2019, the Department issued a Notice of Violation ("NOV") to AltEn based on the complaint investigation conducted on July 31, 2019. The NOV informed AltEn it was violating NEPA by disposing of solid waste at a location other than a permitted solid waste management facility and by operating a solid waste management facility on its property without a permit. The Department notified AltEn that the distiller's grain and super sacks of starch are solid waste.

ED_006145_00000172-00016

78. The September 23, 2019 NOV prohibited AltEn from stockpiling the distiller's grain onsite and required disposal of the distiller's grain at a permitted solid waste management facility. AltEn was asked to submit a plan outlining disposal of the distiller's grain within 30 days of receipt of the NOV.

79. AltEn responded to the September 23, 2019 NOV on October 25, 2019. In its response, AltEn argued the distiller's grain was not a solid waste and did not provide a plan for disposal of the distiller's grain.

80. On January 30, 2020, the Department responded to AltEn's October 25, 2019 letter. The Department responded that AltEn's activities of piling significant quantities of distiller's grain on site for long periods of time without protection from the elements supports the Department's determination that the distiller's grain is a solid waste.

81. The Department also determined:

> AltEn must immediately comply with the requirements of the September 23, 2019 NOV. Furthermore, AltEn must provide a detailed plan for disposing of all solid waste, including [the distiller's grain], **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.

(Emphasis in original).

82. AltEn again argued in a February 18, 2020 letter that the distiller's grain was not a solid waste and again did not provide a plan for disposal of the distiller's grain at a permitted solid waste management facility.

83. On May 21, 2020, the Department conducted a complaint investigation. During the investigation, Department inspectors observed distiller's grain was still stockpiled west of the compost pads, north of the office building, and east of the hoop buildings. Department

inspectors also observed distiller's grain was now being stockpiled in the northeast corner of the Facility. AltEn indicated about 4,000 tons of distiller's grain was piled in the northeast corner.

84. On September 14, 2020, the Department conducted another site visit at AltEn. Department inspectors observed distiller's grain was still being stockpiled east of the hoop buildings, the northeast corner of the property, and west of the compost pads. AltEn was also now stockpiling distiller's grain north of the hoop buildings, on all three compost pads, and in areas adjacent to cattle pens.

85. Although Department inspectors observed some distiller's grain had been removed from areas west of the compost pads and by the hoop buildings, a significant amount of distiller's grain was still stockpiled onsite. An AltEn representative stated the removed distiller's grain was taken to a landfill.

86. On November 17, 2020, the Department received a letter from EPA in response to its inquiry about distiller's grain that "contains very high levels of pesticide residues." Based on NDA's April 2019 lab results and an estimated application rate of 15 to 20 tons per acre, EPA concluded "that it is likely that land application of the [distiller's grain] material will result in application of these [pesticides] to farm lands at rates that far exceed the registered application rates for which EPA has conducted safety assessments for products containing these pesticides." EPA could not "conclude that land application of the [distiller's grain] [would] not result in unreasonable adverse effects on humans or the environment."

87. On February 1, 2021, the Department conducted a site visit at AltEn. Department inspectors observed AltEn continued to stockpile distiller's grain onsite north of the hoop buildings, east of the hoop buildings, and in the northeast corner. *See* Attachment C (areas marked as WDG). These areas covered approximately 14 acres, 12, acres, and 4 acres,

respectively. An AltEn representative estimated there were 60,000 cubic yards of distiller's grain on site, which is approximately 84,000 tons of material.

88. Upon information and belief, AltEn has not disposed of the distiller's grain stockpiled at its Facility by taking it to a permitted solid waste management facility.

89. Upon information and belief, there is over 84,000 tons of distiller's grain stockpiled onsite at AltEn.

C. Water.

90. At all times material herein, AltEn held three NPDES permits:

a. Authorization NER910444 to Discharge under the NPDES General NPDES Permit Number NER910000 for Storm Water Discharges from Industrial Activity to Waters of the State of Nebraska, which was issued on April 20, 2017 ("ISW Permit NER910000");

b. Authorization to Discharge under the NPDES Individual Permit Number NE0137634, which was issued on June 21, 2017 and modified on October 28, 2020 ("NPDES Permit NE0137634"); and

c. Authorization CSW-201802742 to Discharge under the NPDES General Permit Number NER160000 for Storm Water Discharges from Construction Sites to Waters of the State of Nebraska, which was issued on May 30, 2018 ("CSW Permit NER160000"). Authorization CSW-201802742 was terminated in October 2018 when construction of the west lagoon was complete.

91. AltEn continues to hold ISW Permit NER910000 and NPDES Permit NE0137634.

92. These NPDES permits cover storm water discharges and discharges of wastewater. *See* Attachment D (showing wastewater lagoons). An overview showing storm water outfalls and the storm water flowline at the Facility is hereto attached to this Complaint as **Attachment F**.

93. On July 3, 2018, the Department conducted a complaint investigation to examine possible storm water discharges from distiller's grain stockpiled onsite at AltEn. At the time, AltEn held both CSW Permit NER160000 and ISW Permit NER910000 so the Department inspectors requested AltEn to provide SWPPPs for both storm water permits but AltEn was unable to provide either SWPPP upon request. Department inspectors further observed there was no sign or notice posted onsite indicating AltEn was authorized under CSW Permit NER160000 for construction of the west lagoon or that AltEn had a SWPPP.

94. Department inspectors also observed AltEn was not using or maintaining BMPs to eliminate track out or minimize sediment discharges from the construction site of the west lagoon. AltEn also had not implemented BMPs for disturbed slopes or installed any silt fences, waddles, or other temporary control measures to minimize discharges from the construction site for the west lagoon. Away from the construction site, Department inspectors observed the berm used to control runoff from the distiller's grain piles by the biochar unit had breached and was discharging runoff onto a neighboring property. There were no BMPs or secondary controls in place to prevent runoff in the event the berm breached. The breached berm was reestablished by AltEn on July 3, 2018.

95. On July 23, 2018, the Department issued an NOV to AltEn. The NOV notified AltEn of its failure to meet the terms and conditions of CSW Permit NER160000 by not using and maintaining BMPs, by not providing the SWPPP when requested, and failing to post that AltEn had authorization under CSW Permit NER160000. The Department also notified AltEn of its failure to meet the terms and conditions of its ISW Permit NER910000 by not using or maintaining BMPs and by not immediately providing the SWPPP when requested.

96. On April 8, 2019, the Department had a contracted third-party conduct sampling at AltEn. Samples of the wastewater in the west lagoon, as well as the distiller's grain onsite were collected. While onsite, Department inspectors observed the west lagoon had a floating liner known as a "whale," animal burrows had damaged the liner, and the liner was also torn and damaged in another spot.

97. On April 24, 2019, the Department issued an NOV to AltEn. The NOV notified AltEn of its failure to comply with lagoon operation and maintenance regulations, because the west lagoon was damaged and there was evidence of animal burrows. The Department required AltEn to fix the damage to the west lagoon liner, including the tear, the "whale", and the animal burrows. AltEn repaired the animal burrow damage to the west lagoon on or about April 30, 2019, and the liner tear on or about May 15, 2019.

98. The Department and AltEn also entered into a Consent Order on April 24, 2019. A true and accurate copy of the April 24, 2019 Consent Order is hereto attached to this Complaint as **Attachment G**. The Consent Order required AltEn to:

a. Submit the land application site requirements and set-back information required by NPDES Permit NE0137634 within fifteen days of the signing of the Consent Order.

b. Submit an independent engineering evaluation for the repair of the northeast and southeast lagoon liners and the emergency lagoon liner that also includes an additional review by another independent engineering firm within 60 days of the signing of the Consent Order. Vegetation must be removed, animal burrows repaired, and lagoons must not be operating in the area designed for freeboard.

c. Enter into a binding contract to begin implementation of the repair plan for the southeast lagoon and the emergency lagoon within 30 days of receiving approval of the repair plan.

d. Determine whether to repair the northeast lagoon and/or whether to use another method of water treatment or storage within 30 days after receiving approval of the repair plan for the northeast lagoon.

e. Submit a ground water monitoring plan of the Facility including the lagoons to the Department for review and approval within 60 days of the consent order. The ground water monitoring plan must include, at a minimum, the identification and installation of four monitoring wells, identification of all constituents to be monitored, and quarterly monitoring.

f. Fully implement the repairs to the southeast lagoon and the emergency lagoon and the ground water monitoring plan by October 1, 2019.

g. Determine the completion date for the repairs of the northeast lagoon or the use of water treatment or storage at the time a final decision and plan is accepted by the Department.

See Attachment G at 5–6.

99. AltEn consented to complete requirements (A) through (G) within the timeframes specified by signing the Consent Order on April 24, 2019. None of the timeframes in the Consent Order were amended by the parties.

100. On April 29, 2019, the Department received the lab results from the samples collected on April 8, 2019. The west lagoon sample showed elevated concentrations of pesticides: azoxystrobin (99.3 ppb); clothianidin (58,400 ppb); glyphosate (124 ppb); thiabendazole (8,450 ppb); and thiamethoxam (35,400 ppb). The distiller's grain sample also showed elevated concentrations of pesticides: azoxystrobin (1,430 ppb); clothianidin (112,000 ppb); thiabendazole (55,600 ppb); and thiamethoxam (30,500 ppb). The Department provided these results to AltEn on May 2, 2019.

101. On May 9, 2019, AltEn provided a BMP plan for application of lagoon wastewater, but the BMP did not address any pesticides and did not include lab results analyzing the presence of pesticides in the wastewater.

102. AltEn provided a response to the Consent Order on June 21, 2019. The response included a bid proposal for the repairs of the northeast and southeast lagoons from an

engineering firm, but it was not an engineering evaluation and did not contain an additional review by another engineering firm. AltEn also provided a groundwater monitoring plan, but the plan proposed installing three monitoring wells, instead of the four monitoring wells required by the Consent Order. AltEn further notified the Department the repairs to the emergency lagoon were complete, vegetation causing damage was removed, animal burrows were repaired, and the lagoons were no longer operating in the areas designed for freeboard.

103. On July 31, 2019, the Department conducted an inspection. In regard to storm water, Department inspectors observed there was a pool of water that was not contained where distiller's grain was piled south of the west lagoon. There were torn and leaking bags of starch that were exposed to the elements and the starch that had spilled from the torn and leaking bags was mixing with storm water and discharging into a storm water conveyance. Department inspectors observed condensate was discharging from the top of the building to the ground. On the ground, the condensate was encountering treated seed corn that had been spilled on the ground by the grain receiving/unloading area. After running over the spilled treated seed corn, the condensate flowed to a drainage area. Department inspectors also observed track out of distiller's grain on the haul road going to and from the WDG loadout area. Department inspectors observed another discharge, this time from the cooling tower that joined other discharges flowing south. The discharge from the cooling tower was forming a filamentous bacteria growth and hypochlorite odor. An AltEn representative stated the cooling tower had been leaking since June 2019. Both of these discharges appeared to have been ongoing. Department inspectors observed that no berms or other storm water controls existed along the haul road or east of the hoop buildings where distiller's grain was piled. Department inspectors also learned AltEn was sampling from a location over a mile away instead of a closer location

that would capture a representative sample of authorized storm water discharges. Department inspectors took a sample of a brown, greenish liquid next to the cooling tower and a sample from outfall 001 for benchmark sampling under ISW Permit NER910000.

104. In regard to the lagoon system, Department inspectors observed "whales" in the liner of the northeast lagoon, a rotary drum separator was being used to jet wastewater into the air in the northeast lagoon, and an air relief vent was damaged and leaking wastewater onto the ground next to it. Department inspectors also observed the levels of the lagoons were lower than previously observed.

105. On August 27, 2019, the Department received lab results from the benchmark sampling conducted on July 31, 2019. The lab results for the sample of the brown, greenish liquid showed 468 mg/L of Chemical Oxygen Demand ("COD"), which exceeded the 120 mg/L quarterly benchmark value for COD in ISW Permit NER910000.

106. On September 6, 2019, the Department conducted a site visit at AltEn to observe liner repair of the southeast lagoon. While onsite, Department inspectors observed the cooling tower had been repaired, the starch bags were consolidated in a central location, and the previously observed spills of starch had been cleaned up.

107. On September 13, 2019, the Department issued an NOV to AltEn. The NOV notified AltEn of its failure to comply with operation and maintenance regulations because the use of a rotary drum separator in the northeast lagoon had not been authorized and the air relief vent by the southeast lagoon was leaking wastewater to the ground next to the air relief vent. The NOV required AltEn to immediately cease using the rotary drum until receiving authorization from the Department and to repair the air relief vent.

108. AltEn was notified of its failure to meet the terms and conditions of its ISW Permit NER910000:

a. Failing to use or maintain BMPs to meet non-numeric technology-based effluent limits in the permit by allowing spilled treated seed corn to come into contact with condensate discharge, starch spills that mix with storm water discharges, lack of control of track out of distiller's grain, a leaking hypochlorite tote, and not implementing controls for all distiller's grain storage areas.

b. Failing to adequately maintain or use required monitoring practices by not monitoring at a point where discharges to waters of the State are representative, exceeding the COD benchmark in the permit, and the SWPPP does not address distiller's grain containing pesticides as a pollutant.

109. The September 13, 2019 NOV also notified AltEn that the discharges from the cooling tower were mixing with other industrial materials and storm water discharges, which is not allowed under ISW Permit NER910000. The discharges from the cooling tower were also a violation of NPDES Permit NE0137634. The NOV stated AltEn's May 2019 BMP plan failed to address the short-term and long-term surface water and ground water contamination from lagoon wastewater containing pesticides.

110. Further, the September 13, 2019 NOV required AltEn to:

> **Immediately**, cease land application of lagoon wastewater. **Within 30 days of the date of this notification**, submit 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. This request does not preclude you from the requirements of NPDES Permit NE0137634. In addition to lowering the lagoon liquid levels for the purpose of maintenance and repair, solids removal from the lagoons may be required. Lagoon solids may contain pesticides or other pollutants. Prior to removal and disposal, the solids must be analyzed for the above pesticides and Toxicity Characteristic Leaching Procedure (TCLP); and the results must be reported to [the Department]. [The Department] must provide prior approval of the disposal method.

(Emphasis in original).

111. AltEn's registered agent received the September 13, 2019 NOV on September 19, 2019.

112. On September 30, 2019, the Department conducted a site visit at AltEn. During the site visit, the Department inspectors observed the southeast lagoon had been repaired, which was required by the Consent Order. Department inspectors also observed a storm water berm was installed to the south of the west lagoon, the rotary drum was not in use, and the air relief vent was repaired. Department inspectors further observed the west and northeast lagoons were operating near the area designed for freeboard, the west lagoon now had three whales, and no groundwater monitoring wells were installed.

113. Department inspectors also noted the area where the starch bags were stored did not have storm water controls implemented and there was track out where distiller's grain was stored.

114. On October 18, 2019, AltEn provided, *inter alia*, corrective action reports showing the following industrial storm water violations were addressed:

a. Seed corn on the ground that could mix with storm water and discharge was cleaned up on July 31, 2019;

b. Leaking starch bags that could mix with storm water and discharge were removed on August 23, 2019 and damaged bags would be disposed of or used in ethanol manufacturing process in the future. A silt fence was also installed on August 23, 2019;

c. Vehicle tracking of wet cake was addressed on July 31, 2019 and would be monitored;

d. The hypochlorite tote that was not contained was moved into the process building and put in a containment area on July 31, 2019;

e. Controls for the wet cake storage areas were implemented, including berms repaired or installed on July 31, 2019, routine observations will be performed, and a wet cake management plan would be addressed; and

f. The leaking cooling tower was repaired on August 23, 2019 and future leaks would be addressed immediately and the pumps would be taken offline if necessary for replacement.

115. On November 12, 2019, the Department conducted sampling of wastewater from AltEn's lagoon system. Composite wastewater samples were taken from the northeast and west lagoons.

116. On December 4, 2019, the Department received lab results for the samples of wastewater taken at AltEn on November 12, 2019. The northeast lagoon sample showed elevated concentrations of pesticides: azoxystrobin (33.9 ppb); clothianidin (7,070 ppb); glyphosate (206 ppb); thiabendazole (2,450 ppb); and thiamethoxam (2,400 ppb). The west lagoon sample showed elevated concentrations of pesticides: azoxystrobin (111 ppb); clothianidin (31,000 ppb); glyphosate (116 ppb); thiabendazole (2,160 ppb); and thiamethoxam (24,000 ppb). These lab results were sent to AltEn on December 16, 2019.

117. On February 18, 2020, the Department conducted a site visit at AltEn. Department inspectors observed runoff discharging from the distiller's grain stockpiled to the north of the hoop buildings to other areas and evidence showing the berm on the east side of the stockpiled distiller's grain had overtopped.

118. On March 2, 2020, AltEn submitted a Revised Groundwater Monitoring Plan that called for four monitoring wells as required by the Consent Order.

119. The Department received a corrective action report from AltEn on March 5, 2020. The berm on the east side of the distiller's grain stockpiled north of the hoop buildings was repaired on February 20, 2020 and a berm was constructed on the west side of the property to contain relocated distiller's grain on February 20, 2020.

ED_006145_00000172-00027

120. On April 2, 2020, the Department approved AltEn's Revised Groundwater Monitoring Plan, which was required by the Consent Order. Under this Plan, four monitoring wells would be drilled, and monitoring would be conducted on a quarterly basis.

121. On May 1, 2020, the Department issued an NOV to AltEn. The NOV notified AltEn that it needs to update its SWPPP because the SWPPP did not adequately cover unpermitted or ineligible discharges of runoff from distiller's grain containing pesticides. The NOV required AltEn to submit corrective action reports and to update its SWPPP.

122. The Department received AltEn's corrective action reports in response to the May 1, 2020 NOV on June 8, 2020. AltEn stated its SWPPP was updated to provide:

> Storm water that falls north of the WDG holding berms to the north of the hoop buildings [would] flow along the northern edge of the two northern lagoons, and then south to Outfall 001. Typically, any storm water that falls within the wet cake berms [would] flow south and southeast where it [would] collect in an area north of the tank farm, where it will evaporate. However, if the berm surrounding the WDG storage areas near the northwest corner of the northwest lagoon were to fail, water that may come in contact with WDG in that area could flow east, north of the two northern lagoons, before traveling to Outfall 001.

The corrective action reports indicated the SWPPP was updated to address the distiller's grain storage area has a high potential to impact storm water and changed the language to reflect that a compromised berm "will be repaired as soon as possible" instead of "should be repaired as soon as possible."

123. In August 2020, the Department began the process of modifying NPDES Permit NE0137634 to add the requirement for AltEn to implement and maintain the Revised Groundwater Monitoring Plan, including completion of monitoring well installation and quarterly monitoring.

124. On August 31, 2020, the Department received another corrective action report from AltEn responding to the May 1, 2020 NOV. This corrective action report indicated the

SWPPP was updated to document how unpermitted discharges from distiller's grain containing pesticides are being addressed. The updated language further provided: "AltEn understands that any unauthorized discharge of storm water co-mingled with non-storm water is considered a violation of the [ISW] Permit [NER910000]."

125. On September 11, 2020, the Department conducted a site visit at AltEn. While inspecting the lagoons, Department inspectors observed the levels of the west and northeast lagoons were lower than observed in November 2019, but the levels of the southeast lagoon were higher because wastewater was being transferred into this lagoon from the northeast lagoon. An AltEn representative told Department inspectors AltEn had been land applying lagoon wastewater in 2020 to lower the lagoon levels. The Department had not approved any land application of wastewater since it issued the September 13, 2019 NOV, which prohibited land application of the lagoon wastewater.

126. Department inspectors further observed the west and northeast lagoons still had "whales," which could further damage the liners if not repaired. The liner of the northeast lagoon was also completely torn and the liner of the west lagoon had small tears.

127. In regard to the storm water inspection on September 11, 2020, Department inspectors observed no silt fence was installed around the biochar unit although the SWPPP indicated a silt fence should have been installed. Department inspectors observed runoff from distiller's grain was discharging into two separate areas—a ditch leading to Outfall 001 and a conveyance system west of the biochar unit. There were no BMPs installed to control runoff from distiller's grain in the staging area. Department inspectors further observed two separate spills of liquid. For the first spill, a green hose attached to a pumping system was releasing thin stillage. For the second spill, there was a pump failure that caused thin stillage to be pumped

into a secondary containment area. During the transfer, thin stillage spilled to the ground. Department inspectors also observed unlabeled chemical totes and fuel tanks, unsecured hoses, and torn and spilled super sacks of biochar.

128. On September 25, 2020, installation of the four ground water monitoring wells was completed.

129. On October 2, 2020, the Department issued a Letter of Noncompliance ("LNC")[3] to AltEn. The LNC reiterated that AltEn had not addressed continuing violations of the Consent Order or the September 19, 2019 NOV and notified AltEn of new violations based on the September 11, 2020 site visit. The continuing violations outlined in the LNC were:

a. Failing to submit an engineering evaluation of the northeast lagoon that includes an additional review completed by an independent engineering firm within 60 days of the Consent Order;

b. Land applying wastewater from the lagoons despite the prohibition on land application of the wastewater, as set forth in the September 13, 2019 NOV; and

c. Failing to submit a land application BMP for the lagoon wastewater within 30 days of the September 13, 2019 NOV.

130. The new violations were:

a. Failing to comply with operation and maintenance requirements of Title 123 due to the badly damaged liners for the west and northeast lagoons;

b. Failing to use or maintain BMPs to meet non-numeric technology effluent limits in ISW Permit NER910000 because no BMPs were installed to prevent discharges of distiller's grain residue from the staging area, no silt fence was installed around the biochar unit, torn and leaking bags were observed, distiller's grain runoff from the biochar unit was not addressed, unlabeled totes were observed, two liquid spills and one granular material spill was observed; and

[3] In 2020, the Department began issuing LNC instead of NOVs. Although these documents have different names, an LNC still notifies the regulated party of violations and requests correction of violations.

c. Failing to have a BMP plan to prevent short-term and long-term surface water and ground water contamination by lagoon wastewater that contains pesticides.

131. The October 2, 2020 LNC also requested AltEn to immediately submit an independent engineering evaluation of the northeast and west lagoons along with an additional review by another independent engineering firm to the Department for review, install BMPs to control distiller's grain runoff and update the SWPPP to include this BMP, install a silt fence around the biochar unit, and submit corrective action reports. Finally, the October 2, 2020 LNC provided:

> **Immediately**, cease land application of lagoon wastewater. Wastewater should not be land applied per [an NOV] 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 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 [NOV] 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.

(Emphasis in original).

132. On October 12, 2020, AltEn conducted sampling of the ground water for monitoring for the quarter ending December 31, 2020.

133. On October 15, 2020, the Department received three corrective action reports from AltEn. One corrective action report addressed the first spill observed by the Department inspectors on September 11, 2020 and provided repairs were made and the spill was cleaned up.

The other corrective action reports provided the silt fence around the biochar unit was "replaced" on September 16, 2020. The second spill of wastewater observed by the Department inspectors, on September 11, 2020, had been cleaned up by the next day and repairs would be made to the pipe that resulted in the spill. There was no corrective action report for the unlabeled totes and fuel tanks or unsecured hoses.

134. On October 16, 2020, the Department received a BMP for land application of the lagoon wastewater from AltEn.

135. In regard to the BMP, the Department sent a request for more information to AltEn on October 27, 2020. To help evaluate the BMP, the Department requested:

a. All wastewater sampling lab results for azoxystrobin, clothianidin, glyphosate, thiabendazole, and thiamethoxam from March 1, 2020 through present; and

b. All wastewater sampling information, including type of sample, sampling locations, sampling depths, sampling dates, and who collected the samples, as well as a standard operating procedure for sampling if one exists.

This letter also asked for the information previously requested in the October 2, 2020 LNC because it would expedite review.

136. On October 28, 2020, the Department issued NPDES Permit NE0137634 as modified to address groundwater monitoring.

137. On December 24, 2020, the Department received some of the information requested from AltEn in its October 27, 2020 letter. AltEn provided one page of a lab report for wastewater samples collected on July 31, 2020, which showed elevated concentrations of pesticides: azoxystrobin (44.4 ppb) and thiabendazole (2,410 ppb). Glyphosate was not tested for by the lab. AltEn's response also included a standard operating procedure showing how

wastewater was sampled but did not include any of the land application information requested in the October 2, 2020 LNC.

138. By January 1, 2021, the Department had not received a ground water monitoring report from AltEn for the quarter ending on December 31, 2020.

139. On January 11, 2021, the Department emailed AltEn requesting the ground water monitoring report for the quarter ending on December 31, 2020. AltEn responded that it had received the ground water monitoring report from its consultant but had not reviewed the information yet. AltEn finally submitted the ground water monitoring report to the Department on January 19, 2021, which was dated January 4, 2021. The ground water monitoring report also indicated the lab results were received on January 4, 2021.

140. On January 13, 2021, the Department received a letter from EPA in response to its inquiry about land application of lagoon wastewater containing pesticides. Based on the concentrations of pesticides in the Department's November 2019 lab results for AltEn's lagoon wastewater, EPA concluded, *inter alia*, that "applying this wastewater to nearby fields [was] likely to result in application of these compounds to farmlands at rates that far exceed the registered application rates for which EPA has conducted safety assessments for products containing these pesticides." The EPA "could not conclude that discharging this water onto land [would] not result in unreasonable adverse effects on humans or the environment."

141. On February 1, 2021, the Department conducted a site visit at AltEn. Department inspectors observed the levels of each of the lagoons (west, northeast, and southeast) had exceeded maximum operating depths and were operating in the area designed for freeboard. Department inspectors also observed the liner of the northeast lagoon was still badly damaged and had not been repaired. The "whales" in the west lagoon were also still visible.

142. In regard to storm water, Department inspectors observed multiple piles of distiller's grain had no storm water containment to prevent runoff from mixing with storm water discharges. Department inspectors also noted that although AltEn had installed the silt fence around the biochar unit that was missing during the last inspection, AltEn had failed to label the unlabeled chemical totes on site, clean up spilled seed, and there was track out north of the biochar unit.

143. On February 3, 2021, the Department notified AltEn that the BMP for land application of lagoon wastewater was not approved.

144. On February 16, 2021, the Department issued an LNC to AltEn. The LNC notified AltEn of its failure to meet the conditions of ISW Permit NER910000 because AltEn had not labeled the unlabeled totes or secured hoses as required in the October 2, 2020 LNC, had not cleaned up the spills of treated seed corn, and there were no BMPs to control storm water runoff from distiller's grain stockpiled on the east side of the Facility. The LNC required AltEn to, *inter alia*, immediately label the totes and secure the hoses, implement good housekeeping measures by cleaning up spills, and provide photographs showing the installation of berms to prevent runoff from distiller's grain piled on the east side of the Facility.

D. Air.

145. AltEn was issued Air Construction Permit CP13-010 on February 20, 2014 and was issued revised Air Construction Permit CP14-066 on October 9, 2015. CP14-066 superseded Permit Conditions III.(B) and III.(E) of CP13-010.

146. AltEn submitted an air operating permit application on January 7, 2016 and was issued an Air Quality Class II Operating Permit OP16S2-001 on May 23, 2019.

147. On January 12, 2015, AltEn notified the Department that actual startup occurred on January 9, 2015. The notification did not contain a report describing or certifying control equipment, as required by 129 Neb. Admin. Code § 18-001.

148. The Department's first compliance inspection of the Facility under AltEn's ownership and operation occurred on May 28, 2015. As a result of this inspection, the Department issued an NOV to AltEn on June 8, 2015 for failing to maintain, and have available, records required by the permit. AltEn proposed corrective actions to address these violations, including that components of the Total Reduced Sulfur ("TRS") Continuous Emissions Monitoring System ("CEMS") would be replaced and the unit would be operational on July 31, 2015. CP14-066 requires AltEn to install a TRS CEMS for its anaerobic digestion system.

149. AltEn was required to conduct a performance test of the digester flare by July 8, 2015, as required by CP14-066. The Department had not receive any information that a performance stack test was performed or was completed.

150. On July 19, 2018, the Department conducted a compliance inspection of AltEn. During the inspection, Department inspectors observed beer, soda pop, industrial starch, and treated seed corn were present at the Facility; and it looked like the items were being used as feedstock for the ethanol manufacturing process, but none of these items had been identified as feedstock in AltEn's permit application for CP13-010. An AltEn representative stated beer and pop were being used in the ethanol manufacturing process. The Department notified AltEn the use of these items is a change in operations and a performance stack test of the scrubber would need to be conducted by September 30, 2018 and AltEn would need to correct the feedstock information in CP13-010.

151. The Department had not received any notifications from AltEn regarding changes to its feedstock.

152. In regard to CEMS units, Department inspectors requested records showing a TRS CEMS and a methane CEMS were operating since May 1, 2017, but AltEn had no records available showing either CEMS was installed or operating. AltEn had not installed a TRS CEMS or a methane CEMS as required by CP14-066.

153. CP13-010 required onsite haul roads with production related truck traffic to be paved, but Department inspectors observed all haul roads were not paved and AltEn was not documenting the use of BMPs on the unpaved haul roads. As of the filing of this Complaint, AltEn has not paved all haul roads that have production-related truck traffic.

154. In regard to the fermentation and distillation scrubber, Department inspectors observed the scrubber stack on this unit was emitting water vapor and needed to be repaired. Department inspectors also requested various documents from AltEn, including the operation and maintenance manual; daily observation records for the scrubber; and corrective action and maintenance records for the scrubber. AltEn, however, had not been keeping the operation and maintenance manual or the daily observation records, or the corrective action and maintenance records for the scrubber.

155. Department inspectors also asked for other documents, such as the corrective action and maintenance records for the ethanol loadout system; the site survey showing as-built stack heights; records of emissions calculations; records of equipment failures, malfunctions, and other variations; records showing a flame present at the digester flare; and the drift loss design specification as required by CP13-010, but AltEn was not keeping these records. AltEn also could not provide the site survey when requested.

156. The Department also observed distiller's grain was being used in the biochar unit and there were smoldering piles of biochar on the ground near the biochar unit. An AltEn representative stated a few of the biochar super sacks had started on fire.

157. On July 23, 2018, the Department issued an NOV to AltEn. The NOV notified AltEn of two permit violations:

a. Failure to notify the Department within 15 days of operational changes that may have caused previous testing to not represent current operating conditions or emissions; and

b. Failure to properly operate and maintain the fermentation and distillation scrubber.

158. The NOV required AltEn to conduct a performance stack test before September 30, 2018 and to provide the Department with a 30-day notice prior to testing. The NOV required AltEn to bring the fermentation and distillation scrubber back to proper operation. AltEn had the stack for the fermentation and distillation scrubber repaired on July 20, 2018.

159. On August 13, 2018, the Department issued an additional NOV to AltEn based on the July 13, 2018 site visit and the July 19, 2018 inspection. This NOV listed these relevant violations:

a. Failure to submit relevant facts in the permit application about the feedstock process changes in the fermentation process from corn as the primary feedstock, as stated in the permit, to using treated seed corn, beer, pop, and industrial starch;

b. Causing or allowing an open fire from smoldering biochar product without the Director's written permission;

c. Failure to produce calculations required to be compiled and recorded by the 15th of each month since January 9, 2015 when the Facility started up;

d. Failure to provide the operation and maintenance manual for the fermentation and distillation scrubber;

e. Failure to provide a site survey documenting the as-built stack heights;

f. Failure to provide records of equipment failures, malfunctions, or other violations since Facility startup;

g. Failure to provide daily observations records for the fermentation and distillation scrubber since Facility startup;

h. Failure to provide any corrective action or maintenance records for the fermentation and distillation scrubber and the ethanol loadout system since Facility startup;

i. Failure to submit a report that describes the control equipment and certifies that the control equipment meets regulatory specifications since Facility startup;

j. Failure to conduct a performance test for the digester flare;

k. Failure to monitor and operate the TRS CEMS as shown by the absence of any records showing the TRS CEMS was operational from May 1, 2017 to July 19, 2018;

l. Failure to monitor and operate the methane CEMS as shown by the absence of any records showing the methane CEMS was operational from May 1, 2017 to July 19, 2018;

m. Failure to provide records since Facility startup;

n. Failure to pave all production-related truck traffic and record best management practices used onsite; and

o. Failure to provide the drift loss design specifications.

160. The NOV required AltEn to perform a number of tasks to correct these violations.

161. On September 14, 2018, AltEn provided certifications that it was documenting the use of BMPs on haul roads; it had the operation and maintenance manual for the fermentation and distillation scrubber; it was recording daily observations of the fermentation and distillation scrubber; it was keeping corrective action and maintenance records for the fermentation and distillation scrubber and the ethanol loadout system; it was keeping the site survey; it was

keeping emissions records; it was keeping records of equipment failures, malfunctions, and other variations; and it was keeping records of the drift loss design specifications. AltEn also stated it had used only treated seed corn the past year and 2,000 gallons of beer and pop were used in 2017.

162. On September 14, 2018, AltEn also finally submitted the report describing and certifying the control equipment meeting the specifications of 40 C.F.R. §§ 60.112b(a)(1) & 60.113b(a)(1), which was required to be submitted with the startup notification.

163. On October 2, 2018, the Department conducted another inspection. Department inspectors again asked for the site survey and stack heights for the boiler and digester flare, but the stack heights were not available. AltEn has since provided these stack heights. In regard to the flame for the digester flare, an AltEn representative stated AltEn was working on getting a monitoring system to show a flame was present on the digester flare.

164. On July 24, 2019, the Department conducted a site visit of AltEn to observe the initial certification testing of the CEMS unit installed by AltEn, which would allow AltEn to monitor emissions when changing up feedstock instead of needing to conduct more performance stack tests.

165. On March 13, 2020, AltEn submitted an application to modify its permit to limit the feedstock to the anaerobic digesters, to modify the requirements for a CEMS by allowing a methane/ H_2S monitor instead, and to remove the requirement to conduct performance testing for the digester flare. AltEn subsequently submitted an amendment to this modification application. This modification request is currently under review by the Department.

166. On January 12, 2021, AltEn submitted an Air Operating Permit Significant Revision application, which is under review by the Department.

E. Recent Events.

167. On February 4, 2021, the Department issued an Emergency Complaint and Order requiring AltEn to, *inter alia*, "[i]mmediately cease discharge of industrial wastewater into its wastewater lagoons" and "not remove industrial wastewater from its wastewater lagoons except in accordance with standards and conditions for disposal of industrial wastewater laced with pesticides." The Director had found:

> [E]very additional discharge … to the lagoons [would] increase the lagoon levels, decrease the freeboard above max available in the lagoons, and take the lagoons further above their maximum operating depths, presenting an imminent and substantial danger to the structure and integrity of the lagoons, an imminent and substantial risk of an unpermitted and uncontrolled release of wastewater, and further damage to public health and the environment.

The Order also requires AltEn to submit a plan detailing a protocol for disposal of the lagoon wastewater by March 10, 2021.

168. On February 10, 2021, the Department confirmed AltEn was shut down and wastewater was no longer discharging into the lagoons.

169. On February 12, 2021, one of AltEn's four-million-gallon digesters began releasing waste materials that went off AltEn's property into a drainage ditch and onto neighboring property approximately 4.5 miles away from AltEn.

170. On February 20, 2021, the Department issued another Emergency Complaint and Order requiring AltEn to, *inter alia*, immediately prevent any further discharge of the waste materials from the digester and to take active steps to clean up the discharge of waste materials from the digester. The Order also prohibits AltEn from resuming operations until the discharged waste materials are sufficiently remediated. The Order also requires AltEn to provide the Department with daily reports regarding removal of the released waste materials.

171. Both Emergency Orders are still in effect as of the filing of this Complaint.

ED_006145_00000172-00040

172. Upon information and belief, AltEn is not currently producing ethanol or generating new distiller's grain or process wastewater.

FIRST CAUSE OF ACTION

DISPOSAL OF SOLID WASTE AT A LOCATION OTHER THAN A SOLID WASTE MANAGEMENT FACILITY HOLDING A PERMIT IN VIOLATION OF NEB. REV. STAT. § 81-1506(3)(d).

173. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1-172 as though fully set forth herein.

174. Under NEPA, it is "unlawful for any person to … dispose of any solid waste at any location other than a solid waste management facility holding a current permit issued by the Department pursuant to [ISWMA]." Neb. Rev. Stat. § 81-1506(3)(d).

175. On May 17, 2019, NDA issued a Stop-Use and Stop-Sale Order prohibiting AltEn from distributing the distiller's grain as a soil conditioner for land application. AltEn's distiller's grain is no longer registered as a soil conditioner.

176. AltEn's distiller's grain contains elevated levels of pesticides and cannot be land applied.

177. Since July 31, 2019, the amount of distiller's grain being stored onsite at AltEn has grown substantially. As of July 31, 2019, there was approximately 26,000 tons of distiller's grain onsite and, as of February 1, 2021, there was over 84,000 tons of distiller's grain onsite.

178. AltEn's distiller's grain is a solid waste as defined in Neb. Rev. Stat. § 81-1502(26).

179. Since June 26, 2019, AltEn has known its distiller's grain is a solid waste and must be disposed of at a permitted solid waste management facility. The Department issued an NOV on September 23, 2019 outlining this violation and, on January 30, 2020, the Department

ED_006145_00000172-00041

told AltEn it had until March 1, 2021 to remove all distiller's grain from onsite and dispose of it at a permitted solid waste management facility.

180. Despite these directives, AltEn has continued to store far more distiller's grain on site than it has taken to a permitted solid waste management facility.

181. By storing tens of thousands of tons of distiller's grain onsite at its Facility, AltEn is disposing of the solid waste at a location other than a permitted solid waste management facility.

182. AltEn does not hold, and has never held, a permit to operate as a solid waste management facility.

183. AltEn has not removed the distiller's grain from its property and continues to store this solid waste onsite at its Facility.

184. AltEn violated, and continues to violate, Neb. Rev. Stat. § 81-1506(3)(d) by disposing of the distiller's grain solid waste on its property instead of at a permitted solid waste management facility. AltEn has been in violation of this statute since at least June 26, 2019 and continues to unlawfully dispose of the distiller's grain solid waste onsite at its Facility.

185. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), AltEn is subject to a civil penalty of not more than $10,000 per day for this violation.

186. Pursuant to Neb. Rev. Stat. § 81-1508, the foregoing cause of action presents an imminent and substantial endangerment to the health of humans or animals or to the environment and/or AltEn violated and/or threatens to violate NEPA. This Court should issue an injunction immediately restraining AltEn from storing distiller's grain onsite, order AltEn to remove the distiller's grain stored on its property by disposing of this solid waste at a permitted solid waste management facility, and order such other actions as may be necessary.

ED_006145_00000172-00042

SECOND CAUSE OF ACTION

OPERATING A SOLID WASTE MANAGEMENT FACILITY WITHOUT A PERMIT IN VIOLATION OF NEB. REV. STAT. § 81-1506(3)(a) AND 132 NEB. ADMIN. CODE § 2-001.

187. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1-172 as though fully set forth herein.

188. Under NEPA, it is "unlawful for any person to … [c]onstruct or operate a solid waste management facility without first obtaining a permit required under [NEPA] or under [ISWMA] and the rules and regulations adopted and promulgated by the council pursuant to the acts." Neb. Rev. Stat. § 81-1506(3)(a); *see also* 132 Neb. Admin. Code § 2-001.

189. AltEn does not hold, and has never held, a permit to operate as a solid waste management facility.

190. Although AltEn is not a permitted solid waste management facility, it has been operating as a solid waste management facility, as defined in Neb. Rev. Stat. § 13-2010, by disposing of distiller's grain onsite at its Facility. The Department notified AltEn of this violation in the September 23, 2019 NOV. On January 30, 2020, the Department told AltEn it had until March 1, 2021 to remove all distiller's grain from onsite and dispose of it a permitted solid waste management facility.

191. AltEn's distiller's grain is a solid waste as defined in Neb. Rev. Stat. § 81-1502(26).

192. Since July 31, 2019, the amount of distiller's grain being stored onsite at AltEn has grown. As of July 31, 2019, there was approximately 26,000 tons of distiller's grain onsite and, as of February 1, 2021, there was over 84,000 tons of distiller's grain onsite.

ED_006145_00000172-00043

193. By storing tens of thousands of tons of distiller's grain onsite at its Facility, AltEn is operating as a solid waste management facility without a permit.

194. AltEn has failed to remove the distiller's grain from its property and, instead, continues to operate as an unpermitted solid waste management facility by storing the distiller's grain solid waste at its Facility.

195. AltEn violated, and continues to violate, Neb. Rev. Stat. § 81-1506(3)(a) by operating as an unpermitted solid waste management facility by disposing of the distiller's grain solid waste onsite at its Facility. AltEn has been in violation of this statute since at least July 31, 2019 and continues to unlawfully operate as a solid waste management facility.

196. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), AltEn is subject to a civil penalty of not more than $10,000 per day for this violation.

197. Pursuant to Neb. Rev. Stat. § 81-1508, the foregoing cause of action presents an imminent and substantial endangerment to the health of humans or animals or to the environment and/or AltEn violated and/or threatens to violate NEPA. This Court should issue an injunction immediately restraining AltEn from operating an unpermitted solid waste management facility, order AltEn to remove all distiller's grain stored on its property by disposing of this solid waste at a permitted solid waste management facility, and order such other actions as may be necessary.

THIRD CAUSE OF ACTION

CAUSING POLLUTION TO WATER AND LAND OF THE STATE IN VIOLATION OF NEB. REV. STAT. § 81-1506(1)(a).

198. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1-172 as though fully set forth herein.

199. Under NEPA, it is "unlawful for any person … [t]o cause pollution of any air, waters, or land of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, waters, or land of the state." Neb. Rev. Stat. § 81-1506(1)(a).

A. Distiller's Grain.

200. AltEn's distiller's grain contains elevated levels of pesticides and cannot be land applied.

201. AltEn's distiller's grain is a "waste," as defined in Neb. Rev. Stat. § 81-1502(14), and is contaminated with elevated concentrations of pesticides.

202. Since July 31, 2019, the amount of distiller's grain being stored onsite at AltEn has grown substantially. As of July 31, 2019, there was approximately 26,000 tons of distiller's grain onsite and, as of February 1, 2021, there was over 84,000 tons of distiller's grain onsite in three separate areas covering approximately 30 acres.

203. Department inspectors have repeatedly observed runoff from the areas where distiller's grain is stored mixing with storm water discharges, including but limited to observations in July 2018, February 2020, and September 2020.

204. The distiller's grain containing elevated concentrations of pesticides is also stored on the land of the state. There is no concrete pad or other liner between the distiller's grain and the ground.

205. AltEn's storage of distiller's grain containing elevated concentrations of pesticides on the ground and discharges of runoff from distiller's grain constitutes "water pollution" and/or "land pollution," as defined in Neb. Rev. Stat. §§ 81-1502(19) & 81-1502(20).

ED_006145_00000172-00045

206. By storing tens of thousands of tons of distiller's grain containing elevated concentrations of pesticides onsite, AltEn caused pollution to the waters and/or lands of the state or caused the distiller's grain to be placed in locations where the pesticide-laden distiller's grain or its runoff was likely to cause pollution to the waters and/or lands of the state.

207. AltEn violated Neb. Rev. Stat. § 81-1506(1)(a) by storing distiller's grain containing elevated concentrations of pesticides in a manner that caused or was likely to cause pollution to waters and/or lands of the state from 2019 to present.

B. Lagoon Wastewater.

208. Based on lab results, the lagoon wastewater contains elevated concentrations of pesticides and is a "waste," as defined in Neb. Rev. Stat. § 81-1502(14), and a "pollutant," as defined in 119 Neb. Admin. Code § 1-087.

209. The Department told AltEn to "**Immediately**, cease land application of lagoon wastewater" in the September 13, 2019 NOV.

210. AltEn does not hold a permit authorizing it to discharge wastewater containing elevated concentrations of pesticides.

211. AltEn had received the September 13, 2019 NOV on September 19, 2019.

212. Although AltEn was prohibited from land applying the lagoon wastewater containing pesticides, the Department observed the lagoon levels were lower on September 11, 2020 than in November 2019.

213. An AltEn representative admitted to the Department, on September 11, 2020, that AltEn had been land applying lagoon wastewater in 2020 to lower the levels of the lagoon system.

ED_006145_00000172-00046

214. AltEn did not have approval to land apply the lagoon wastewater containing pesticides in 2020.

215. The lagoons are currently operating in the areas designed for freeboard, which presents danger to the structure and integrity of the lagoons and substantially increases the risk of an unpermitted and uncontrolled release of lagoon wastewater.

216. Upon information and belief, AltEn land applied lagoon wastewater containing elevated concentrations of pesticides at locations that are lands of the state or "waters of the state," as defined in Neb. Rev. Stat. § 81-1502(21).

217. AltEn's land application of lagoon wastewater containing elevated concentrations of pesticides to the lands and/or waters of the state constitutes "water pollution" and/or "land pollution," as defined in Neb. Rev. Stat. §§ 81-1502(19) & 81-1502(20).

218. By land applying the lagoon wastewater containing elevated concentrations of pesticides without Department approval, AltEn caused pollution to the waters and/or lands of the state or caused the pesticide-laden lagoon wastewater to be placed in locations where the lagoon wastewater was likely to cause pollution to the waters and/or lands of the state.

219. AltEn violated Neb. Rev. Stat. § 81-1506(1)(a) by land applying lagoon wastewater containing elevated concentrations of pesticides that caused or was likely to cause pollution to waters and/or lands of the state in 2020.

220. AltEn violated Neb. Rev. Stat. § 81-1506(1)(a) by:

a. Causing pollution by storing distiller's grain or storing distiller's grain in a location likely to cause pollution to land and/or waters of the state from 2019 to present; and

b. Causing pollution by land applying lagoon wastewater or land applying lagoon wastewater in a location likely to cause pollution of the land and/or waters of the state in 2020.

221. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), AltEn is subject to a civil penalty of not more than $10,000 per day for each of these violations.

222. Pursuant to Neb. Rev. Stat. § 81-1508, the foregoing cause of action presents an imminent and substantial endangerment to the health of humans or animals or to the environment and/or AltEn violated and/or threatens to violate NEPA. This Court should issue an injunction to:

a. Immediately restrain AltEn from storing distiller's grain in a manner that causes pollution of the land or waters of the state by requiring storm water controls to be implemented, order AltEn to dispose of the distiller's grain at a permitted solid waste management facility, and order such other actions as may be necessary; and

b. Immediately restrain AltEn from operating the lagoon system in such a manner that causes pollution of the land or waters of the state by prohibiting land application or other disposal of the lagoon wastewater until approval by the Department, order AltEn to construct secondary containment around the lagoon system, and order such other actions as may be necessary.

FOURTH CAUSE OF ACTION

DISCHARGE OF A POLLUTANT INTO WATERS OF THE STATE WITHOUT A PERMIT IN VIOLATION OF NEB. REV. STAT. § 81-1506(2)(a).

223. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1-172 as though fully set forth herein.

224. Under NEPA, it is "unlawful for any person to … [d]ischarge any pollutant into waters of the State without obtaining a permit as required by the [NPDES] created by the [CWA] … and by rules and regulations adopted and promulgated pursuant to section 81-1505[.]" Neb. Rev. Stat. § 81-1506(2)(a).

225. On June 21, 2017, the Department issued NPDES Permit NE0137634, which was modified on October 28, 2020.

ED_006145_00000172-00048

226. Based on lab results, the lagoon wastewater contains elevated concentrations of pesticides and is a "waste," as defined in Neb. Rev. Stat. § 81-1502(14).

227. The lagoon wastewater is a "pollutant," as defined in 119 Neb. Admin. Code § 1-087.

228. NPDES Permit NE0137634 does not authorize land application of the lagoon wastewater that contains pesticides. AltEn has no other permit authorizing discharges of wastewater into waters of the state.

229. The Department told AltEn to "**Immediately**, cease land application of lagoon wastewater" in the September 13, 2019 NOV.

230. AltEn had received the September 13, 2019 NOV on September 19, 2019.

231. Although AltEn was prohibited from land applying the lagoon wastewater containing pesticides, the Department observed the lagoon levels were lower on September 11, 2020 than in November 2019.

232. An AltEn representative admitted to the Department, on September 11, 2020, that AltEn had been land applying lagoon wastewater in 2020 to lower the levels of the lagoon system.

233. AltEn's land application of lagoon wastewater was a "discharge of a pollutant," as defined in 119 Neb. Admin. Code § 1-040, and from a "point source," as defined in 119 Neb. Admin. Code § 1-086.

234. AltEn's land application sites are located near or adjacent to "waters of the state," as defined in Neb. Rev. Stat. § 81-1502(21).

235. AltEn violated Neb. Rev. Stat. § 81-1506(2)(a) by discharging a pollutant into a water of the state by land applying lagoon wastewater containing pesticides into waters of the state without a permit.

236. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), AltEn is subject to a civil penalty of not more than $10,000 per day for this violation.

237. Pursuant to Neb. Rev. Stat. § 81-1508, the foregoing cause of action presents an imminent and substantial endangerment to the health of humans or animals or to the environment and/or AltEn violated and/or threatens to violate NEPA. This Court should issue an injunction immediately restraining AltEn from any action that would result in a discharge of lagoon wastewater into waters of the state by prohibiting land application or other disposal of the lagoon wastewater until approval by the Department, and order such other actions as may be necessary.

FIFTH CAUSE OF ACTION

FAILURE TO COMPLY WITH NPDES PERMIT NE0137634 IN VIOLATION OF NEB. REV. STAT. § 81-1508.02(1)(b).

238. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1-172 as though fully set forth herein.

239. Under NEPA, it is "unlawful for any person … [t]o violate … any permit or license condition or limitation … issued … pursuant to [NEPA] … or the rules or regulations adopted and promulgated pursuant to such acts." Neb. Rev. Stat. § 81-1508.02(1)(b).

A. Discharge of Pollutant Not Authorized by NPDES Permit NE0137634.

240. 119 Neb. Admin. Code § 14-003 provides: "The discharge of any pollutant not identified and authorized by the NPDES permit … shall constitute a violation of the terms and conditions of the permit."

241. On June 21, 2017, the Department issued NPDES Permit NE0137634, which was modified on October 28, 2020.

242. NPDES Permit NE0137634 authorized land application of the lagoon wastewater only under certain conditions. Part II.B required AltEn to prepare a BMP plan "for the application of treated effluent" that meets the requirements of the permit. Part II.B.3.a requires: "An assessment of wastewater characteristics to include a determination of the pollutant from the wastewater that requires the greatest land application area so that the wastewater can be applied at an agronomic rate." Part II.B.6 provides: "The BMP Plan shall provide a narrative explanation of the type of controls to be maintained by AltEn, LLC to prevent short-term and long-term surface and ground water contamination."

243. NPDES Permit NE0137634 does not authorize land application of the lagoon wastewater that contains pesticides, especially with the elevated concentrations of pesticides found in the lab results of the lagoon wastewater from April 2019 and November 2019.

244. The lagoon wastewater is a "pollutant," as defined in 119 Neb. Admin. Code § 1-087.

245. Although AltEn provided a BMP plan for application of its lagoon wastewater on May 9, 2019, the BMP did not address that the lagoon wastewater contained pesticides and did not include lab results showing samples were analyzed for pesticides.

246. In the September 13, 2019 NOV, the Department notified AltEn that the lagoon wastewater contained pesticides and the BMP plan submitted by AltEn did not address pesticides. AltEn was told to stop land applying lagoon wastewater immediately, and to "submit a BMP for land application of wastewater that includes sampling and analysis for Azoxystrobin, Clothianidin, Glyphosate, Thiabendazole, and Thiamethoxam" and "how the agronomic rate for

each of these compounds will be met to protect ground and surface water contamination" within 30 days. The Department notified AltEn that prior approval would be necessary before AltEn could land apply the lagoon wastewater.

247. Although AltEn was prohibited from land applying the lagoon wastewater containing pesticides, the Department observed the lagoon levels were lower on September 11, 2020 than in November 2019.

248. AltEn's land application of lagoon wastewater was a "discharge of a pollutant," as defined in 119 Neb. Admin. Code § 1-040, and from a "point source," as defined in 119 Neb. Admin. Code § 1-086.

249. Because AltEn had been land applying lagoon wastewater despite the prohibition contained in the September 13, 2019 NOV, the Department sent the October 2, 2020 LNC telling AltEn, again, to cease land application of the lagoon wastewater. The Department also had not received the BMP plan for land application of wastewater requested under the September 13, 2019 NOV and, again, asked AltEn to submit a BMP plan.

250. AltEn finally submitted a BMP plan for land application of the lagoon wastewater on October 16, 2020.

251. On December 24, 2020, the Department received additional information from AltEn that it had requested on October 27, 2020.

252. The Department did not approve AltEn's BMP plan for land application of wastewater.

253. Because NPDES Permit NE0137634 did not, and does not, authorize land application of lagoon wastewater containing pesticides and AltEn did not have an approved BMP

to land apply the lagoon wastewater, AltEn's land application of the lagoon wastewater was not authorized by NPDES Permit NE0137634.

254. AltEn violated the terms and conditions of NPDES Permit NE0137634 by land applying lagoon wastewater without authorization.

B. Failure to Meet Ground Water Monitoring Report Deadline.

255. NPDES Permit NE0137634, as modified in October 2020, required groundwater monitoring for pesticides to be conducted at AltEn on a quarterly basis. NPDES Permit NE0137634 requires AltEn to "follow the requirements of the [Revised] Ground Water Monitoring Plan received by the Department on March 5, 2020 and approved on April 2, 2020."

256. NPDES Permit NE0137634 required quarterly sampling to start in Fall 2020, which was October 1, 2020 to December 31, 2020.

257. The Revised Ground Water Monitoring Plan required AltEn to submit a report, which included field sampling data, lab results, well construction records, and a narrative of site activities from each sampling event to the Department for review within 45 days following the sampling event.

258. AltEn conducted its first quarterly sampling event under NPDES Permit NE0137634 on October 12, 2020. The lab results were sent to AltEn on January 4, 2021 and AltEn received the ground water monitoring report prepared by its consultant on January 4, 2021.

259. The Department did not receive the groundwater monitoring report until January 19, 2021, which was due on or about November 26, 2020, as required by the Revised Ground Water Monitoring Plan.

260. Although AltEn had the ground water monitoring report with the results on January 4, 2021, AltEn waited 15 days to submit the already late ground water monitoring report to the Department.

261. AltEn violated Neb. Rev. Stat. § 81-1508.02(1)(b) by violating the terms and conditions of NPDES Permit NE0137634 by:

a. Land applying lagoon wastewater without an approved BMP in 2020; and

b. Waiting 15 days to provide an already late ground water monitoring report.

262. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), AltEn is subject to a civil penalty of not more than $10,000 per day for each of these violations.

263. Pursuant to Neb. Rev. Stat. § 81-1508, the foregoing cause of action presents an imminent and substantial endangerment to the health of humans or animals or to the environment and/or AltEn violated and/or threatens to violate NEPA. This Court should issue an injunction immediately restraining AltEn from any action that would result in a discharge of lagoon wastewater into waters of the state or other disposal of the lagoon wastewater without authorization from the Department and order such other actions as may be necessary.

SIXTH CAUSE OF ACTION

FAILURE TO COMPLY WITH AN ORDER OF THE DIRECTOR IN VIOLATION OF NEB. REV. STAT. § 81-1508.02(1)(b).

264. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1-172 as though fully set forth herein.

265. Under NEPA, it is "unlawful for any person … [t]o violate … any order of the director." Neb. Rev. Stat. § 81-1508.02(1)(b).

ED_006145_00000172-00054

267. On April 24, 2019, AltEn entered into a Consent Order with the Department. This Consent Order is an order of the Director of the Department for purposes of NEPA.

268. The Consent Order required AltEn to:

a. Submit the land application site requirements and set-back information required by NPDES Permit NE0137634 within fifteen days of the signing of the Consent Order.

b. Submit an independent engineering evaluation for the repair of the northeast and southeast lagoon liners and the emergency lagoon liner that also includes an additional review by another independent engineering firm within 60 days of the signing of the Consent Order. Vegetation must be removed, animal burrows repairs, and lagoons must not be operating in the area designed for freeboard.

c. Enter into a binding contract to begin implementation of repair plan for the southeast lagoon and the emergency lagoon within 30 days of receiving approval of the repair plan.

d. Determine whether to repair the northeast lagoon and/or whether to use another method of water treatment or storage within 30 days after receiving approval of the repair plan for the northeast lagoon.

e. Submit a ground water monitoring plan of the facility including the lagoons to the Department for review and approval within 60 days of the consent order. The ground water monitoring plan must include, at a minimum, the identification and installation of four monitoring wells, identification of all constituents to be monitored, and quarterly monitoring.

f. Fully implement the repairs to the southeast lagoon and the emergency lagoon and the ground water monitoring plan by October 1, 2019.

g. Determine the completion date for the repairs of the northeast lagoon or the use of water treatment or storage at the time a final decision and plan is accepted by the Department.

269. AltEn voluntarily agreed to the timelines and requirements of the Consent Order.

270. AltEn completed items (A) and (C) of the Consent Order within the required timeframes, but not (B), (D), (E), (F) or (G).

A. Consent Order Item (B).

271. Item (B) required AltEn to submit an independent engineering evaluation for the repair of the northeast and southeast lagoons and the emergency lagoon, which included an additional review by another independent engineering firm within 60 days of the signing of the Consent Order.

272. AltEn submitted a bid proposal for the repairs of the northeast and southeast lagoons from an engineering firm on June 21, 2019.

273. The bid proposal for the repairs of the northeast and southeast lagoons did not comply with item (B) of the Consent Order because it was not a professional engineering evaluation and did not contain an additional review by another professional engineering firm.

274. Through the date of the filing of this Complaint, AltEn has not submitted a professional engineering evaluation with an additional review by another professional engineering firm for the northeast lagoon, as required by item (B) of the Consent Order.

B. Consent Order Item (D).

275. Item (D) required AltEn to determine whether to repair the northeast lagoon and/or whether to use another method of water treatment or storage within 30 days after receiving approval of the repair plan for the northeast lagoon.

276. As of the date of the filing of this Complaint, AltEn has not completed item (D) of the Consent Order.

C. Consent Order Items (E) & (F).

277. Item (E) required AltEn to submit a ground water monitoring plan that included four monitoring wells to the Department for review and approval within 60 days of the signing of

ED_006145_00000172-00056

the Consent Order. Item (F) required AltEn to have an approved ground water monitoring plan implemented by October 1, 2019.

278. AltEn did not submit a revised ground water monitoring plan that called for installation of the required four monitoring wells until March 2, 2020. The Department approved the revised ground water monitoring plan on April 2, 2020.

279. The four ground water monitoring wells were not completed until September 25, 2020 and sampling did not occur until October 12, 2020.

280. AltEn did not complete item (E) until March 2, 2020, despite the June 23, 2019 deadline in the Consent Order.

281. AltEn did not complete item (F)—implementation of the ground water monitoring plan—until October 12, 2020, despite the October 1, 2019 deadline in the Consent Order.

D. Consent Order Item (G).

282. Item (G) required AltEn to determine the completion date for the repairs of the northeast lagoon or the use of water treatment or storage at the time a final decision and plan is accepted by the Department.

283. AltEn still has not completed items (D) and (G) of the Consent Order and has not fully completed item (B) of the Consent Order because the northeast lagoon has not been repaired.

284. AltEn's failure to repair the damaged liner of the northeast lagoon compromises the integrity of the structure and the seepage rate may no longer be controlled.

285. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), AltEn is subject to a civil penalty of not more than $10,000 per day for each violation of the Consent Order.

ED_006145_00000172-00057

286. AltEn continues to violate Neb. Rev. Stat. § 81-1508.02(1)(b) because the following items of the Consent Order are still not completed:

a. AltEn has not submitted an engineering evaluation with an additional review for the northeast lagoon as required by item (B) from June 23, 2019 to present;

b. AltEn has failed to complete item (D) from June 23, 2019 to present; and

c. AltEn has failed to complete item (G) from June 23, 2019 to present.

287. Pursuant to Neb. Rev. Stat. § 81-1508, the foregoing cause of action presents an imminent and substantial endangerment to the health of humans or animals or to the environment and/or AltEn violated and/or threatens to violate NEPA. This Court should issue an injunction immediately ordering AltEn to complete items (B), (D), and (G) of the Consent Order and such other actions as may be necessary.

SEVENTH CAUSE OF ACTION

FAILURE TO COMPLY WITH TITLE 119 AND TITLE 123 REGULATORY REQUIREMENTS IN VIOLATION OF NEB. REV. STAT. § 81-1508.02(1)(e).

288. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1-172 as though fully set forth herein.

289. Under NEPA, it is "unlawful for any person … [t]o violate any other provision of or fail to perform any other duty imposed by such acts, rules, or regulations." Neb. Rev. Stat. § 81-1508.02(1)(e).

A. Requirement to Fix Animal and Vegetation Damage.

290. 123 Neb. Admin. Code § 11-008.05 provides: "Damage to lagoon dikes and liners caused by muskrats or other rodents, erosion, tree roots, animal hooves, or any other source will be promptly repaired."

ED_006145_00000172-00058

291. On April 8, 2019, Department inspectors observed the existence of animal burrows on the west dike of the west lagoon.

292. The April 24, 2019 NOV required AltEn to repair the damage to the west lagoon.

293. AltEn repaired the damage to the west lagoon caused by animals on April 30, 2019.

294. AltEn violated 123 Neb. Admin. Code § 11-008.05 by failing to promptly repair the damage to the west lagoon caused by animals on or before April 8, 2019 until April 30, 2019.

295. On September 11, 2020, the Department inspectors observed damage to the liner of the northeast lagoon caused by vegetation.

296. The October 2, 2020 LNC required AltEn to repair the badly damaged liner for the northeast lagoon.

297. The Department observed the liner for the northeast lagoon was still badly damaged on February 1, 2021.

298. AltEn has not promptly repaired the badly damaged liner for the northeast lagoon.

299. AltEn's failure to repair the northeast lagoon's badly damaged liner impacts the integrity of the lagoon containing wastewater contaminated with pesticides.

300. AltEn violated 123 Neb. Admin. Code § 11-008.05 by failing to promptly repair the damage to the northeast lagoon caused by vegetation from on or before September 11, 2020 to present.

B. Requirement to Properly Operate and Maintain Lagoon Liners.

301. 123 Neb. Admin. Code § 11-008.06 provides: "The liners of wastewater lagoons will be maintained so that wastewater seepage does not exceed the rate approved by the Department in the construction plans and specifications." 119 Neb. Admin. Code § 14-001.05

ED_006145_00000172-00059

provides: "The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit."

302. On April 8, 2019, Department inspectors observed the liner of the west lagoon was torn and damaged.

303. The April 24, 2019 NOV required AltEn to repair the west lagoon's damaged liner.

304. Although AltEn repaired the damaged liner on May 15, 2019, AltEn failed to properly operate and maintain the west lagoon on or before April 8, 2019 until May 15, 2019.

305. AltEn violated 123 Neb. Admin. Code § 11-008.06 and 119 Neb. Admin. Code § 14-001.05 by failing to maintain the west lagoon by not repairing tears to the liner on or before April 8, 2019 until May 15, 2019.

306. On April 8, 2019, Department inspectors observed one "whale" in the liner of the west lagoon.

307. On July 31, 2019, Department inspectors observed "whales" in the liner of the northeast lagoon.

308. On September 30, 2019, Department inspectors observed additional "whales" in the liner of the west lagoon.

309. On September 11, 2020, Department inspectors observed both the west and northeast lagoons still had "whales" in the liners and both lagoons also had tears in the liners.

310. The October 2, 2020 LNC required AltEn to submit an independent professional engineering evaluation with an additional review done by another firm to repair the northeast and

ED_006145_00000172-00060

west lagoons. The April 24, 2019 Consent Order already required AltEn to repair the northeast lagoon.

311. AltEn repaired the tears to the liner of the west lagoon discovered in 2019, but has not repaired the tears to liners of the west and northeast lagoons discovered in 2020.

312. Despite AltEn's regulatory obligation to properly operate and maintain its lagoon system, AltEn has not repaired the "whales" in the liners of the northeast and west lagoons and the "whales" continue to worsen in both lagoons.

313. AltEn's failure to repair the "whales" and tears in the liners of the northeast and west lagoons compromises the integrity of the structure and the seepage rate may no longer be controlled.

314. AltEn violated 123 Neb. Admin. Code § 11-008.06 and 119 Neb. Admin. Code § 14-001.05 by failing to maintain the northeast and west lagoons by not repairing liner damage caused by "whales" and tears from at least April 8, 2019 to present.

C. Construction Permit Requirement.

315. 123 Neb. Admin. Code § 3-001 provides: "No person shall construct, install, modify, or make additions to a wastewater works until a construction permit is issued authorizing the project."

316. On July 31, 2019, the Department inspectors observed a rotary drum separator was jetting wastewater into the air in the northeast lagoon.

317. No plans and specifications for installation of the rotary drum separator had been submitted to the Department.

318. No wastewater construction permit was issued authorizing the project.

319. The September 13, 2019 NOV required AltEn to immediately cease use.

ED_006145_00000172-00061

320. AltEn ceased use of the rotary drum separator by September 30, 2019 and has not applied for a permit.

321. AltEn violated 123 Neb. Admin. Code § 3-001 by using the rotary drum separator without authorization on or before July 31, 2019 until September 30, 2019.

D. Operation of Wastewater Treatment Facilities.

322. 123 Neb. Admin. Code § 11-001 provides: "Wastewater treatment facilities will be maintained in proper operating condition in accordance with this chapter and operated in a manner to meet all NPDES permit requirements and not result in a prohibited bypass or an unauthorized discharge."

323. On July 31, 2019, Department inspectors observed an air relief vent was damaged and leaking wastewater to the ground next to the vent. The leaking wastewater from the air relief vent was an unauthorized discharge.

324. The September 13, 2019 NOV required AltEn to repair the air relief vent.

325. On September 30, 2019, Department inspectors observed the air relief vent had been repaired.

326. AltEn violated 123 Neb. Admin. Code § 11-001 by failing to maintain the air relief vent in proper operating condition to prevent it from causing an unauthorized discharge from July 31, 2019 until on or before September 30, 2019.

327. AltEn violated Neb. Rev. Stat. § 81-1508.02(1)(e) by failing to comply with the rules and regulations of the Department regarding operation and maintenance of the lagoon system:

a. Not promptly repairing the damage to the liner of the west lagoon caused by animals on or before April 8, 2019 until April 30, 2019;

b. Not promptly repairing the damage to the liner of the northeast lagoon caused by vegetation on or before September 11, 2020 to present;

c. Failing to maintain the northeast lagoon by repairing liner tears on or before April 8, 2019 until May 15, 2019;

d. Failing to maintain the northeast and west lagoons by repairing liner tears on or before September 11, 2020 to present;

e. Failing to maintain the northeast and west lagoons, which both have "whales" in the liners, from at least April 8, 2019 to present;

f. Using the rotary drum separator without a permit on or before July 31, 2019 and until September 30, 2019;

g. Failing to properly maintain the air relief vent on or before July 31, 2019 until September 30, 2019.

328. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), AltEn is subject to a civil penalty of not more than $10,000 per day for each of these violations.

329. Pursuant to Neb. Rev. Stat. § 81-1508, the foregoing cause of action presents an imminent and substantial endangerment to the health of humans or animals or to the environment and/or AltEn violated and/or threatens to violate NEPA. This Court should issue an injunction immediately ordering AltEn to repair the "whales" and any other liner damage to the northeast and west lagoons upon approval by the Department and order such other actions as may be necessary.

EIGHTH CAUSE OF ACTION

FAILURE TO COMPLY WITH INDUSTRIAL STORM WATER PERMIT CONDITIONS IN VIOLATION OF NEB. REV. STAT. § 81-1508.02(1)(b).

330. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1-172 as though fully set forth herein.

ED_006145_00000172-00063

331. Under NEPA, it is "unlawful for any person … [t]o violate … any permit or license condition or limitation." Neb. Rev. Stat. § 81-1508.02(1)(b); *see also* 119 Neb. Admin. Code § 14-001.01 ("The permittee must comply with all conditions of the permit.")

332. AltEn was issued ISW Permit NER910000 on April 20, 2017 regarding industrial activities at the Facility.

A. Requirement to Minimize Exposure.

333. ISW Permit NER910000(2.1.2.1) provides: "You must minimize the exposure of manufacturing, processing, and material storage areas (including loading and unloading, storage, disposal, cleaning, maintenance, and fueling operations) to rain, snow, snowmelt, and runoff by either locating these industrial materials and activities inside or protecting them with storm resistant coverings." Ways to minimize exposure include "grading, berming, or curbing to prevent runoff of contaminated flows and divert run-on away from these areas" and "clean up spills and leaks promptly using dry methods (e.g., absorbents) to prevent the discharge of pollutants."

334. On July 31, 2019, Department inspectors observed there was pooling of water that was not being contained in the south distiller's grain storage area. The Department inspectors also observed there were torn and leaking starch bags exposed to the elements.

335. AltEn removed the torn and leaking starch bags and installed a silt fence to contain runoff from the south distiller's grain storage area on August 23, 2019.

336. Although torn and leaking storage bags were cleaned up, the Department observed the starch bags were still exposed to the elements on September 6, 2019.

337. AltEn violated ISW Permit NER910000 by failing to minimize the exposure of the torn and leaking starch bags to rain and runoff and by failing to contain runoff from the south distiller's grain storage area on or before July 31, 2019 and until August 23, 2019.

338. On September 11, 2020, Department inspectors observed runoff from distiller's grain being stored by the biochar unit was discharging into a storm water conveyance west of the biochar unit. The SWPPP provided a silt fence was installed, but Department inspectors observed it had not been installed.

339. AltEn installed a silt fence around the biochar unit on September 16, 2020.

340. AltEn violated ISW Permit NER910000 by failing to minimize the exposure of the distiller's grain piles to runoff on or before September 11, 2020 and until September 16, 2020.

B. Requirement to Keep Exposed Areas Clean and Materials Orderly and Labeled.

341. ISW Permit NER910000(2.1.2.2) provides: "You must keep clean all exposed areas that are potential sources of pollutants, using such measures as sweeping at regular intervals, keeping materials orderly and labeled, and storing materials in appropriate containers."

342. On July 31, 2019, Department inspectors observed treated seed corn was covering the ground east of the grain receiving/unloading area and was making contact with condensate discharging from the top of the building. Department inspectors observed track out of distiller's grain on the haul road to a distiller's grain storage area. Department inspectors also observed torn and leaking bags of industrial starch and a leaking hypochlorite tote.

343. Spills of treated seed corn, torn and leaking bags of starch, track out, and a leaking hypochlorite tote were potential sources of pollutants.

344. AltEn cleaned up the spilled seed corn and track out on July 31, 2019.

345. AltEn also moved the hypochlorite tote and put it into containment on July 31, 2019.

346. AltEn removed the torn and leaking bags of industrial starch on August 23, 2019.

347. AltEn violated ISW Permit NER910000 by failing to keep clean all exposed areas that are potential sources of pollutants by not sweeping or cleaning up the spilled treated seed corn, the torn and leaking starch bags, the leaking tote, and track out of distiller's grain on or before July 31, 2019.

348. On September 11, 2020, Department inspectors observed unlabeled totes, fuel tanks, and multiple, unsecured hoses throughout the Facility.

349. On February 1, 2021, Department inspectors observed there were still unlabeled totes and multiple, unsecured hoses throughout the Facility.

350. Unsecured hoses and unlabeled totes are potential sources of pollutants.

351. Upon information and belief, AltEn has still not labeled the totes or secured the multiple hoses.

352. AltEn violated ISW Permit NER910000 by failing to keep materials orderly and labeled from September 11, 2020 to present.

C. Requirement to Avoid Releases of Pollutants.

353. ISW Permit NER910000(2.1.2.3) provides: "You must regularly inspect, test, maintain, and repair all industrial equipment and systems to avoid situations that may result in leaks, spills, and other releases of pollutants into storm water discharged to receiving waters."

354. On July 31, 2019, Department inspectors observed condensate was discharging from the top of the building and encountering treated seed corn before discharging to a drainage area. There was also a discharge from the cooling tower's main piping system, which flowed

until joining other discharges to the south of the Facility. These discharges appeared to have been ongoing.

355. The top of the building and the cooling tower are industrial equipment and systems under ISW Permit NER910000.

356. The condensate discharging over treated seed corn and discharges from the cooling tower are pollutants that mixed with storm water runoff.

357. AltEn did not complete repairs to the cooling tower until August 23, 2019.

358. AltEn violated ISW Permit NER910000 by failing to regularly inspect, maintain, or repair the discharges from the top of the building and the cooling tower that resulted in releases of pollutants into storm water discharges on or before July 31, 2019 and until August 23, 2019.

D. Requirement to Minimize Pollutants in Discharges.

359. ISW Permit NER910000(2.1.2.6) provides: "You must divert, contain, or otherwise reduce storm water runoff, to minimize pollutants in your discharges."

360. On July 31, 2019, Department inspectors observed controls were not implemented in the areas where distiller's grain was piled north of the hoop buildings. There was no berm constructed along the haul road by the west lagoon where distiller's grain is stored north and east of the hoop buildings and there was no visibly constructed berm to prevent runoff from flowing to the southeast.

361. Distiller's grain contaminated with pesticides is a pollutant.

362. AltEn stated berms were repaired or put into place on July 31, 2019.

363. On February 1, 2021, Department inspectors observed controls were not implemented in the area where distiller's grain was piled on the east edge of the Facility. There

were no berms or other controls to contain runoff from the distiller's grain, which is near a waterway that drains AltEn's property.

364. Installing berms in these areas would contain or reduce storm water runoff and reduce runoff from the distiller's grain contaminated with pesticides.

365. AltEn failed to divert, contain, or reduce storm water runoff from the areas where distiller's grain contaminated with pesticides was piled.

366. AltEn violated ISW Permit NER910000 by failing to minimize pollutants into its discharges by implementing controls where distiller's grain is piled from on or before July 31, 2019 to present.

367. On September 11, 2020, Department inspectors observed two liquid spills in areas that could discharge through a storm water conveyance. One spill was teal-colored and the other spill was of wastewater. These spills were not being contained or being cleaned up.

368. These two liquid spills were pollutants.

369. AltEn cleaned up these spills by September 12, 2020.

370. AltEn violated ISW Permit NER910000 by failing to minimize pollutants into its discharges because it did not contain or immediately clean up the spills right as required by ISW Permit NER910000.

371. On September 11, 2020, Department inspectors observed no BMPs were installed to control distiller's grain runoff in the staging area and no silt fence was installed around the biochar unit although the SWPPP represented that one had been installed.

372. Distiller's grain contaminated with pesticides is a pollutant.

373. AltEn finally installed as silt fence on September 16, 2020.

374. Upon information and belief, AltEn has not installed any BMPs to control distiller's grain runoff in the staging area.

375. AltEn violated ISW Permit NER910000 by failing to minimize pollutants into its discharges because it has not implemented any BMPs to control distiller's grain runoff from on or before September 11, 2020 to present and failed to install silt fence required by its SWPPP on or before September 11, 2020 and until September 16, 2020.

E. Unauthorized Non-Storm Water Discharges.

376. ISW Permit NER910000 (1.1.4.1) provides: "Stormwater discharges that are mixed with non-stormwater, other than those non-stormwater discharges listed in Part 1.1.3, are not eligible for coverage under this permit." ISW Permit NER910000(2.1.2.6) provides: "You must eliminate non-stormwater discharges not authorized by an NPDES permit."

377. On July 31, 2019, Department inspectors observed spilled industrial starch was mixing with storm water and being discharged to a drainage area.

378. ISW Permit NER910000 prohibits storm water discharges mixed with industrial starch residue.

379. AltEn removed the torn and leaking bags and installed a silt fence to contain runoff on August 23, 2019.

380. AltEn violated ISW Permit NER910000 by failing to eliminate this non-storm water discharge on or before July 31, 2019 and until August 23, 2019.

381. On February 18, 2020, Department inspectors observed runoff was discharging from where distiller's grain was stored and there was evidence that a berm had been overtopped by a discharge.

382. ISW Permit NER910000 prohibits storm water discharges mixed with distiller's grain residue, which contains pesticides.

383. AltEn repaired and constructed a berm on February 20, 2020 to address the discharges.

384. AltEn violated ISW Permit NER910000 by failing to eliminate this non-storm water discharge on or before February 18, 2020 and until February 20, 2020.

385. On September 11, 2020, Department inspectors observed distiller's grain residue was mixing with storm water and discharging into storm water conveyances in separate areas.

386. On February 1, 2021, Department inspectors observed controls were not implemented in the areas where distiller's gran was piled on the east edge of the Facility. There were no berms or other controls to contain runoff from the distiller's grain, which is near a waterway that drains AltEn's property.

387. ISW Permit NER910000 prohibits storm water discharges mixed with distiller's grain residue, which contains pesticides.

388. Upon information and belief, AltEn has not implemented BMPs or installed controls to prevent distiller's grain runoff from mixing with storm water and discharging into a storm water conveyance since February 2020.

389. AltEn violated ISW Permit NER910000 by failing to eliminate these non-storm water discharges from on or before September 11, 2020 to present.

F. Maintenance and Repair of Control Measures.

390. ISW Permit NER910000(2.1.2.3) provides:

> You must regularly inspect, test, maintain, and repair all industrial equipment and systems to avoid situations that may result in leaks, spills, and other releases of pollutants in stormwater discharged to receiving waters. You must maintain all control measures that are used to achieve

> the effluent limits required by this permit in effective operating condition. Nonstructural control measures must also be diligently maintained (e.g., spill response supplies available, personnel appropriately trained). If you find that your control measures need to be replaced or repaired, you must make the necessary repairs or modifications as expeditiously as practicable.

391. On July 3, 2018, Department inspectors observed the berm installed to control runoff from the distiller's grain piles by the biochar area had breached and runoff was discharging onto a neighboring property. AltEn had no BMPs or secondary controls in place to stop or prevent runoff or discharges caused by a breach of the berm.

392. The berm installed by the biochar area was a control measure.

393. AltEn reestablished the berm on July 3, 2018.

394. AltEn violated ISW Permit NER910000 by failing to maintain the breached berm and failed to make the repairs as expeditiously as practicable on or before July 3, 2018.

G. Sampling of Authorized Discharges.

395. ISW Permit NER910000(6.1.2) provides: "If discharges authorized by this permit commingle with discharges not authorized under this permit, any required sampling of the authorized discharges must be performed at a point before they mix with other waste streams, to the extent practicable."

396. On July 31, 2019, Department inspectors discovered AltEn was sampling from a location over a mile away rather than a point that would capture a representative sample of authorized discharges prior to commingling with unauthorized discharges.

397. AltEn's SWPPP still has not been updated to correct the sampling location so that representative samples are captured.

398. AltEn violated ISW Permit NER910000 by failing to sample from a point before authorized discharges mix with other waste streams from July 31, 2019 to present.

ED_006145_00000172-00071

H. Benchmark Monitoring.

399. ISW Permit NER910000(8.C.3) provides the benchmark monitoring concentration for COD is 120 mg/L for quarterly benchmark monitoring.

400. On July 31, 2019, Department inspectors collected a sample of a brown greenish liquid next to the cooling tower, as well as a sample of water from the current outfall 001 for benchmark monitoring to determine concentrations of COD.

401. The benchmark monitoring results for the brown greenish liquid showed a COD of 468 mg/L, which far exceeds the quarterly benchmark value of 120 mg/L.

402. AltEn violated ISW Permit NER910000 by exceeding the benchmark monitoring value for quarterly benchmark monitoring for COD.

I. Requirement to Document Areas and Describe Pollutants.

403. ISW Permit NER910000(5.1.3) requires AltEn to:

> [D]ocument areas at [its] facility where industrial materials or activities are exposed to stormwater and from which allowable non-stormwater discharges are released.... For each area identified, the description must include ... [a] list of the pollutant(s) or pollutant constituents ... associated with each identified activity. The pollutant list must include all significant materials that have been handled, treated, stored, or disposed, and that have been exposed to stormwater in the 3 years prior to the date you prepare or amend your SWPPP.

404. On July 31, 2019, Department inspectors observed track out of distiller's grain and pooling of water where the distiller's grain was piled with no containment.

405. Distiller's grain is an industrial material and a pollutant because it contains pesticides. Distiller's grain is exposed to storm water because it is stored in piles without adequate containment and is tracked out to other areas.

406. AltEn's SWPPP did not address pesticides from the use of treated seed corn present in the distiller's grain as a pollutant.

ED_006145_00000172-00072

407. The September 13, 2019 NOV required AltEn to address pesticides in the distiller's grain as pollutants in the SWPPP.

408. The May 1, 2020 NOV again required AltEn to update its SWPPP to address pesticides in the distiller's grain as pollutant.

409. AltEn did not update its SWPPP to account for pesticides in the distiller's grain until August 31, 2020.

410. AltEn violated ISW Permit NER910000 by failing to update its SWPPP from at least July 31, 2019 and until August 31, 2020.

J. SWPPP Availability Requirement.

411. ISW Permit NER910000(5) required AltEn to prepare a SWPPP.

412. ISW Permit NER910000(5.3) provides: "You must retain a copy of the current SWPPP required by this permit at the facility, and it must be immediately available to EPA; [the Department]; and the operator of an MS4 receiving discharges from the site."

413. On July 3, 2018, Department inspectors requested the SWPPP while conducting an investigation. AltEn did not make the SWPPP immediately available when requested by the Department.

414. AltEn violated ISW Permit NER910000 by failing to make its SWPPP immediately available on July 3, 2018.

415. AltEn violated Neb. Rev. Stat. § 81-1508.02(1)(b) by failing to comply with the following terms and conditions of ISW Permit NER910000:

a. Failing to regularly inspect, maintain, or repair or, alternatively, expeditiously repair the breached berm that allowed distiller's grain runoff to discharge onto neighboring property on or before July 3, 2018;

b. Failing to minimize exposure of industrial starch to runoff on or before July 31, 2019 until August 23, 2018;

c. Failing to minimize exposure of distiller's grain to runoff on or before September 11, 2020 until September 16, 2020;

d. Failing to keep clean exposed areas with spilled treated seed corn, track out, and leaking tots, which are a potential sources of pollutants on or before July 31, 2019;

e. Failing to label totes and fuel tanks and secure hoses from September 11, 2020 to present;

f. Failing to regularly inspect, maintain, or repair the cooling tower to avoid releases of pollutants into storm water conveyances on or before July 31, 2019 until August 23, 2019;

g. Failing to minimize pollutants into discharges from the distiller's grain piles from on or before July 31, 2019 to present;

h. Failing to minimize pollutants into discharges from two liquid spills on September 11, 2020;

i. Failing to minimize pollutants due to the lack of BMPs in the distiller's grain storage area and no silt fence from on or before September 11, 2020 to present;

j. Failing to eliminate non-storm water discharges of industrial starch on or before July 31, 2019 until August 23, 2019;

k. Failing to eliminate non-storm water discharges of distiller's grain runoff on or before February 18, 2020 until February 20, 2020;

l. Failing to eliminate non-storm water discharges of distiller's grain runoff from on or before September 11, 2020 to present;

m. Failing to sample a point before authorized discharges mix with other waste streams on or before July 31, 2019;

n. Exceeding the benchmark monitoring for COD on July 31, 2019; and

o. Failing to update the SWPPP to address pesticides in the distiller's grain as a pollutant on or before July 31, 2020 until August 31, 2020; and

p. Failing to provide the SWPPP when requested by the Department on July 3, 2018;

416. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), AltEn is subject to a civil penalty of not more than $10,000 per day for each of these violations.

417. Pursuant to Neb. Rev. Stat. § 81-1508, the foregoing cause of action presents an imminent and substantial endangerment to the health of humans or animals or to the environment and/or AltEn violated and/or threatens to violate NEPA. This Court should issue an injunction immediately restraining AltEn from allowing runoff from distiller's grain contaminated with pesticides from mixing with storm water discharges by ordering AltEn to install, maintain, and repair storm water control measures onsite, as well as secondary containment and order such other actions as may be necessary.

NINTH CAUSE OF ACTION

FAILURE TO COMPLY WITH CONSTRUCTION STORM WATER PERMIT CONDITIONS IN VIOLATION OF NEB. REV. STAT. § 81-1508.02(1)(b).

418. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1-172 as though fully set forth herein.

419. Under NEPA, it is "unlawful for any person … [t]o violate … any permit or license condition or limitation." Neb. Rev. Stat. § 81-1508.02(1)(b); *see also* 119 Neb. Admin. Code § 14-001.01 ("The permittee must comply with all conditions of the permit.").

420. AltEn was issued CSW Permit NER160000 on May 30, 2018 for construction of the west lagoon.

421. AltEn notified the Department of termination of its authorization under CSW Permit NER160000 on October 5, 2018. Construction of the west lagoon was completed.

A. SWPPP Availability and Posting Requirements.

422. CSW Permit NER160000(III)(A) required AltEn to prepare a SWPPP.

423. CSW Permit NER160000(III)(L) provided: "The SWPPP must be made available upon request to federal, state, and local agencies, from the date of commencement of construction activities to the date of final stabilization." In addition, "[a] sign or other notice must be posted conspicuously near the entrance of the construction site" that includes a copy of the Notice of Intent submitted to the Department and a copy of the SWPPP or information detailing how to obtain access to the SWPPP.

424. On July 3, 2018, Department inspectors observed there was no posting of the Notice of Intent or SWPPP at AltEn. AltEn also could not provide the SWPPP when requested by Department inspectors.

425. AltEn did not provide the SWPPP to the Department until July 24, 2018.

426. AltEn failed to post any sign or notice of the Notice of Intent or SWPPP as required by CSW Permit NER160000.

427. AltEn violated CSW Permit NER160000 by failing to make its SWPPP available from July 3, 2018 to July 24, 2018 and not having the Notice of Intent or SWPPP posted at the site before July 3, 2018 until October 5, 2018 when the permit was terminated.

B. Failure to Comply with Storm Water Effluent Limitation Guidelines.

428. CSW Permit NER160000(III)(E) requires AltEn to comply with construction storm water effluent limitation guidelines, which require all construction point sources to achieve erosion and sediment controls, including:

a. Minimize the disturbance of steep slopes; and

b. Minimize sediment discharges from the site.

429. On July 3, 2018, Department inspectors observed AltEn was not minimizing sediment discharges from track out or the lagoon construction site or minimizing the disturbance of steep slopes at the construction site.

430. AltEn failed to comply with the effluent limitation guidelines to minimize sediment discharges and disturbance of steep slopes as required by CSW Permit NER160000.

431. AltEn violated CSW Permit NER160000 by failing to minimize sediment discharges from the site or disturbance of steep slopes before July 3, 2018 and until October 5, 2018 when the permit was terminated.

C. Failure to Maintain control BMPs.

432. CSW Permit NER160000(III)(F) requires AltEn to maintain control BMPs. Control BMPs include: "[m]inimize the disturbance of steep slopes to prevent erosion and implement controls as needed for disturbed slopes" and temporary construction control BMPs, which "must be properly selected, installed, and maintained in accordance with relevant manufacturer specifications, good engineering practices, and applicable federal, state, and local requirements."

433. On July 3, 2018, Department inspectors observed AltEn had not implemented any control BMPs for disturbed slopes and had not installed any temporary control measures for the construction site.

434. AltEn failed to maintain control BMPs as required by CSW Permit NER160000.

435. AltEn violated CSW Permit NER160000 by failing to implement control BMPs for disturbed slopes and by failing to install temporary control measures before and after July 3, 2018.

436. The July 23, 2018 NOV required AltEn to correct these violations.

437. AltEn violated Neb. Rev. Stat. § 81-1508.02(1)(b) by failing to comply with the following terms and conditions of CSW Permit NER160000:

a. Provide the SWPPP when requested by the Department from July 3, 2018 to July 24, 2018;

b. Post a sign or notice of the Notice of Intent and SWPPP (or access to the SWPPP) on or before July 3, 2018 and until October 5, 2018;

c. Minimize sediment discharges from the construction site on or before July 3, 2018 and until October 5, 2018;

d. Implement controls for disturbed slopes on or before July 3, 2018 and until October 5, 2018; and

e. Install temporary construction controls for the construction site on or before July 3, 2018 and until October 5, 2018.

438. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), AltEn is subject to a civil penalty of not more than $10,000 per day for each of these violations.

TENTH CAUSE OF ACTION

FAILURE TO CONDUCT A PERFORMANCE TEST FOR THE DIGESTER FLARE IN VIOLATION OF NEB. REV. STAT. § 81-1506(4)(b) AND AIR PERMITS

439. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1-172 as though fully set forth herein.

440. Under NEPA, it is "unlawful to … [v]iolate any term or condition of an air pollution permit or any emission limit set in the permit." Neb. Rev. Stat. § 81-1506(4)(b).

441. AltEn's air permit CP13-010(II)(D) required it to conduct performance tests "within sixty (60) days after first reaching the maximum capacity, but not more than 180 days after the start-up of operations of each unit, unless otherwise specified by the [Department]."

442. AltEn started up operations on or before January 9, 2015.

ED_006145_00000172-00078

443. AltEn's air permit CP14-066 (III)(E) required performance testing of the digester flare by July 8, 2015.

444. AltEn failed to complete a performance test of the digester flare by July 8, 2015, which is 180 days after Facility start up.

445. AltEn violated Neb. Rev. Stat. § 81-1506(4)(b) by failing to conduct a performance test of the digester flare by July 8, 2015 and still has not conducted a performance test.

446. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), AltEn is subject to a civil penalty of not more than $10,000 per day for this violation.

447. Pursuant to Neb. Rev. Stat. § 81-1508, the foregoing cause of action presents an imminent and substantial endangerment to the health of humans or animals or to the environment and/or AltEn violated and/or threatens to violate NEPA. This Court should issue an injunction ordering AltEn to comply with its air permits.

ELEVENTH CAUSE OF ACTION

FAILURE TO INSTALL AND OPERATE CEMS UNITS FOR THE ANAEROBIC DIGESTION SYSTEM IN VIOLATION OF NEB. REV. STAT. § 81-1506(4)(b) AND AIR PERMIT

448. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1-172 as though fully set forth herein.

449. Under NEPA, it is "unlawful to … [v]iolate any term or condition of an air pollution permit or any emission limit set in the permit." Neb. Rev. Stat. § 81-1506(4)(b).

A. Failure to Install TRS CEMS Unit.

450. AltEn's air permit CP14-066(III)(E)(3)(f) was issued October 9, 2015 and required AltEn to install and operate a TRS CEMS for its anaerobic digestion and steam

generation system that complies with certain requirements unless written approval is obtained from the Department.

451. To date, AltEn has failed to install and operate a TRS CEMS, as required by CP14-066.

452. AltEn violated Neb. Rev. Stat. § 81-1506(4)(b) by failing to monitor and operate a TRS CEMS from October 9, 2015 to present.

B. Failure to Install a Methane CEMS Unit.

453. AltEn's air permit CP14-066(III)(E)(3)(j) was issued October 9, 2015 and required AltEn to install and operate a continuous methane monitor (methane CEMS) for its anaerobic digestion and steam generation that complies with certain requirements unless written approval is obtained from the Department.

454. To date, AltEn has failed to install and operate a methane CEMS, as required by CP14-066.

455. AltEn violated Neb. Rev. Stat. § 81-1506(4)(b) by failing to monitor and operate a methane CEMS from October 9, 2015 to present.

456. AltEn violated Neb. Rev. Stat. § 81-1506(4)(b) by failing to install the TRS CEMS and the methane CEMS required by its air permit:

a. Failing to install the TRS CEMS from October 9, 2015 to present; and

b. Failing to install the methane CEMS from October 9, 2015 to present.

457. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), AltEn is subject to a civil penalty of not more than $10,000 per day for each of these violations.

458. Pursuant to Neb. Rev. Stat. § 81-1508, the foregoing cause of action presents an imminent and substantial endangerment to the health of humans or animals or to the environment

ED_006145_00000172-00080

and/or AltEn violated and/or threatens to violate NEPA. This Court should issue an injunction order AltEn to comply with CP14-066.

TWELFTH CAUSE OF ACTION

FAILURE TO PAVE ALL PRODUCTION-RELATED TRUCK TRAFFIC AREAS AND RECORD BMPS USED ONSITE IN VIOLATION OF NEB. REV. STAT. § 81-1506(4)(b) AND AIR PERMITS

459. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1-172 as though fully set forth herein.

460. Under NEPA, it is "unlawful to … [v]iolate any term or condition of an air pollution permit or any emission limit set in the permit." Neb. Rev. Stat. § 81-1506(4)(b).

461. AltEn's air permit CP13-010(III)(F)(1) provides: "All on-site haul roads with production-related truck traffic shall be paved." CP13-010(III)(F)(5) also required AltEn to keep records documenting the use of BMPs on haul roads.

462. AltEn's air permit OP16S2-001 also required all on-site haul roads to be paved.

463. On July 19, 2018, Department inspectors observed production-related haul roads were not paved and AltEn did not have records documenting the use of BMPs on haul roads.

464. AltEn certified it was keeping records documenting the use of BMPs on haul roads on September 14, 2018.

465. AltEn violated Neb. Rev. Stat. § 81-1506(4)(b) by failing to document the use of BMPs until September 14, 2018, as required by its air permit, and by failing to pave all production-related haul roads, as required by its air permit, from at least July 19, 2018 to present.

466. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), AltEn is subject to a civil penalty of not more than $10,000 per day for this violation.

ED_006145_00000172-00081

467. Pursuant to Neb. Rev. Stat. § 81-1508, the foregoing cause of action presents an imminent and substantial endangerment to the health of humans or animals or to the environment and/or AltEn violated and/or threatens to violate NEPA. This Court should issue an injunction ordering AltEn to comply with its air permits.

THIRTEENTH CAUSE OF ACTION

FAILURE TO COMPLY WITH PERMIT CONDITIONS FOR THE FERMENTATION AND DISTILLATION SCRUBBER IN VIOLATION OF NEB. REV. STAT. § 81-1506(4)(b) AND AIR PERMIT

468. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1-172 as though fully set forth herein.

469. Under NEPA, it is "unlawful to … [v]iolate any term or condition of an air pollution permit or any emission limit set in the permit." Neb. Rev. Stat. § 81-1506(4)(b).

A. Failure to Operate and Maintain the Scrubber.

470. AltEn's air permit CP13-010(II)(C) provides: "All permitted emission units, control equipment, and monitoring equipment shall be properly installed, operated, and maintained."

471. AltEn's fermentation and distillation scrubber falls within the definition of "permitted emissions units, control equipment, and monitoring equipment" under CP13-010.

472. On July 19, 2018, Department inspectors observed the fermentation and distillation scrubber was not being properly operated and maintained because the scrubber stack was emitting water vapor. When properly operated and maintained, the scrubber stack should not be emitting water vapor as observed.

473. AltEn completed repairs on or about July 20, 2018.

ED_006145_00000172-00082

474. AltEn violated Neb. Rev. Stat. § 81-1506(4)(b) by failing to properly operate and maintain the fermentation and distillation scrubber.

B. Failure to Provide the Manual for the Scrubber.

475. AltEn's air permit CP13-010(II)(B)(5) provides:

> Records of all measurements, results, inspections, and observations as required to ensure compliance with all applicable requirements shall be maintained on-site as follows … Operation and Maintenance manuals, or equivalent documentations, detailing proper operation and maintenance of all permitted emission units, required control equipment, and required monitoring equipment shall be keep for the life of the equipment.

476. On July 19, 2018, Department inspectors requested AltEn to provide the operation and maintenance manual for the fermentation and distillation scrubber. AltEn did not have the operation and maintenance manual to provide to the Department.

477. AltEn certified it was now keeping the operation and maintenance manual for the fermentation and distillation scrubber as of September 14, 2018.

478. AltEn violated Neb. Rev. Stat. § 81-1506(4)(b) by failing to provide the operation and maintenance manual for the fermentation and distillation scrubber from at least July 19, 2018 until September 14, 2018.

C. Failure to Provide Daily Observation Records for the Scrubber.

479. AltEn's air permit CP13-010(III)(B)(3)(b) provides:

> Operation and maintenance of the fermentation and distillation scrubber … shall be in accordance with the following requirements until the issuance of an operating permit to the source … Observations at least once each day during daylight hours of scrubber operation shall be conducted to determine whether there are leaks, noise, or other indications that corrective action is necessary. If corrective action is necessary, it shall occur immediately.

480. CP13-010(III)(B)(5)(e) requires AltEn to keep records of observations of scrubber operation documenting "date and time of routine observations with a description, including

operating parameters, atypical parameters observed, and any corrective actions taken, for each day the scrubber is in operation."

481. On July 19, 2018, Department inspectors requested AltEn to provide daily observation records for the fermentation and distillation scrubber since Facility startup on January 9, 2015. AltEn did not have any daily observation records for the fermentation and distillation scrubber.

482. AltEn certified it was now keeping daily observation records for the fermentation and distillation scrubber as of September 14, 2018.

483. AltEn violated Neb. Rev. Stat. § 81-1506(4)(b) by failing to provide daily observation records for the fermentation and distillation scrubber from January 9, 2015 to September 14, 2018.

D. Failure to Provide Records for the Scrubber and Ethanol Loadout System.

484. AltEn's air permit CP13-010(III)(B) provides specific conditions for operation of the fermentation and distillation scrubber, including that "[e]ach corrective action taken shall be documented upon occurrence, including the date, time, observations, and description of corrective action" and "[r]ecords documenting when routine maintenance and preventive actions were performed with a description of the maintenance and/or preventive action performed."

485. AltEn's air permit CP13-010(III)(B) provides specific conditions for operation of the ethanol loadout system, including keeping "[r]ecords documenting when routine maintenance and preventive actions were performed on the vapor recovery system and flare with a description of the maintenance and/or preventive action performed."

486. On July 19, 2018, Department inspectors requested AltEn to provide corrective action and/or maintenance records for both the fermentation and distillation scrubber and the

ethanol loadout system since Facility startup on January 9, 2015. AltEn did not have any corrective action and/or maintenance records for either the fermentation and distillation scrubber or the ethanol loadout system.

487. AltEn certified it was now keeping corrective action and/or maintenance records for both the fermentation and distillation scrubber and the ethanol loadout system as of September 14, 2018.

488. AltEn violated Neb. Rev. Stat. § 81-1506(4)(b) by failing to keep any corrective action and/or maintenance records for either the fermentation and distillation scrubber or the ethanol loadout system from January 9, 2015 to September 14, 2018.

489. AltEn violated Neb. Rev. Stat. § 81-1506(4)(b) by failing to comply with the permit conditions for the fermentation and distillation scrubber and the ethanol loadout system:

a. Failing to properly operate and maintain the fermentation and distillation scrubber from on or before July 19, 2018 to July 20, 2018;

b. Failing to keep the operation and maintenance manual for the fermentation and distillation scrubber from on or before July 19, 2018 until September 14, 2018;

c. Failing to provide daily observation records for the fermentation and distillation scrubber from January 9, 2015 until September 14, 2018;

d. Failing to document and maintain records for the fermentation and distillation scrubber from January 9, 2015 until September 14, 2018; and

e. Failing to document and maintain records for the ethanol loadout system from January 9, 2015 until September 14, 2018.

490. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), AltEn is subject to a civil penalty of not more than $10,000 per day for each of these violations.

FOURTEENTH CAUSE OF ACTION

FAILURE TO SUBMIT RELEVANT FACTS IN THE PERMIT APPLICATION IN VIOLATION OF NEB. REV. STAT. § 81-1506(4)(b) AND AIR PERMIT

491. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1-172 as though fully set forth herein.

492. Under NEPA, it is "unlawful to … [v]iolate any term or condition of an air pollution permit or any emission limit set in the permit." Neb. Rev. Stat. § 81-1506(4)(b).

493. AltEn's air permit CP13-010(I)(D) provides:

> Any owner or operator who failed to submit any relevant facts or who submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information.… In addition, any modification which may result in an adverse change to the air quality impacts predicted by atmospheric dispersion modeling … shall have prior approval from the [Department].

494. 129 Neb. Admin. Code § 17-006 also requires any applicant to submit "supplementary facts or corrected information."

495. On July 19, 2018, Department inspectors observed treated seed corn, beer, pop, and industrial starch at the Facility. AltEn representatives stated AltEn uses discarded treated seed corn as a feed stock and uses beer and pop in the ethanol process.

496. AltEn's application for modification of its construction permit, received by the Department on February 14, 2013, did not state treated seed corn, beer, industrial starch, or pop would be used as feedstock.

497. AltEn did not supplement or correct this information until on or about September 19, 2018.

ED_006145_00000172-00086

498. AltEn violated Neb. Rev. Stat. § 81-1506(4)(b) by failing to submit relevant facts or by failing to promptly submit supplementary facts or corrected information regarding its feedstock for the ethanol process from at least 2017 and until September 19, 2018.

499. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), AltEn is subject to a civil penalty of not more than $10,000 per day for this violation.

FIFTEENTH CAUSE OF ACTION

FAILURE TO NOTIFY THE DEPARTMENT OF OPERATIONAL CHANGES THAT MAY CAUSE PREVIOUS TESTING NOT TO REPRESENT CURRENT OPERATING CONDITIONS OR EMISSIONS IN VIOLATION OF NEB. REV. STAT. § 81-1506(4)(b) AND AIR PERMIT

500. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1-172 as though fully set forth herein.

501. Under NEPA, it is "unlawful to … [v]iolate any term or condition of an air pollution permit or any emission limit set in the permit." Neb. Rev. Stat. § 81-1506(4)(b).

502. AltEn's air permit CP13-010(II)(A) provides: "When the source makes physical or operational changes to an emissions unit or associated control equipment that may cause the previous testing to not represent current operation conditions or emissions, the owner/operator shall submit notification of the change. Such notification shall be postmarked within 15 days after the change."

503. On July 19, 2018, Department inspectors observed treated seed corn, beer, pop, and industrial starch at the Facility and were told AltEn uses discarded treated seed corn as a feed stock and uses beer and pop in the ethanol process.

504. By changing up its feedstock, AltEn made operational changes that may have caused previous testing not to represent current operation conditions or emissions, as set forth in CP13-010. AltEn was required to notify the Department of the changes within 15 days.

ED_006145_00000172-00087

505. The Department did not receive notification within 15 days of AltEn making changes in its operations using different materials as its feedstock, as required by CP13-010.

506. AltEn violated Neb. Rev. Stat. § 81-1506(4)(b) by failing to notify the Department within 15 days that it had been begun using discarded treated seed corn, not field corn, and beer and pop as feedstock for its ethanol manufacturing process.

507. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), AltEn is subject to a civil penalty of not more than $10,000 per day for each time AltEn changed its feedstock and did not notify the Department.

SIXTEENTH CAUSE OF ACTION

ALLOWING AN OPEN FIRE WITHOUT THE DIRECTOR'S WRITTEN PERMISSION IN VIOLATION OF NEB. REV. STAT. § 81-1506(4)(b) AND AIR PERMIT

508. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1-172 as though fully set forth herein.

509. Under NEPA, it is "unlawful to … [v]iolate any term or condition of an air pollution permit or any emission limit set in the permit." Neb. Rev. Stat. § 81-1506(4)(b).

510. AltEn's air permit CP13-010(I)(H) prohibits open fires except pursuant to 129 Neb. Admin. Code § 30-002.

511. On July 19, 2018, Department inspectors observed a smoldering pile of biochar on the ground at AltEn. An AltEn representative stated three super sacks of biochar had caught fire previously.

512. On August 1, 2018, Department inspectors observed biochar was smoldering again.

513. The smoldering piles of biochar were open fires at the Facility.

514. The Director had not given written permission for the open fires.

515. AltEn violated Neb. Rev. Stat. § 81-1506(4)(b) by allowing open fires without meeting an exception under 129 Neb. Admin. Code § 30-002.

516. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), AltEn is subject to a civil penalty of not more than $10,000 per day for this violation.

SEVENTEENTH CAUSE OF ACTION

FAILURE TO KEEP OR PROVIDE ACCESS TO RECORDS REQUIRED BY THE AIR PERMITS IN VIOLATION OF NEB. REV. STAT. § 81-1506(4)(b) AND AIR PERMITS

517. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1-172 as though fully set forth herein.

518. Under NEPA, it is "unlawful to … [v]iolate any term or condition of an air pollution permit or any emission limit set in the permit." Neb. Rev. Stat. § 81-1506(4)(b).

A. Failure to Keep Records of Equipment Failures.

519. AltEn's air permit CP13-010(III)(A) provides: "Inspection and maintenance records for each fabric dust collector, to show compliance with Condition III.(A)(3)(b), shall include the following … [r]ecords documenting equipment failures, malfunctions, or other variations, including time of occurrence, remedial action taken, and when corrections were made."

520. On July 19, 2018, Department inspectors discovered the air pump for one of the baghouses had been fixed and requested AltEn to produce all records of equipment failures, malfunctions, and other variations since Facility startup on January 9, 2015. AltEn did not have these records or records showing the air pump was fixed.

521. AltEn certified these records were being kept, as of September 14, 2018.

ED_006145_00000172-00089

522. AltEn violated Neb. Rev. Stat. § 81-1506(4)(b) by not keeping records of equipment failures, malfunctions, and other variations from Facility startup on January 9, 2015 until September 14, 2018.

B. Failure to Keep Records Showing a Flare Present.

523. AltEn's air permit CP14-066(III)(E)(5) provides: "Records of flame presence and biogas flow to demonstrate compliance with Condition III.(E)(3)(c)." Condition (III)(E)(3(c) provides:

> [The digester flare] shall be operated with a flame present whenever biogas is flowing to the unit. A monitoring system, including a data recorder capable of continuously monitoring and recording the presence of a flame and biogas flow to [the digester flare], shall be installed to ensure that biogas flow to the flare cannot occur without the presence of a flame.

524. On July 19, 2018, Department inspectors requested AltEn to provide records showing a flame present at the digester flare since Facility start up on January 9, 2015.

525. AltEn did not have records showing the presence of flame because no monitoring system was installed.

526. AltEn violated Neb. Rev. Stat. § 81-1506(4)(b) by not keeping records showing the presence of a flame at the digester flare from Facility startup on January 9, 2015 to present.

C. Failure to Maintain and Keep a Site Survey Documenting As-Built Stack Heights.

527. AltEn's air permit CP13-010(II)(F) requires: "A site survey, or similar documentation containing the as-built stack dimensions, shall be maintained on-site and kept for the life of the source."

528. On July 19, 2018, Department inspectors requested the site survey documenting the as-built stack heights. AltEn did not provide the site survey required to be maintained on site and kept for the life of the source.

529. AltEn certified it was now maintaining the site survey onsite, as of September 14, 2018.

530. On October 2, 2018, Department inspectors again requested the site survey. The site survey failed to include the stack heights for the boiler and the digester flare, as required by CP13-010.

531. AltEn failed to maintain and keep a site survey with the as-built stack dimensions onsite, as required by CP13-010.

532. AltEn violated Neb. Rev. Stat. § 81-1506(4)(b) by failing to maintain and keep a site survey containing the as-built stack heights from at least July 19, 2018 to October 2, 2018.

D. Failure to Keep the Drift Loss Design Specifications Onsite.

533. AltEn's air permit CP13-010(III)(H) provides: "Manufacturer's drift loss design specifications shall be kept on site."

534. On July 19, 2018, Department inspectors requested AltEn to provide the drift loss design specifications. AltEn did not have the drift loss design specifications onsite.

535. AltEn certified it was now keeping these records on site, as of September 14, 2018.

536. AltEn violated Neb. Rev. Stat. § 81-1506(4)(b) by not keeping the drift loss design specifications onsite from Facility startup on January 9, 2015 to September 14, 2018.

E. Failure to Provide Access to Records to Ensure Compliance.

537. AltEn's air permit CP13-010(I)(F)(2) provides: "The owner or operator shall allow the [Department], EPA or an authorized representative, upon presentation of credentials to … [h]ave access to and copy, at reasonable times, any records, for the purpose of ensuring compliance with the permit or applicable requirements."

538. CP13-010(II)(B)(1) also provides:

> Records of all measurements, results, inspections, and observations as required to ensure compliance with all applicable requirements shall be maintained on-site as follows … [a]ll calculations and records required throughout this permit shall be completed no later than the fifteenth (15th) day of each calendar month and shall include all information through the previous calendar month, unless otherwise specified in this permit.

539. On July 19, 2018, Department inspectors requested AltEn to produce the records of emission calculations since Facility startup on January 9, 2015.

540. AltEn did not produce these records when requested so the Department did not have access to these records.

541. AltEn violated Neb. Rev. Stat. § 81-1506(4)(b) by not providing the Department with access to the records of emissions calculations on July 19, 2018.

542. AltEn violated Neb. Rev. Stat. § 81-1506(4)(b) by failing to comply with the recordkeeping requirements of its air permit:

a. Failing to keep records of equipment failures from January 9, 2015 until September 14, 2018;

b. Failing to keep records showing a flame present at the digester flare from January 9, 2015 to present;

c. Failing to maintain and keep a site survey onsite from at least July 19, 2018 until October 2, 2018;

d. Failing to keep the drift loss design specifications onsite from January 9, 2015 until September 14, 2018; and

e. Failing to provide access to the emissions calculations from July 19, 2018 until September 14, 2018;

543. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), AltEn is subject to a civil penalty of not more than $10,000 per day for each of these violations.

544. Pursuant to Neb. Rev. Stat. § 81-1508, the foregoing cause of action presents an imminent and substantial endangerment to the health of humans or animals or to the environment and/or AltEn violated and/or threatens to violate NEPA. This Court should issue an injunction ordering AltEn to comply with its air permits.

EIGHTEENTH CAUSE OF ACTION

FAILURE TO SUBMIT A REPORT THAT DESCRIBES AND CERTIFIES THE CONTROL EQUIPMENT MEETS SPECIFICATIONS IN VIOLATION OF NEB. REV. STAT. § 81-1508.02(1)(e) AND 129 NEB. ADMIN. CODE § 18-001

545. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1-172 as though fully set forth herein.

546. Under NEPA, it is "unlawful for any person … [t]o violate any other provision of or fail to perform any other duty imposed by such acts, rules, or regulations." Neb. Rev. Stat. § 81-1508.02(1)(e).

547. 129 Neb. Admin. Code § 18-001 adopts by reference and incorporates the "Standards of Performance for Stationary Sources" published at 40 C.F.R. Part 60, effective July 1, 2013, including standards for volatile organic liquid storage vessels. 40 C.F.R. § 60.115b provides:

> The owner or operator of each storage vessel … shall keep records and furnish reports as required by paragraphs (a), (b), and (c) of this section depending upon the control equipment installed to meet the requirements of § 60.112b. The owner or operator shall keep copies of all reports and records required by this section, except for the record required by (c)(1), for at least 2 years. The record required by (c)(1) will be kept for the life of the control equipment.
>
> (a) After installing control equipment in accordance with § 60.112b(a)(1) (fixed roof and internal floating roof), the owner or operator shall meet the following requirements.

ED_006145_00000172-00093

> (1) Furnish the Administrator with a report that describes the control equipment and certifies that the control equipment meets the specifications of § 60.112b(a)(1) and § 60.113b(a)(1). This report shall be an attachment to the notification required by § 60.7(a)(3).

548. The notification of the actual date of initial startup required by 40 C.F.R. § 60.7(a)(3) had to be postmarked within 15 days after such date.

549. AltEn was required to provide the report with the notification of actual date of initial startup.

550. The Department received AltEn's notification of actual date of initial startup on January 16, 2015, but it did not contain the report.

551. The Department did not receive the report required by 40 C.F.R. § 60.115b(a)(1) from AltEn until September 14, 2018.

552. AltEn violated 129 Neb. Admin. Code § 18-001 by not providing a report describing and certifying its control equipment from January 16, 2015 until September 14, 2018.

553. AltEn violated Neb. Rev. Stat. § 81-1508.02(1)(e) by failing to comply with the rules and regulations of the Department.

554. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), AltEn is subject to a civil penalty of not more than $10,000 per day for this violation.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests this Court to enter judgment on this Complaint in its favor and grant the following relief:

Waste Violations

A. Declare AltEn violated the Nebraska Environmental Protection Act and/or Title 132 of the Nebraska Administrative Code by:

ED_006145_00000172-00094

1. Disposing solid waste at a location other than a permitted solid waste management facility (Cause of Action #1); and/or

2. Operating a solid waste management facility without a permit (Cause of Action #2);

3. Causing pollution to water and land of the state or placing or causing to be placed wastes in a location where the wastes will likely cause pollution to waters and land of the state (Cause of Action #3);

B. Enter the statutory maximum civil penalty against AltEn, as provided under Neb. Rev. Stat. § 81-1508.02(2), for the solid waste violations in Causes of Action #1, #2, and #3;

C. Issue a permanent injunction ordering AltEn to remove all distiller's grain solid waste from its property and dispose of the distiller's grain solid waste at a permitted solid waste management facility, for the solid waste violations in Causes of Action #1, #2, and #3;

Water Violations

D. Declare AltEn violated the Nebraska Environmental Protection Act, Title 119 of the Nebraska Administrative Code–*NPDES* Regulations, Title 123 of the Nebraska Administrative Code–*Department Regulations*, and/or NPDES Permit NE0137634, CSW Permit NER16000, and/or ISW Permit NER910000 by:

1. Causing pollution to water and land of the state or placing or causing to be placed wastes in a location where the wastes will likely cause pollution to waters and land of the state (Cause of Action #3);

2. Discharging a pollutant into waters of the state without a permit (Cause of Action #4);

3. Failing to comply with NPDES Permit NE0137634 (Cause of Action #5);

4. Failing to comply with an Order of the Director (Cause of Action #6);

5. Failure to comply with operation and maintenance requirements (Cause of Action #7);

6. Failure to comply with ISW Permit NER910000 (Cause of Action #8);

7. Failure to comply with CSW Permit NER160000 (Cause of Action #9);

E. Enter the statutory maximum civil penalty against AltEn, as provided under Neb. Rev. Stat. § 81-1508.02(2), for the water violations in Causes of Action #3 through #9;

F. Issue a permanent injunction ordering AltEn to:

1. Prohibit AltEn from operating the lagoon system in such a manner as to cause pollution by prohibiting land application or disposal of lagoon wastewater until approval from the Department; and order secondary containment around the lagoon system, for Cause of Action #3;

2. Complete items (B), (D), and (G) of the Consent Order, for Cause of Action #6;

3. Repair the floating liners and any other liner damage in the west and northeast lagoon, for Cause of Action #7, upon approval by the Department;

4. Implement BMPs and install storm water controls to prevent discharges of distiller's grain runoff into storm water conveyances, for Cause of Action #8;

Air Violations

G. Declare AltEn violated the Nebraska Environmental Protection Act, Title 129 of the Nebraska Administrative Code, *Nebraska Air Quality Regulations* and/or CP13-010, CP14-066, and/or OP16S2-001 by:

1. Failure to conduct a performance test for the digester flare (Cause of Action #10);

2. Failure to install and operate the TRS CEMS unit and/or methane CEMS Unit for the anaerobic digestion system (Cause of Action #11);

3. Failure to pave all production-related truck traffic haul roads (Cause of Action #12);

4. Failure to comply with permit conditions for the fermentation and distillation scrubber (Cause of Action #13);

5. Failure to submit relevant facts in the permit application (Cause of Action #14);

6. Failure to notify the Department of operational changes that may cause previous testing not to represent current operating conditions or emissions (Cause of Action #15);

7. Allowing an open fire without the Director's written permission (Cause of Action #16);

8. Failure to keep or provide access to records required by the air permit (Cause of Action #17);

9. Failure to submit report (Cause of Action #18);

H. Enter the statutory maximum civil penalty against AltEn, as provided under Neb. Rev. Stat. § 81-1508.02(2), for the air violations in Causes of Action #10 through #18;

I. Issue a permanent injunction ordering AltEn to pave all haul roads with production-related truck traffic, for Cause of Action #12;

J. Issue a permanent injunction ordering AltEn to comply with the conditions of its air permits, for Causes of Action #10 through #12, and #17;

K. Tax all court costs herein to AltEn; and

L. Grant Plaintiff such additional and further relief as this Court deems just and proper.

DATED this 1st day of March 2021.

STATE OF NEBRASKA, ex rel.,
JIM MACY, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENT AND ENERGY, Plaintiff

By: Douglas J. Peterson, #18146
Attorney General

By: *<u>/s/ Maegan L. Woita</u>*
Justin D. Lavene, #22178
Maegan L. Woita, #26287
Joshua E. Dethlefsen, #24667
Assistant Attorney General
2115 State Capitol
P.O. Box 98920
Lincoln, Nebraska 68509-8920
Tel. (402) 471-1912
justin.lavene@nebraska.gov
maegan.woita@nebraska.gov
joshua.dethlefsen@nebraska.gov
Attorneys for Plaintiff

ED_006145_00000172-00097

GLOSSARY OF ACRONYMS

BMP – Best Management Practice

CAA – The Clean Air Act, 42 U.S.C. § 7401 *et seq.*

CEMS – Continuous Emissions Monitoring System

COD – Chemical Oxygen Demand

CP – Construction Permit

CSW – Construction Storm Water

CWA – The Clean Water Act, 33. U.S.C. § 1251 *et seq.*

EPA – U.S. Environmental Protection Agency

ISW – Industrial Storm Water

ISWMA – The Integrated Solid Waste Management Act, Neb. Rev. Stat. § 13-2001 *et seq.*

LNC – Letter of Noncompliance

LOW – Letter of Warning

NDA – Nebraska Department of Agriculture

NEPA – The Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.*

NOV – Notice of Violation

NPDES – National Pollutant Discharge Elimination System

OP – Operating Permit

ppb – parts per billion

RCRA – Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*

SW – Storm Water

SWPPP – Storm Water Pollution Prevention Plan

TCLP – Toxicity Characteristic Leaching Procedure

TRS – Total Reduced Sulfur

WDG – Wet Distiller's Grain

AltEn LLC - Overview Map - 1

Attachment B

N

Address: 11344 County Road 10, Mead NE
NDEQ ID: 84069
Program ID: NE0137634

500 250 0 500 1,000 1,500 2,000 Feet

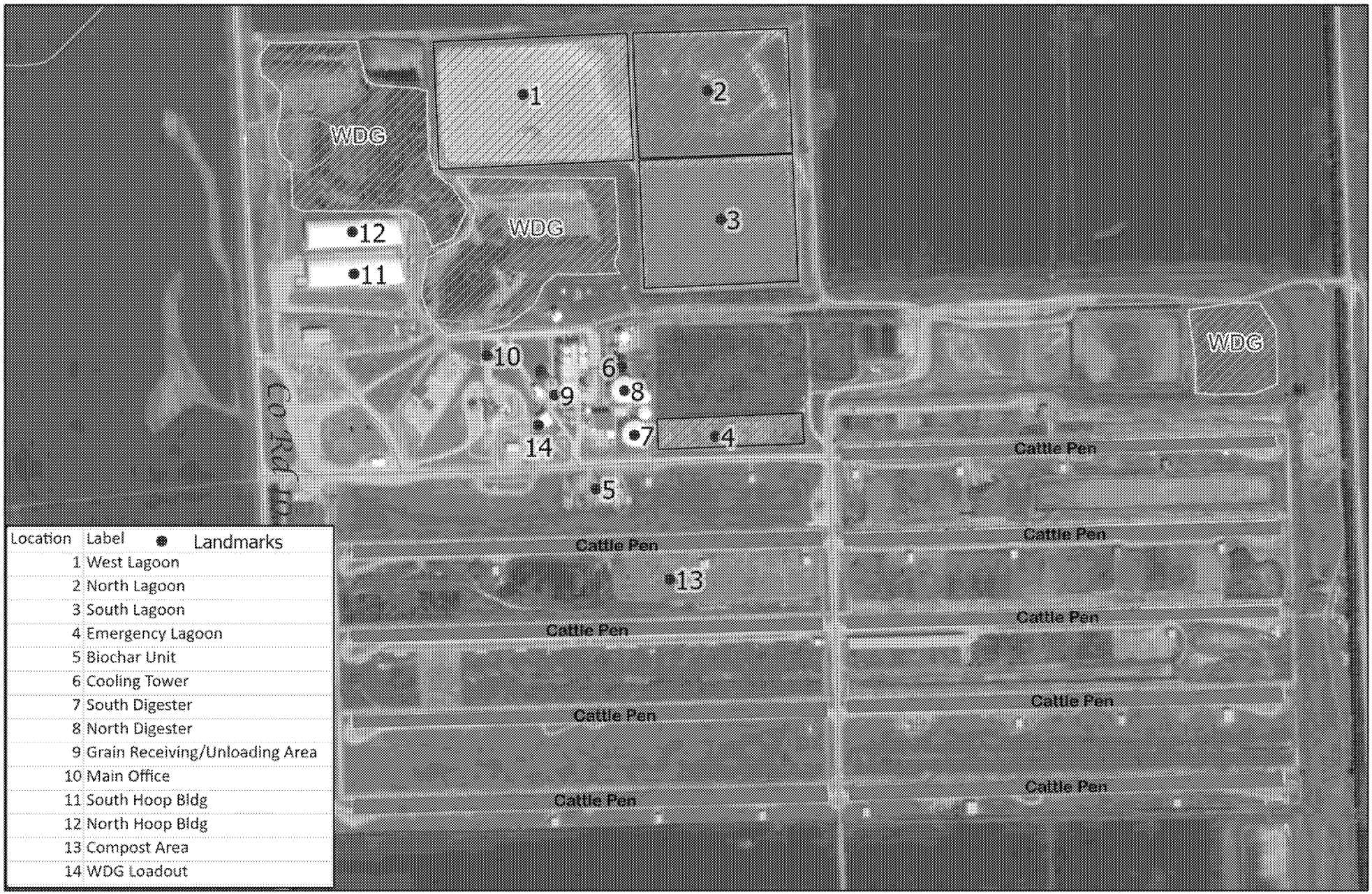
NEBRASKA
DEPT. OF ENVIRONMENT AND ENERGY

JW - February 2021

AltEn LLC - Overview Map - 2

Attachment C

N



Location	Label	Landmarks
1	West Lagoon	
2	North Lagoon	
3	South Lagoon	
4	Emergency Lagoon	
5	Biochar Unit	
6	Cooling Tower	
7	South Digester	
8	North Digester	
9	Grain Receiving/Unloading Area	
10	Main Office	
11	South Hoop Bldg	
12	North Hoop Bldg	
13	Compost Area	
14	WDG Loadout	

Address: 11344 County Road 10, Mead NE
NDEQ ID: 84069
Program ID: NE0137634

500 250 0 500 1,000 1,500 2,000 Feet

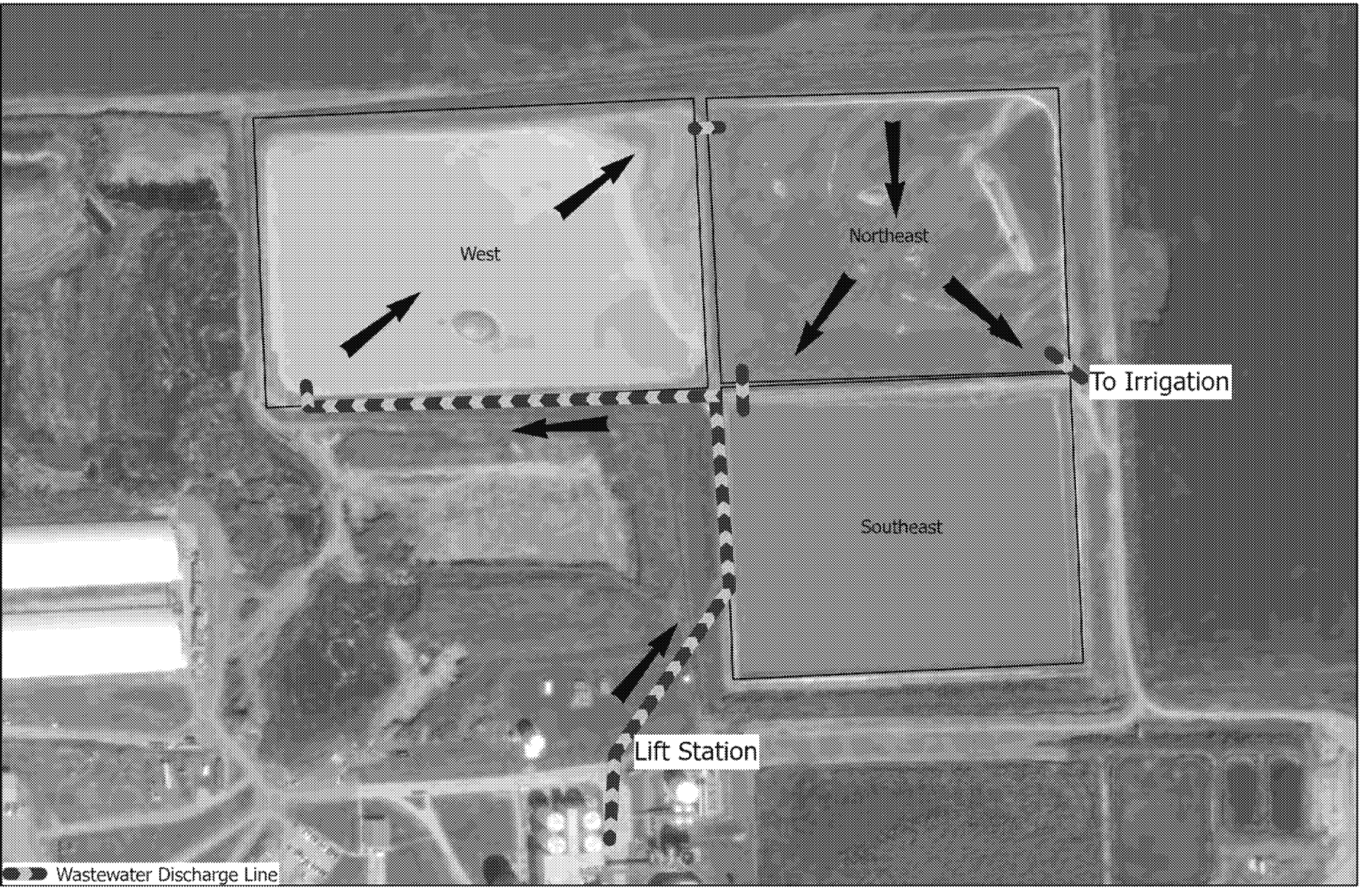
NEBRASKA
DEPT. OF ENVIRONMENT AND ENERGY

JW - February 2021

AltEn LLC - Wastewater Map- 3

Attachment D

N



Address: 11344 County Road 10, Mead NE
NDEQ ID: 84069
Program ID: NE0137634

200 100 0 200 400 600 800 Feet

NEBRASKA
DEPT. OF ENVIRONMENT AND ENERGY

JW - February 2021

AltEn LLC - Storm Water Area 2- 5b

Attachment E

Address: 11344 County Road 10, Mead NE
NDEQ ID: 84069
Program ID: NE0137634

125 62.5 0 125 250 375 500 Feet

NEBRASKA
DEPT. OF ENVIRONMENT AND ENERGY

JW - February 2021

AltEn LLC - Storm Water Outfalls - 4

Attachment F

Address: 11344 County Road 10, Mead NE
NDEQ ID: 84069
Program ID: NE0137634

1,000 500 0 1,000 2,000 Feet

NEBRASKA
DEPT. OF ENVIRONMENT AND ENERGY

JW - February 2021

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF ALTEN, LLC,	)	CASE NO. 3483
FID # 84069	)	CONSENT ORDER
Respondent.	)	

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

2019003254 5

ED_006145_00000172-00104

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://deq.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: Scott Tingelhoff

Title: General Manager / Vice President, AltEn, LLC

Date: 4-24-19

For the Department: IT IS ORDERED and agreed this 24th day of April, 2019.

By: _____
Jim Macy
Director
Department of Environmental Quality

IN THE DISTRICT COURT OF SAUNDERS COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,	)	
JIM MACY, Director,	)	Case No. _____
NEBRASKA DEPARTMENT OF	)	
ENVIRONMENT AND ENERGY,	)	
	)	
Plaintiff,	)	**PRAECIPE**
	)	
v.	)	
	)	
ALTEN, LLC,	)	
	)	
Defendant.	)	

TO: THE CLERK OF THE DISTRICT COURT

Please issue a summons in the above-captioned action for service by certified mail upon the following named Defendant:

AltEn, LLC
c/o Capitol Corporate Services, Inc.
Suite 800
1125 S. 103rd Street
Omaha, Nebraska 68124

Return the summons to the Plaintiff for service by certified mail upon the Defendant, as provided by law.

DATED this 1st day of March 2021.

ED_006145_00000172-00112

STATE OF NEBRASKA, ex rel.,
JIM MACY, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENT AND ENERGY, Plaintiff

By: Douglas J. Peterson, #18146
Attorney General

By: */s/ Maegan L. Woita*

Justin D. Lavene, #22178
Maegan L. Woita, #26287
Joshua E. Dethlefsen, #24667
Assistant Attorney General
2115 State Capitol
P.O. Box 98920
Lincoln, Nebraska 68509-8920
Tel. (402) 471-1912
justin.lavene@nebraska.gov
maegan.woita@nebraska.gov
joshua.dethlefsen@nebraska.gov

Attorneys for Plaintiff

ED_006145_00000172-00113