

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: The Martin-Brower Company, L.L.C.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

**IN THE MATTER OF:
The Martin-Brower Company, L.L. C.
Cerro Gordo County, Iowa**

**ADMINISTRATIVE CONSENT
ORDER
NO. 2021-WW-20**

TO: CT Corporation System, Registered Agent
400 E. Court Ave
Des Moines, IA
50309

Steve Crossen, Assistant General Manager
2400 15th St SW
Mason City, IA
50401

I. SUMMARY

This administrative consent order (order) is entered into between The Martin-Brower Company, L.L.C. (Martin-Brower) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to an illegal discharge of a pollutant to a water of the state. Martin-Brower agrees to pay an administrative penalty of \$4,000.00. In the interest of avoiding litigation, the parties have agreed to resolve the violations alleged herein through entry of this order.

Any questions or responses regarding this order should be directed to:

Relating to technical requirements:

Jeremy Klatt, Environmental Specialist Senior
DNR Field Office No. 2
2300 15th St. SW
Mason City, IA 50401
319-927-2640

Relating to legal requirements:

Carrie Schoenebaum, Attorney
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Phone: 515-725-8244

Payment of penalty to:

Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034

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JURISDICTION

This order is issued pursuant to 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 I and the rules promulgated or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

STATEMENT OF FACTS

1. Martin-Brower is a food ingredient warehouse and distribution center. It has numerous locations throughout the United States. The location that is the subject of this order is located at 2400 15th St. SW, Mason City, Iowa.
2. On April 13, 2021, the Department received a complaint alleging a milky white discharge to an unnamed tributary of Black Pit (unnamed tributary) located north of the Coca Cola building on 15th Street SW in Mason City, Iowa. Following the receipt of this complaint, Jeremy Klatt, an Environmental Specialist Senior with the Department, went to the site to investigate. Once on site, Mr. Klatt observed milky white wastewater discharging from the storm sewer immediately north of the Department's Mason City field office building and south of the railroad tracks (site 1). Mr. Klatt took a laboratory sample that indicated the pollutant had high biochemical oxygen demand five day (BOD₅) and low ammonia concentration.¹
3. On April 13, 2021, Mr. Klatt contacted the Mason City engineer's office and requested a copy of the storm sewer map. After reviewing this map, Mr. Klatt was able to determine that the storm sewer which had the discolored water traveled through the Martin-Brower property. Thus, Mr. Klatt met with Steve Crossen, the Assistant General Manager of Martin-Brower, at its property. Once on site, Mr. Klatt located the storm sewer manhole in the northeast corner of the property. When this manhole cover was removed, the water in the storm sewer was observed; it was apparent that a milky white pollutant was entering the sewer from a pipe located north of the manhole. This pipe was not marked on Mason City's storm sewer map. Mr. Crossen and Mr. Klatt were unable to locate any additional manholes on the property.
4. On April 14, 2021, Mr. Klatt went back to the Martin-Brower property and met with Steve Olney, Mason City's engineer, and Mr. Crossen. Together they observed the water in the storm sewers below the manholes along the south side of 15th Street. They observed that all were dry and did not have any evidence of the milky white wastewater. Next, they returned to the manhole on the Martin-Brower property where the milky white wastewater was observed the previous day. At this time, Mr. Crossen indicated that there was an incident on April 12, 2021, in which a milk shake ingredient was spilled from a dumpster at a loading dock on the property. Mr. Crossen reported that staff had cleaned the spilled material up by washing it into the storm sewer. Following this discussion, Mr. Klatt observed that the storm sewer intake where the incident occurred. Mr. Klatt noted that it was filled with milky white colored wastewater. It appeared to be the same color as

¹ All laboratory sample results from samples taken during this inspection are presented in the table below.

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the wastewater observed downstream at Site 1. A laboratory sample was taken at this location (Site 2) and from the plunge pool below the storm sewer outfall (Site 3). Then Mr. Klatt informed Martin-Brower employees that the impacted water would need to be removed from the unnamed tributary, the storm sewers would need to be flushed and the flushed water should be captured and removed.

5. Martin-Brower hired a contractor to remove the contaminated water from the unnamed tributary. The contractor began the afternoon of April 14, 2021, and removed the majority of the contaminated water.
6. On April 15, 2021, Dan Bratrud, an Environmental Specialist with the Department, returned to the site to observe the cleanup. Mr. Bratrud observed that the cleanup was complete.
7. On April 26, 2021, a Notice of Violation (NOV) was sent for the above discussed violations.
8. Laboratory samples were taken at the following locations and the results are in the below table:

Location	Ammonia nitrogen as N milligrams per Liter (mg/L)	Biological Oxygen Demand 5 day (mg/L)	Total Suspended Solids (mg/L)
Site 1	.26	750	52
Site 2	Not tested	5800	26200
Site 3	Not tested	280	30

9. On May 11, 2021, Martin-Brower submitted a letter to the Department stating that in the future it will implement steps to ensure controls are in place to prevent future improper disposal of wastewater.

CONCLUSIONS OF LAW

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into a water of the state, except for adequately treated pollutants discharged pursuant to a permit issued by the Department. The above stated facts demonstrate non-compliance with this provision of law.
2. 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 this provision of law.

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3. Subrule 567 IAC 64.3(1) provides that no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the Director. The above stated facts demonstrate noncompliance with this provision of law.

ORDER

THEREFORE, the Department orders, and Martin-Brower consents to do, the following:

1. Cease all illegal discharges to waters of the State; and
2. Pay an administrative penalty of \$4,000.00 within 30 days of the date the Director signs this order.

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 \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 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 flushing contaminated water into a water of the state rather than paying to have the pollutant properly cleaned up, which may have included hauling it off site to be properly disposed of. This avoided a significant amount of money; thus, it is reasonable to estimate that \$500.00 was saved. Therefore, \$500.00 is assessed for this factor.
 - b. **Gravity of the Violation.** 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 deposits 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 \$2,000.00 is assessed for this factor.

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- c. **Culpability.** Martin-Brower is large company with multiple locations throughout the United States. It stores and distributes food ingredients. This is a highly regulated activity and therefore Martin-Brower has an obligation to be aware of the applicable regulations and comply with those regulations. Therefore, the amount of \$2,000.00 is assessed for this factor.

WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175(1) and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent Martin-Brower. By signature to this order, all rights to appeal this order are waived by Martin-Brower.

NONCOMPLIANCE

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



Cynthia McCauley
General Counsel & SVP Communications

On behalf of The Martin-Brower Company, L.L.C.

Dated this 22nd day of
September, 2021

Kayla Lyon, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES