

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: Main Voyage, L.L.C. d/b/a All Iowa Pool and Supply, Inc. Polk County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2021-WW- 11
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TO: Matt Main, Owner
1325 Hoak Drive
West Des Moines, IA
50265

Steven Despotovich, Registered Agent
4200 University Ave Suite 424
West Des Moines, IA
50266

I. SUMMARY

This administrative consent order (Order) is entered into between the Main Voyage, L.L.C. d/b/a All Iowa Pool and Supply, Inc. (All Iowa Pool) and the Iowa Department of Natural Resources (Department) for the purpose of addressing an illegal discharge of a pollutant to a water of the state.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Bryan Bunton
DNR Field Office #5
502 E. 9th Street
Des Moines, Iowa 50319
Phone: 515-725-0105

Relating to legal requirements:

Carrie Schoenebaum, Attorney for the DNR
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, Iowa 50319
Phone: 515-444-8165

II. JURISDICTION

This Order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 (wastewater) and the rules adopted or permits issued pursuant to that part; and Iowa Code section 455B.109 and

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567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. All Iowa Pool is located at 1325, 1375 and 1395 Hoak Dr., West Des Moines, Iowa. These properties are contiguous. At these locations All Iowa Pool distributes pool and spa supplies, which includes numerous chemicals, one of which is chlorine.

2. On July 23, 2019, the Department received two complaints reporting dead fish in Walnut Creek between Colby Park in Windsor Heights and the Grand Avenue bridge on the border of Des Moines and West Des Moines. Following receipt of this complaint, Department Environmental Specialists, Anthony Bigger and Bryan Bunton, went to multiple locations to investigate. The locations and observations are contained in the below table:

Location	Observation	Documentation
Location 1 (upstream of Colby Park at Maddox Parkway and Walnut Creek)	No dead fish or sheen on water was observed	
Location 2 (22 nd Street West Des Moines bridge over Walnut Creek)	No dead fish or sheen on water was observed	
Location 3 (Grand Avenue bridge over Walnut Creek)	Numerous dead fish were observed and no sheen on the water was observed	Pictures were taken
Location 4 (North Valley Drive bridge over Walnut Creek)	Numerous dead fish were observed and no sheen on the water was observed	Pictures were taken
Location 5 (Colby Park and Walnut Creek)	No dead fish or sheen on water was observed	
Location 6 (Clive Greenbelt South of Colby Park at Walnut Creek)	Numerous dead fish were observed and no sheen on the water was observed	
Location 7 (South of location 6 approximately 200 feet)	Numerous dead fish were observed and no sheen on the water was observed	
Location 8 (All Iowa Pool)	Socks were placed in the storm water retention area	Pictures were taken

At the location of All Iowa Pool (location 8) Mr. Bigger and Mr. Bunton met with employees of the business. The employees informed the Department that an unknown quantity of chlorine had spilled out of a 250 gallon container located in the storage area at the back of the

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property. They stated that in an effort to clean up the spill, employees rinsed off the concrete. Thus, the Department determined that the chlorinated rinse water flowed into a storm water retention area and into a storm drain. The storm drains on the property flow directly to Walnut Creek. Department staff mapped the flow path.

3. On August 22, 2019, the Department sent a Notice of Violation (NOV) to All Iowa Pool for the above discussed violations. This NOV summarized the investigation, the relevant law and the following corrective action: (1) remove the 250 gallon tank and replace it with smaller containers to prevent future spills; and (2) all floor drains inside the facility should be mapped out and any that flow to Walnut Creek should be plugged or rerouted.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged pursuant to a permit. The above stated facts demonstrate noncompliance with this provision of law.

2. Iowa Code section 455B.173(3) authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of waste disposal systems, the discharge of pollutants into waters of the state, and the issuance of permits to waste disposal systems. The Commission has done so at 567 IAC 60 through 69. 567 IAC 64.3(1) prohibits the operation of a waste water disposal system without or contrary to the terms of a permit. The above stated facts demonstrate noncompliance with this provision of law.

3. 567 IAC 61.3(2) “e” states:

e. Such waters shall be free from substances, attributable to wastewater discharges or agricultural practices, in quantities which would produce undesirable or nuisance aquatic life.

The above stated facts demonstrate noncompliance with these provisions.

V. ORDER

1. Cease all illegal discharges; and
2. Pay a penalty in the amount of \$6,000.00 within 30 days of the date the Director signs this order.

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VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC Chapter 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with an administrative penalty. The administrative penalty is determined as follows:

a. Economic Benefit. 567 IAC chapter 10 requires that the Department consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” An economic benefit was obtained by All Iowa Pool by not devoting staff time or resources to a spill prevention and a mitigation plan. Such a plan would require development and then training of staff. For these reasons, it is reasonable to estimate that \$1,000.00 was saved. Therefore, \$1,000.00 is assessed for this factor.

b. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. Failure to properly manage wastewater discharges excess pollutants in water channels. Pollution of Iowa’s waterways is a serious problem. Degraded water quality harms aquatic life, prevents the attainment of state water quality goals, and causes a decline in the quality of life generally. Therefore, the amount of \$3,000.00 is assessed for this factor.

c. Culpability. All Iowa Pool sells and stores chemicals. This is a highly regulated activity and therefore it has an obligation to be aware of the applicable regulations and comply with those regulations. Chlorine is a dangerous chemical that is poisonous to living organisms. Staff should be trained to properly handle chlorine spills and spills of other chemicals. Further staff should be trained as to who to contact during such spills and where each storm drain discharges. Therefore, the amount of \$2,000.00 is assessed for this factor.

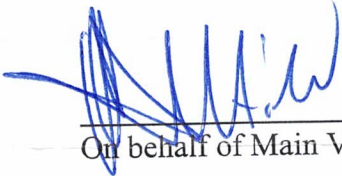
VII. WAIVER OF APPEAL RIGHTS

This Order is entered into knowingly by and with the consent of All Iowa Pool. For that reason, it waives its right to appeal this Order or any part thereof.

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III. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



On behalf of Main Voyage, L.L.C.

d/b/a All Iowa Pool and Supply, Inc.

Dated this 19th day of

APRIL, 2021

Kayla Lyon, DIRECTOR
Iowa Department of Natural Resources

Dated this _____ day of
_____, 2021

Field Office #5; Carrie Schoenebaum; EPA; Water Quality Bureau; I.B.2.C.1