

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

<p>IN THE MATTER OF:</p> <p>THE MARTIN-BROWER Co., L.L.C.</p>	<p style="text-align: center;">ADMINISTRATIVE CONSENT ORDER</p> <p>No. 2024-WW-14</p>
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To: Jason Stufflebeam, Operations Manager
Martin-Brower Co., L.L.C.
2400 15TH ST SW
Mason City, IA 50401

Re: Unpermitted discharge to a Water of the State.

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 (DNR) to resolve legal matters related to a discharge of a pollutant to a water of the state. As detailed below, Martin-Brower agrees to post signage to avoid discharges into the site's storm drain, train its employees on proper spill disposal, and pay an administrative penalty of \$6,500.

Relating to technical requirements:

Jeremy Klatt, Env. Specialist Senior
Iowa Department of Natural Resources
Field Office No. 2
2300 15th St. SW
Mason City, Iowa 50401
Phone: (641) 424-4073

Relating to legal requirements:

Bradley Adams
Attorney for the DNR
Wallace State Office Building
6200 Park Ave., Ste. 200
Des Moines, IA 50321
Phone: (515) 664-8894

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
6200 Park Ave., Ste. 200
Des Moines, Iowa 50321

RECEIVED

SEP 06 2024

II. 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.

III. 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 September 22, 2021, Martin-Brower signed Administrative Consent Order No. 2021-WW-20 to resolve an illegal discharge that occurred on April 12, 2021, in which a milkshake ingredient was spilled from a dumpster at a loading dock on the property. At that time, a Martin-Brower representative reported that employees had cleaned the spilled material by removing the product to the storm sewer.
3. On February 8, 2024, DNR Field Office 2 (FO2) received a complaint regarding discolored water in an unnamed tributary to Chelsea Creek in Mason City. Jeremy Klatt, FO2 Environmental Specialist Senior, responded to the complaint and confirmed that there was a discharge from a storm sewer that discolored the unnamed tributary. The discharge was found to originate on the Martin-Brower property. Martin-Brower staff had spilled a milkshake ingredient and flushed a portion of the pollutant into the storm sewer, resulting in a discharge of a pollutant with a very high biochemical oxygen demand (BOD) into Chelsea Creek.
4. That same day, Martin Brower was instructed to flush the storm sewer and to remove the contaminated water from the Unnamed Tributary. Martin Brower hired a contractor and was able to remove a majority of the contaminated water from the sewer and unnamed tributary.
5. On February 20, 2024, FO2 issued a Notice of Violation to Martin Brower for illegally discharging a pollutant into a water of the state.

IV. 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.

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2. Iowa Code section 455B.173 authorizes the Environmental Protection Commission (Commission) to adopt rules establishing water quality and discharge standards. The Commission has done so at 567 IAC Chapters 60 through 65.
3. 567 IAC 61.3(2)“e” states that surface 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 of law.

V. ORDER

Therefore, the DNR orders and Martin-Brower agrees to the following:

1. Within 90 days of the effective date of this order, Martin-Brower shall post signage in the vicinity of the loading dock storm drains, reminding staff that the drains discharge to a surface water.
2. Within 90 days of the effective date of this order, Martin-Brower shall submit documentation showing that employees have been trained in proper spill remediation.
3. Within 60 days of the effective date of this order, Martin-Brower shall pay a \$6,500 administrative penalty.

VI. CIVIL PENALTY

1. Iowa Code § 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures authorizing the Director to assess administrative penalties at 567 IAC 10.
2. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violations of Iowa wastewater law. However, 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.
3. 567 IAC 10 establishes the criteria that the DNR must consider in determining whether an administrative penalty is warranted, and if so how much the penalty should be. The general categories for consideration are the economic benefit of the alleged non-compliance by the violator, the gravity of the alleged violation, and the culpability of the violator. The administrative penalty assessed by this Order is determined as follows:

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- a. Economic Benefit: 567 IAC chapter 10 requires that the DNR consider the costs saved or that were likely to be saved by noncompliance. 567 IAC 10.30(1) states that “where a violator realizes an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties to offset the economic benefit.” 567 IAC 10.30(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.”

Martin-Brower realized an economic benefit by removing the material to the storm sewer. Proper clean-up would have included soaking the material up with an absorbent and capturing any rinse water for proper disposal. This would have taken additional staff time and resulted in the closure of the loading dock while clean-up was occurring.

As such, \$500 is assessed for this factor.

- b. Gravity of the Violations: Elements to consider when determining the gravity of a violation include the actual or threatened harm to the environment or public health and safety, and whether the violation threatens the integrity of the regulatory program.

The incident resulted in a discharge of a pollutant with a very high BOD into a Water of the State. Pollutants with a high BOD degrade surface waters by removing the oxygen from the water and can result in fish kills. The discharge also caused a violation of the State General Water Quality Criteria by discoloring the Unnamed Tributary for several hundred feet.

As such, \$3,000 is assessed for this factor.

- c. Culpability: The factors to be considered in determining the culpability of the violator include the degree of intent or negligence of the violator, whether the case involves false reporting of required information and whether the violator has taken remedial measures to address the harm caused by the violations.

The material was intentionally discharged to the storm sewer. Martin-Brower intentionally discharged the same pollutant to the storm sewer in 2021 and was informed that it was illegal to do so at that time. Martin-Brower agreed to cease illegal discharges in an Administrative Consent Order in 2021.

As such, \$3,000 is assessed for this factor.

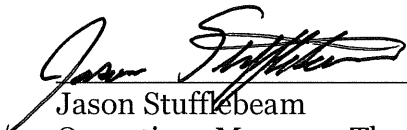
VII. APPEAL RIGHTS

As this Order is entered by consent of the parties, there is no right of appeal.

VIII. NONCOMPLIANCE WITH THIS ORDER

Failure to comply with any requirement of this Order may result in the imposition of further administrative penalties or referral to the Iowa Attorney General to obtain injunctive relief and/or 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.

Kayla Lyon, Director
Iowa Department of Natural Resources



Jason Stufflebeam
Operations Manager, The Martin Brower Co.

09/04/2024, 2024.
Month Day

Sept. 4th 2024