

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: A to Z Drying, Inc.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

**IN THE MATTER OF:
A to Z Drying, Inc.
Mitchell County, Iowa**

**ADMINISTRATIVE CONSENT
ORDER
NO. 2021-WW- 24**

TO: Alston Jason Penfold, President
3340 Lancer Ave
Osage, IA
50461

Nicholas Halbach, EHS Manager
100 Wallace Rd
Osage, IA
50461

Pappajohn, Shriver, Eide and Nielsen P.C. Registered Agent
103 East State Street
Mason City, IA
50401

I. SUMMARY

This administrative consent order (order) is entered into between A to Z Drying, Inc. (A to Z) 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. A to Z agrees to pay an administrative penalty of \$5,000.00. 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
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. A to Z is an Iowa corporation with production facilities in Osage, Iowa. Founded in 1972, A to Z offers custom spray drying, blending, packaging, and warehousing. A to Z provides cost-effective manufacturing for clients. The location that is the subject of this order is located at 215 State Street, Osage, Iowa 50461.
2. On May 18, 2021, A to Z called the Department and reported it had discharged a chemical called VectoBac 12AS, to the storm sewer on May 16, 2021.
3. On May 19, 2021, Jeremy Klatt, an Environmental Specialist Senior with the Department, and Rachel Glaza, an Environmental Specialist with the Department, went to the site to investigate. Once they arrived at A to Z they met with Nicholas Halbach, Jason Penfold, and George Weber, all of whom are employees of A to Z. Messrs. Halbach, Penfold and Weber explained that the secondary containment area for two tanks on the south side of the property drain into the process wastewater tank of an adjacent production building, and that employees observe the water in the process wastewater tank to decide if it should be sent to the sanitary sewer or discharged to the road. This determination is made by looking at the color of the water in the tank. Further, they stated that this had been the standard practice since the secondary containment was installed in 2008.
4. Mr. Klatt and Ms. Glaza were shown the discharge route that flows from a sump pump located inside the secondary containment's concrete tank, which is located outside of the production building. The discharge point looks like a rain gutter with a downspout and there is a plunge pool beneath which contained turbid brown water. The water also had a sour, fishy odor. A to Z staff indicated that this water was from the discharge that occurred on May 16, 2021. At this location (Site 1) a laboratory sample was taken.¹ Mr. Klatt asked A to Z how the water being discharged was monitored and they indicated that monitoring isn't something they document regularly; however, the water typically discharged was less discolored than the water discharged on May 16, 2021. Mr. Klatt asked why the DNR was called two days after the discharge occurred and A to Z staff indicated that they called after receiving a report from a neighbor who lives approximately two blocks away that the water had entered his basement.

Next, Department staff traveled to the neighbor's property to discuss the discharge. The neighbor stated that he saw wastewater entering the storm drain and took a sample in a jar. The

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

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wastewater in the jar had the same appearance and odor as the water observed in the puddle on A to Z's property. The neighbor indicated that a second sample of the water that came into his basement from the floor drain was a different color. There was standing water in front of the storm drain and a sample of the standing water was obtained (Site 2).

Next, Department staff spoke with Kurt Angel and John Eagan of the City of Osage, and determined the location of the storm sewer outfall that drains the water from A to Z's property. At this location a small amount of water was observed pooled on the ground at the point of the outfall. Mr. Eagan stated that when there are large rain events the water from this outfall flows over the grass area and into Sugar Creek, which is approximately one-half mile away. Department staff detected an odor in the water similar to the odor detected at the above discussed locations.

5. On June 16, 2021, a Notice of Violation (NOV) was sent for the above discussed violations.
6. 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)	Total Kjeldahl Nitrogen as N	Nitrate + Nitrite nitrogen as N
Site 1	210	12000	23300	2400	Not tested
Site 2	1.0	120	130	19	.11

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.

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.

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ORDER

THEREFORE, the Department orders, and A to Z consents to do, the following:

1. Cease all illegal discharges to waters of the State;
2. Within 90 days of the execution of this order A to Z shall conduct training to all employees regarding how to legally manage wastewater and stormwater associated with industrial activities; and
3. Pay an administrative penalty of \$5,000.00 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 the storm drain rather than paying the fee assessed by the City to discharge to its storm sewer. This practice had gone on since 2008. Thus, A to Z likely saved a significant amount of money. Therefore, \$1500.00 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.
 - c. **Culpability.** A to Z is company with two locations in Osage, Iowa. It A to Z offers custom spray drying, blending, packaging, and warehousing. This is a highly regulated activity and

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therefore A to Z 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 A to Z. By signature to this order, all rights to appeal this order are waived by A to Z.

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.



Alston Jason Penfold, President A to Z Drying, Inc.

Dated this 6 day of
Oct 6, 2021

Kayla Lyon, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES