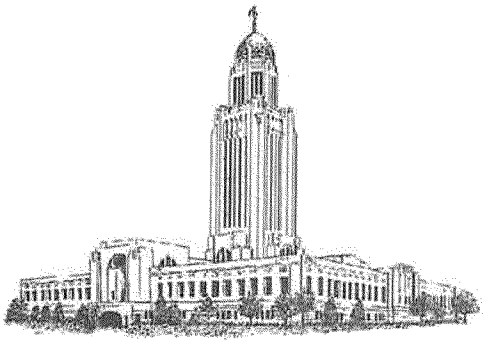
Nebraska State Legislature



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JUN 21 2021

NE Dept of Environment and Energy
By: _____Front Desk_____

June 21, 2021

Jim Macy
Director of the Nebraska Department Environment and Energy
245 Fallbrook Blvd
Lincoln, NE 68521

Director Macy,

Due to the ongoing situation with the AltEn ethanol processing plant near the town of Mead, I felt compelled to write to you immediately. Over the last few months, I have been investigating and collecting information about this crisis. It is my hope that your departments can shed light on how this situation happened, how it got so bad and how it will be rectified. I am sure you are aware of the complexity of this issue, as well as its seriousness. Transparency is paramount during this process not only to protect the residents of Mead, Nebraska and surrounding area but also to protect Nebraska taxpayers.

Has the state requested and obtained records of the magnitude of treated seed delivered to AltEn? If any agencies have obtained these records, I'd like to know:

- From what company was that seed was received?
- What seed was processed by the plant?
- What seed was hauled off the site?

Does any state agency know the associated destinations of these loads? Nebraska should request records of AltEn's contracts with the various seed companies that provided products to this facility. Have these records been obtained?

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I have the following questions about the soil in the surrounding area:

- Has the state tested samples from where contaminated wet cake was deposited on private or municipal property in the past?
- Do your offices have scientifically-based information or studies on whether the neonicotinoid toxins are expressed by plants surrounding the AltEn site?
- What is the wet cake disposal plan onsite?
- Does Biochar play a role in any part of the disposal plan and if there is leftover product, where is that being stored?

Relative to any proposed action plans between your agencies and the involved seed companies, how long will the Poseidon tanks be located at the AltEn facility? Is there a plan for how the wastewater will be disposed of and are you able to provide a copy of that plan?

These tanks present obvious and concerning dangers to the public and wildlife. How are your agencies planning on restricting access to the Poseidon tanks? It's been pointed out by area residents that they look quite a bit like above ground swimming pools, which are inviting for children, pets and waterfowl. Animal access particularly could lead to immediate new environmental problems.

Related to these tanks and the storage of the contaminants:

- What containment requirements are being enforced to prevent leaching of herbicides, insecticides or pesticides into groundwater and/or soil, when stored in either solid or liquid form?
- Are there regulations in place regarding storage of pesticides, herbicides and/or insecticides in open tanks accessible to aviary, entomological, amphibious, reptilian and/or mammalian life forms?

There is a family with a pond on their property approximately five miles downstream of the AltEn plant. This pond was reportedly tested twice, with the second test showing a very high level of contaminants. It is now labeled "dead water." Is the state planning on pumping out that pond or will the pesticide residue be allowed to sit untouched? What about other waterways below the plant that might still be filtering contaminants into Nebraska's precious aquifer?

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When it comes to any removal, can you please clarify:

- What notifications may be required for the removal of the presence, shipment or storage of surplus/excess/outdated, pesticides, herbicides or insecticides, or substances treated with any of these aforementioned toxins that are no longer salable, prior to disposition?
- To whom are the notifications given?
- What is the easiest way for the public to access this information?
- What other requirements besides notification apply, and will assure that the disposition is safe?
- What steps are being taken by your agencies or other regulators to make sure containment and disposition requirements are going to be met?
- Which licenses authorize a license holder to dispose of pesticides, herbicides or insecticides in general? What agency issues these licenses?
- Can you describe what substances may be disposed of by each license holder and describe each class of license?

Expanding on the licenses and permits concerns:

- Would you please provide me with the number of permits granted to AltEn, as well as how many of those permits have led to repeated violations and/or noncompliance issues?
- It is my understanding that fines for noncompliance have been repeatedly threatened but never enforced. Is that true? If so, why is this true?
- Is there a standard length of time or number of violations your agency is following before a violator is referred to the Attorney General's office and a suit is filed?
- Are there examinations or investigations conducted to assure compliance?
- What filings must be made by a license holder before disposition, or after disposition of pesticides, herbicides or insecticides to identify the type, quantity, location and circumstances of disposition? Where would we find this information?

I'm very concerned about what appear to be loopholes in our state regulations. I fear these loopholes will lead to more problems like what is happening near Mead.

Does application of a pesticide, herbicide or insecticide to a non-crop or non-soil substance change the definition and thereby permit circumvention of licensure requirements and/or disposition requirements?

What testing must be done to verify chemical properties substances to be or being disposed of, as well as before, during or after disposition and where do these tests need to be filed? Are examination, auditing or verification protocol being used to assure compliance? If any, what records must be maintained by the licensee to verify that actions taken are legally permissible? Does authority exist to assess risks and manage them before disposition and how do these state actions compare to other states with substantial agricultural production like Iowa, Kansas, Illinois, Minnesota or California?

Specifically regarding the AltEn plant and the neighboring feedyard:

- What licenses were held by either?
- Can you give me a history of infractions by each? I'd also like to see a history of complaints about both locations. How might we gain access to this information?

Additionally, I would like:

- An accounting of the on-site investigations or inspections carried out in reaction to those complaints and/or infractions.
- A list of the current regulatory actions stemming from those investigations.
- A clarification as to what organization oversees that the clear and legal language on labels is not violated?
- If the EPA was invited to Nebraska to evaluate this issue, please explain what role they played in helping our state with this concern?

It is paramount that we provide as much information as we can to concerned parties to prevent this from happening in the future and to better prepare the individuals potentially affected by these infractions. There is no reason this information should not be readily available to the public.

All of this leads me to my final questions about who is going to be held ultimately responsible and liable for this environmental catastrophe:

- What is the Village of Mead's liability exposure related to the AltEn site?
- What is Saunders County's liability exposure related to the AltEn site?
- What assurance of financial responsibility is required of a licensee by the state?
- What assurance of financial responsibility is required of a party reporting a spill or other disposition outside of those permitted by the license? This area does not seem clear and it is my hope you can better clarify this concern.

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When disposing of waste or other materials related to a cleanup:

- What is the authority of a municipal landfill to receive pesticides, herbicides, insecticides or substances to which those chemicals have been applied?
- What sort of reporting requirements must be fulfilled by the landfill when disclosing receipt of these chemicals?
- Once the waste and chemicals have been disposed of, what are the permissible toxicity levels at the disposal site regarding surface land application, composting, chemical reactions outside of composting, fill disposition and/ or incineration. Please explain what steps, if any, are taken to assure containment requirements are met.

I do understand that this is an unusual letter, but I know you must agree that this situation is both unusual and untenable. It is my hope and my official request that the Department of Environment and Energy, the Department of Natural Resources and the Department of Agriculture work together to provide me with the information I've asked for here today. There are simply too many unanswered questions that need resolution out of respect for Nebraskans and our environment.

I know we can work together to stop companies like AltEn from taking advantage of our great state, and I do plan on having your agencies' backs in any future fight against a problem like what we're seeing in Mead, but I first need this information in order to make sure we're all well prepared to face that fight.

Please don't hesitate to reach out to my office with any questions regarding this request for information or anything else.

Respectfully,

Senator Carol Blood

Senator Carol Blood
District 3

Cc: Tom Riley, Director of the Nebraska Department of Environmental Resources
Steve Wellman, Director of the Nebraska Department of Agriculture

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