

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

<p>IN THE MATTER OF:</p> <p>Brookstone Specialty Services, Incorporated</p> <p>Cerro Gordo County, Iowa</p>	<p>ADMINISTRATIVE CONSENT ORDER</p> <p>NO. 2022-WW- 11</p>
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TO: Tom Barragy, President
PO Box 2394
225 South Bell Ave,
Ames, IA 50010

Iowa Registered Agents, Inc Registered Agent
400 Locust St., STE 400
Des Moines, IA 50309

I. SUMMARY

This administrative consent order (Order) is entered into between Brookstone Specialty Services, Incorporated (Brookstone) 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. Brookstone agrees to pay an administrative penalty in the amount of \$10,000.00 and in the interest of avoiding litigation, the parties have agreed to resolve the violations alleged herein through entry of this order.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Jacob Donaghy
DNR Field Office #2
2300 15th St SW
Mason City, Iowa 50401
Phone: 641-424-4073

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

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Payment of Penalty to:

Department of Natural Resources
ATTN: Director
Wallace State Office Building
502 E 9th Street
Des Moines, IA 50319
[include Order number with penalty]

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

III. STATEMENT OF FACTS

The Department and Brookstone agree to the following statement of facts:

1. Brookstone is a full service truck wash and disinfecting service. The location that is the subject of this order is located at 1305 19th St SW, Mason City, Iowa 50401.
2. On December 18, 2020, the Department received a complaint alleging that water removed from a portion of Chelsea Creek (creek) located on the south side of Mason City (City) smelled like petroleum and caused an angler's minnows to die.

Following receipt of this complaint the Department went to the location of the 15th street bridge and the creek on the south west side of the city (site 1). At the location of site 1 (where the creek flows into a small pond) the Department observed and documented the following: (1) dead suckers under the ice and (2) brown sludge that was not frozen on top of the ice. Field samples and laboratory samples were taken and the results are in the below tables.

Next, Department staff proceeded to the location of the 19th Street bridge and the creek (site 2). At the location of site 2 a tile outfall that drains from Brookstone flows into the creek. The Department observed and documented milky liquid flowing out of the tile outfall as well as what appeared to a sawdust like material (animal bedding) deposited in the creek. Department staff took laboratory samples and field samples at the location of site 2 and upstream (site 3) and downstream (site 4) of this location. Two workers from a company located nearby approached Department staff and inquired as to what the Department was investigating. These workers stated that the discharge was likely coming from a property to the east where a truck wash had recently began operating.

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Department staff proceeded to the location of Brookstone. Once on site, they met with an employee in the washroom who was unaware of any reason there would be a discharge coming from the facility. That employee stated that they had rinsed out some chemical totes that day but all of the wastewater should be going to the City's sanitary sewer. The employee recommended that they talk with the owner's father, who was more familiar with the operation and was on-site. He was unaware of any reason the facility would have been discharging to the creek and called the owner, Tom Barragy. Mr. Barragy explained that the floor drains in the facility are connected to the City's sanitary sewer and for that reason there should not be a discharge. After some discussion it was determined that the tile line that was responsible for the discharge did come from Brookstone. Further, after the Department described the discharge Mr. Barragy stated that milky liquid was likely the surfactant from rinsing the totes and the brown sludge was most likely distiller's grain residuals. The Department recommended that washing cease until the reason for the discharge was determined and remediated. Mr. Barragy agreed and stated he would work to determine the reason over the upcoming weekend. Mr. Barragy explained that the company purchased the property in August of 2020 and had only just started washing trailers that month.

Field sample and laboratory samples are in the below tables:

December 18, 2020, field samples

Location	Dissolved Oxygen (ppm)	pH	Ammonia (ppm)
Site 1	≥15	8.2	≤0.2
Site 2	9.2	7.3	3.0
Site 3	11.7	8.3	0.3
Site 4	13.1	8.0	0.3

December 18, 2020, laboratory samples

Test	Analyte	Site 3	Site 2	Site 4	Site 1
	Ammonia as N, LAC 10-107-06-1J				
	Ammonia nitrogen as N	<0.050	160	0.44	NA
	Chemical Oxygen Demand, SM 5220 D				
	Chemical Oxygen Demand	<10	5400	19	NA
	Acid Herbicides, EPA 515.3				
	2,4-D	0.0030	2.1	0.010	0.026
	Pentachlorophenol	<0.0002	<0.20	<0.0002	<0.0008
	Picloram	<0.0005	<0.50	0.0024	<0.0020

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	Acifluorfen	<0.0002	<0.20	0.0002	<0.0008
	Dicamba	<0.0002	<0.20	<0.0002	<0.0008
	Glyphosate, EPA 547				
	Glyphosate	0.086	200	0.81	<10

3. On December 19, 2020, Mr. Barragy spoke to the Department over the phone and stated that after looking at schematics for the property he believed he found the source of the discharge. The schematics show a drainage tile that is connected to a catch basin located east of the truck wash building. It is likely that the drainage tile was intended to act as an over flow device. Mr. Barragy planned to continue to investigate and would not wash any additional trucks until he had verified the drainage tile is connected to the catch basin and plugged it.

After this call the Department returned to the location of site 1 and 2. At the location of site 1 the Department did not observe any additional dead fish and the water appeared clear. At the location of site 2 water was still running out of the tile, but it was now clear and flowing at a lower rate than the prior day. Laboratory samples were taken and the results are in the below table:

December 19, 2020, laboratory samples

Test	Analyte	Site 2
	Ammonia as N, LAC 10-107-06-1J	
	Ammonia nitrogen as N	20
	Chemical Oxygen Demand, SM 5220 D	
	Chemical Oxygen Demand	450
	Acid Herbicides, EPA 515.3	
	2,4-D	0.14
	Pentachlorophenol	<0.0050
	Picloram	0.037
	Acifluorfen	0.0058
	Dicamba	0.0069
	Glyphosate, EPA 547	
	Glyphosate	54

4. On December 20, 2020, the Department returned to the location of site 1 and 2. At the location of site 1 the Department did not observe any additional dead fish and the water appeared clear. At the location of site 2 water was still flowing out of the tile line outfall but

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it was clear and flowing at the same rate as the prior day. Laboratory samples were taken at the location of site 2 and the results are in the below table:

December 20, 2020, laboratory samples

Test	Analyte	Site 2
Ammonia as N, LAC 10-107-06-1J		
	Ammonia nitrogen as N	12
Chemical Oxygen Demand, SM 5220 D		
	Chemical Oxygen Demand	290
Acid Herbicides, EPA 515.3		
	2,4-D	0.11
	Pentachlorophenol	<0.0002
	Picloram	0.032
	Acifluorfen	0.0037
	Dicamba	0.0040
Glyphosate, EPA 547		
	Glyphosate	21

5. On December 21, 2020, the Department met with Mr. Barragy at Brookstone. Once on site, Mr. Barragy showed the Department the schematics and the catch basin and the pipes that drain it to the City's sanitary sewer. He then showed the Department an additional pipe that exits the catch basin to the south. The Department observed that livestock bedding had collected on the sides of the catch basin, indicating the drainage line to the holding tank had become clogged at some point and caused a backup into the catch basin. It was this backup that led to the discharge to the overflow tile and then into the creek. Mr. Barragy explained that previously he was not aware that there was an overflow tile and that he intends to temporarily plug it with an expanding plug and eventually permanently cap the line with concrete.

Next, Department staff proceeded to the location of site 2. At this location the Department observed that the flow from the tile outfall was clear and at the same rate as observed on December 19th and 20th. However, while examining the extent of the livestock bedding that had been deposited in the creek, the Department discovered that the amount was approximately 1.5 to 2 feet deep. Following this observation, Department staff called Mr. Barragy to inform him of what was observed. Mr. Barragy stated that he would contact an excavator company to clean the livestock bedding off the property. Mr. Barragy also provided photos to the Department to show that the tile line had been temporarily plugged.

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6. On March 3, 2021, the Department sent a Notice of Violation (NOV) for the above discussed violations. This NOV summarized the violations and the relevant law and included a copy of the laboratory sample results.

8. On March 15, 2021, the Department went back to the location of site 2 and observed that the livestock bedding was still in the creek. It did not appear that any of the livestock bedding had been removed.

9. On March 25, 2021, Paul Vanous, employee of the City's wastewater department, reported to the Department that he observed a discharge coming from the drainage tile near the 19th street south west crossing of the creek (site 2). Upon receipt of this complaint Department staff went to the location to investigate. The Department began at the location of site 2. At this location the Department observed a significant amount of muddy colored water with livestock bedding floating in. It was discharging from the tile that drains Brookstone. The Department took laboratory and field samples at the location of site 2, upstream at the location of site 3, and downstream at the location of site 1. The results of the samples are in the below tables:

March 25, 2021, Field Sample Results

Location	Dissolved Oxygen (ppm)	pH	Ammonia (ppm)
Site 1	12.0	6.7	≤0.3
Site 2	9.1	6.4	≥3
Site 3	12.0	6.7	≤0.3
Site 4	13.1	8.0	0.3

March 25, 2021, laboratory samples

Test	Analyte	Site 3	Site 2	Site 1
Ammonia as N, LAC 10-107-06-1J				
	Ammonia nitrogen as N	<0.050	4.4	0.13
Chemical Oxygen Demand, SM 5220 D				
	Chemical Oxygen Demand	<10	430	<10
Acid Herbicides, EPA 515.3				
	2,4-D	<0.0002	0.030	0.0044
	Pentachlorophenol	<0.00008	<0.00008	<0.00008
	Picloram	<0.0002	0.0004	<0.0002
	Acifluorfen	<0.0002	0.0003	<0.0002
	Dicamba	<0.0002	0.0007	<0.0002
Glyphosate, EPA 547				
	Glyphosate	<0.010	0.034	<0.010

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After taking samples, the Department went to Brookstone and discussed what they observed with Mr. Barragy. Mr. Barragy stated that nothing was being washed at that time and no trucks had been washed recently. The Department concluded that the discharge was a result of excess groundwater from the spring thaw combined with recent rain, which led to a higher volume of water running through the drainage tile and flushing out what had previously been deposited into the drainage tile during the December discharge. During this conversation Mr. Barragy scheduled the livestock bedding to be cleared out of the creek.

10. On March 26, 2021, the Department returned to the site to observe the cleanup of the creek. Brookstone had a contractor on site cleaning the livestock bedding out of the creek. Four truck loads of livestock bedding, which contained approximately 12 cubic yards of material and liquid, was removed from the creek. While on site the contractor also emptied the catch basin. During this process the Department observed a large amount of water draining out of the drainage tile. Because of this observation the Department put tracer dye into the drainage tile. The tracer dye was observed flowing into the drainage tile. The Department removed a manhole cover and observed that the temporary plug was still in place. Mr. Barragy halted all operations at Brookstone until the sewer infrastructure could be fully evaluated. Further cleanup of the creek near site 2 was discussed and it was determined that a lane in the road would have to be closed to complete it; thus Brookstone needed to coordinate with the City and local police to continue with the cleanup.

11. On June 21, 2021, the Department received a complaint alleging illegal dumping of a neon green liquid on the south side of Brookstone's property. The complainant stated that the substance being dumped was BrazeN. Following receipt of this complaint the Department went to the site to investigate. The investigation began at the south side of the Brookstone property. The Department observed small puddles of a bright green liquid. Then the Department drove to the truck wash building and observed a large, 265-gallon, intermediate bulk (IBC) container filled with a green liquid and labeled BrazeN. The Department also observed numerous small 2.5-gallon containers of BrazeN in a IBC cage. The Department went to the office building and met with Blain Bancks, co-owner of Brookstone, who stated that he had no knowledge of the dumping of BrazeN. Then the Department and Mr. Bancks walked to the south side of the property where they all observed the large area of standing green liquid. Mr. Bancks stated that he did not know why his employees would dump the liquid instead of utilizing the 265-gallon IBCs. He also stated that he did not know from which part of Brookstone's operation the material originated. The Department recommended that the product be cleaned up immediately.

12. On June 22, 2021, the Department returned to the site to investigate. Once on site, the Department observed a tank on a car trailer discharging a yellow liquid into the same area that the BrazeN had been discharged to the prior day. The Department then met with Mr. Barragy and discussed a plan to cleanup the site. The Department recommended that the material be sent to a landfill. Next, they discussed the ongoing dumping and Mr. Barragy stated that the material was corn oil wash water. Mr. Barragy also stated that he did not know why the material was being dumped. Following this discussion, the Department proceeded to site 1 where they observed livestock bedding remained in the creek.

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13. On June 23, 2021, the Department returned to Brookstone to check the status of the cleanup. Once on site they met with Mr. Barragy and confirmed cleanup had occurred. Mr. Barragy provided pictures of the cleanup and landfill receipts. No standing liquid or discoloration remained on site. There was a pile of ground up oyster shells that Mr. Barragy said would be sent to the landfill later that day.
14. On July 1, 2021, a NOV was sent for the above discussed violations. Included with this NOV was summary of the relevant law and recommended corrective actions.
15. On July 21, 2021, Mr. Barragy called the Department and reported that the removal of livestock bedding from the creek was in the process of being completed. Following receipt of this call the Department went to the location of site 1 to investigate. Once on site they observed that the livestock bedding had been removed from the creek at this location. The Department proceeded to the location of site 2. At this location the water was too turbid to determine if livestock bedding still remained in the creek.
16. On July 23, 2021, Mr. Barragy called the Department and stated that Brookstone was ready to cleanup the rest of the livestock bedding. Following receipt of this call the Department met Travis Popp of Popp Excavating and a Brookstone employee at the location of site 2. The Department observed that livestock bedding was still in the creek. The Department informed Brookstone that further cleanup was necessary. Later that day the Department confirmed that cleanup was completed.
17. On January 11, 2022, the Department returned to Brookstone. The Department went to the location of site 2 and observed fresh woodchips at the base of the tile outfall and a plume of discolored water and ice. No woodchips or discolored water and ice were observed downstream of site 2 or at the location of site 1.
18. On January 12, 2022, the Department returned the location of site 2 and observed woodchips at the base of the tile outfall, a plume of discolored water and ice and minimal flow exiting the tile outfall .
19. On February 2, 2022, a NOV was sent for the above discussed violations. This NOV asked that a Plan of Action (POA) be submitted to the Department which will ensure that future violations do not occur.
20. On a February 23, 2022, a POA was submitted by Brookstone to the Department.

IV. CONCLUSIONS OF LAW

The Department and the Brookstone agree that the following conclusions of law are applicable in this case:

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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 disposal system without or contrary to the terms of a permit. 567 IAC 64.6 specifies the conditions that are to be included in a permit, including applicable effluent limitations as established in Chapters 61 and 62 of the rules. The above stated facts demonstrate noncompliance with these provisions.

V. ORDER

By the execution of this Order, the Department orders and the Brookstone agrees to do the following:

1. Brookstone shall cease all illegal discharges to waters of the state;
2. In the future Brookstone shall properly dispose of all wastewater;
3. Brookstone shall maintain a log of everything that is washed and the former contents of what was washed. This log shall be kept on site and shall be accessible to the Department upon request;
4. Brookstone shall properly train its employees regarding the proper disposal of wastewater and proof of such training shall be submitted to the Department no later than 30 days after the date the Director signs this Order;
5. Brookstone shall remove all bedding material from Chelsea Creek no later than 30 days after the date the Director signs this Order;
6. Brookstone shall televise the storm sewer line between the Chelsea Creek outfall and the manhole located east of the truck wash building that was first determined to be connected to the storm sewer no later than 30 days after the date the Director signs this Order.
7. A recording of the televised line shall be provided to the Department no later than 15 days after televising the line;
8. If residual bedding material is observed in the above referenced section of storm sewer line, the bedding must be removed from the storm sewer line no later than 60 days after the date the Director signs this Order; and

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9. Brookstone shall pay a penalty in the amount of \$10,000.00 within 30 days of the date the Director signs this Order.

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." Brookstone saved time and money by failing to properly train its employees and by failing to properly oversee them. Brookstone also saved a significant amount of money by failing to properly dispose of the BrazeN wastewater and the corn oil wastewater. The City stated that it would not have accepted this wastewater. Therefore, to properly dispose of it Brookstone would have had to collect the wastewater in containers and disposed of via a third party. The fee range for disposal via a third party is estimated to be between \$2,700.00 and \$11,000.00. Brookstone also saved a significant amount of money through delaying cleanup of the livestock bedding. The estimated economic benefit of noncompliance is at least \$8,400.00. However, because the Department is handling this via an administrative consent order and in light of the administrative penalty cap \$4,000.00 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 dispose of wastewater and livestock bedding degrades water quality. Degradation 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. Brookstone operates a truck wash, which is a highly regulated activity. Therefore, Brookstone has an obligation to be aware of the applicable regulations and comply with those regulations. Brookstone improperly disposed of wastewater multiple

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times and it did so even after it was informed by the Department that the discharge was not proper. Further, Brookstone had to be asked by the Department multiple times to clean up the livestock bedding. Therefore, the amount of \$3,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

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

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.



Tom Barragy, President
Brookstone Specialty Services, Incorporated

Dated this 15th day of
April, 2022

Kayla Lyon, DIRECTOR
Iowa Department of Natural Resources

Field Office #2, Carrie Schoenebaum, EPA, Water Quality Bureau, I. C. I.