

# Senators consider bill to give regulators authority to order environmental cleanup sooner

- [Chris Dunker](#), Lincoln Journal Star, Feb 3, 2022



An environmental cleanup at AltEn included consolidating several piles of contaminated wet cake into the single location seen in this Dec. 28 YouTube video posted by the Nebraska Department of Environment and Energy.

The director of the Nebraska Department of Environment and Energy said a bill under consideration at the Legislature would grant the agency more authority to stop bad actors from polluting.

If passed, Sen. Bruce Bostelman's bill would allow Jim Macy, director of the environmental agency, to order cleanups or issue cease-and-desist letters to companies posing a danger to people and the environment, as well as to initiate cleanup and recover costs.

Macy declined to answer questions from lawmakers Thursday about whether the proposed legislation would have helped stop AltEn from continuing to turn pesticide-treated seed into ethanol.

The biofuel plant near Mead has been pointed to as the source of pesticide contamination that spread for miles throughout Saunders County.

“If we had this (legislation) in effect five years ago, would that situation have resulted differently?” Sen. John Cavanaugh asked Macy at a hearing before the Legislature's Natural Resources Committee.

“Senator, I’m going to be really careful in my answer with you here,” Macy responded. “Instead of looking in the past, this looks forward into the future.”

The Omaha senator said the Department of Environment and Energy had either not exercised its authority to stop AltEn after it learned of the pesticide contamination or had insufficient authority to do so

Before Cavanaugh could get to his question, he was cut off by committee vice chair Sen. Mike Moser of Columbus: “Senator, I don’t think we want to go there.”

Macy said the department spent a lot of time "making a solid case" to bring against AltEn in court, and again stated he would not address that situation at the committee hearing.

Six seed companies that formerly supplied pesticide-treated seed to AltEn are continuing a voluntary cleanup effort of contaminated byproducts stockpiled at the ethanol plant.

At the same time, a 98-page lawsuit, initiated March 1, 2021, is currently in the discovery phase of litigation in Saunders County District Court, according to a spokeswoman for the Nebraska Attorney General’s Office.

Lawmakers have proposed several pieces of legislation this year in response to the environmental crisis.

In addition to granting regulators more authority to order cleanups, the Nebraska Environmental Response Act creates a cash fund that would be seeded with \$300,000 in state appropriations if passed by lawmakers.

The cash fund would be replenished by recovering costs from companies found to be in violation of environmental regulations.

“This bill helps to ensure that responsible parties pay for cleanups rather than the Nebraska taxpayers,” Bostelman told the committee.

The bill's hearing comes nearly a year to the day after the Department of Environment and Energy ordered AltEn to stop pumping contaminated wastewater into a damaged lagoon system at its facility.

The state took the step of ordering the ethanol plant to shut down after dozens of inspections resulted in a series of noncompliance letters, violation notices and administrative orders spaced over several years.

A few days after AltEn shut down, a tank at the facility ruptured, releasing 4 million gallons of pesticide-contaminated waste into waterways flowing downstream from the plant, and brought further scrutiny from state and federal environmental regulators.

Former state Sen. Al Davis, representing the Nebraska Chapter of the Sierra Club, said the environmental advocacy group supported the bill, but blasted the state as slow to act to protect the people of Mead.

State records show the department was aware AltEn was intending to use pesticide-treated seed as an ethanol feedstock as early as 2012, while the lawsuit against the company acknowledges the state knew about the treated seed in 2015.

Residents of Mead and the surrounding area started filing complaints to the Department of Environment and Energy in 2016.

[Sale of contaminated biochar from AltEn halted after state agency intervenes](#)

[Environmental cleanup at AltEn shows progress, Nebraska agency says](#)

Davis and others, including environmental attorney Amy Svoboda, said permissive and undefined language in the bill afforded the director too much discretion in when to pursue action against polluters.

Svoboda also said the bill didn't go far enough in defining who would be considered the "responsible party" for cleanup purposes, saying it could be used against front-line employees individually and not against the company as a whole.

She suggested the bill specify "responsible party" as the owners, operators, or former owners and operators of a facility, as well as the suppliers of any kind of waste product.

Under that definition, the seed companies that supplied AltEn with discarded seed treated with pesticides could be held responsible.

In a letter opposing the bill, the Nebraska Agri-Business Association said it supported Bostelman's intent, but worried seed dealers, haulers and individual growers could be on the hook for cleanup costs.

"Our concern is whether commercial sellers could be held liable for the improper disposal of products by users," association president Scott Merritt wrote.

Bostelman said he was open to amending the bill to address concerns. The committee did not take any action Thursday.