

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

IN THE MATTER OF:

**NMC HOLDINGS, LLC**

**Ida County, Iowa  
AFO #62972**

ADMINISTRATIVE CONSENT ORDER  
NO. 2016-AFO-03

TO: Mike Blaser, Registered Agent  
Brown Winick Law Firm  
666 Grand Avenue, Suite 2000  
Des Moines, Iowa 50309

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and NMC Holdings, LLC (NMC) for the purpose of resolving water quality violations resulting from a manure discharge at its animal feeding operation in Ida County, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Michelle Sabatini, Field Office 3  
Iowa Department of Natural Resources  
Gateway North Mall – 1900 North Grand  
Spencer, Iowa 53101  
Phone: 712/262-4177

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/725-9572

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent 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

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: NMC HOLDINGS, LLC

III, Part 1; Iowa Code chapter 459 and the rules adopted 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**

NMC neither admits nor denies Paragraphs 3-5 of this Section III [Statement of Facts].

1. NMC owns and operates an animal feeding operation located at 5147 120<sup>th</sup> Street, Holstein, Iowa (SW ¼, Section 8, Griggs Township, Ida County). The facility is known as Holstein Sow and Litter and is referred to herein as the “NMC facility.” The confinement facility has a capacity of 4,525 head of sow/litter/gestation swine (1,810 animal units).
2. On September 16, 2015, Dwain Bankson, NMC facility contact, contacted DNR Field Office 3 to report a manure spill at the NMC facility. Mr. Bankson stated that an unknown amount of manure had reached a waterway adjacent to the NMC facility.
3. On the same day, Michelle Sabatini, DNR Field Office 3 environmental specialist, investigated the manure spill. Ms. Sabatini spoke to Mr. Bankson during the investigation. Mr. Bankson stated that an employee turned the pump on at the lift station to draw wastewater from the lagoon system to circulate water to recharge the shallow pit in the gestation barn. The pump was not turned off at the end of the day. The pump operated with a manual switch, there were no timers or alarms to execute an emergency shut down. Therefore the wastewater was pumped into the gestation barn overnight until employees arrived the following morning. The wastewater spilled over the pit and flowed from each of the three doors on the building. The water overflow from the two west doors ran downhill and was stopped by the secondary containment berm. There was no evidence that the water was discharged from the secondary containment berm.
4. Ms. Sabatini noted a flow path of wastewater from the south door entering the road ditch. There was long grass in the road ditch, but Ms. Sabatini noted a strong manure odor. She also observed manure laden water sitting in a culvert that discharged to the tributary adjacent to the property. The water was dark brown and had a strong manure odor. The field test of this water indicated an ammonia level above 3.0 ppm. Ms. Sabatini collected a sample of the water for laboratory analysis. The laboratory sample results indicated the following concentrations: E.coli - >2,400,000 [MPN]/100mL; Ammonia – 1,000 mg/L; and Biological Oxygen Demand (BOD) – 760 mg/L.
5. Mr. Bankson showed Ms. Sabatini where the culverts entered the tributary. The facility piled dirt on both outfalls to stop any further discharges. At

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: NMC HOLDINGS, LLC

the time of the investigation there was water in the tributary. It was colorless and did not have an odor. The field test of this water indicated an ammonia level of 0.5 mg/L. The tributary flows into a main branch of Ashton Creek. Ms. Sabatini noted the branch had a high flow rate, any contaminated water that entered this branch quickly mixed and flowed downstream one mile to Ashton Creek. Ms. Sabatini continued downstream for six miles checking locations for impacts from the manure release. Ms. Sabatini observed a grass area containing backwash water from the creek in the southwest corner of the bridge at 120<sup>th</sup> Street and Carriage Road. The water was brown and had a manure odor. Ms. Sabatini collected a sample of the water for laboratory analysis. The laboratory sample results indicated the following concentrations: Ammonia – 16 mg/L; and BOD – 5.5 mg/L. The results indicated an increase from the upstream samples that Ms. Sabatini collected which indicated the following concentrations: Ammonia - 0.24 mg/L and BOD - <2mg/L.

6. On October 13, 2015, NMC submitted a timely spill report to the DNR. On October 26, 2015, DNR issued a Notice of Violation letter to NMC in care of Mr. Bankson for the violations discovered during Ms. Sabatini's investigation. The letter informed Mr. Bankson the matter was being referred for further enforcement.

#### IV. CONCLUSIONS OF LAW

NMC neither admits nor denies Paragraph 2 of this Section IV [Conclusions of Law].

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. Iowa Code sections 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. During DNR Field Office 3's investigation in September 2015, it was determined that manure from the NMC facility was discharged into an unnamed tributary. The above-mentioned facts indicate a violation of these provisions.

3. 567 IAC 65.2(3) states that the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state or into a tile line that discharges to waters of the state. During DNR Field Office 3's investigation in September 2015, it was determined that manure from the NMC facility had been discharged into an unnamed tributary. The above facts indicate violations of this provision.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: NMC HOLDINGS, LLC

4. The DNR has determined that there is no likelihood that the violations identified in Paragraphs 2-3, Section IV [Conclusions of Law] will occur again as to an occurrence similar to the occurrence that led to the manure release that that is the subject of this administrative consent order if NMC implement the requirements set forth in Paragraphs 1.a and 1.b, Section V [Order] of this administrative consent order.

**V. ORDER**

THEREFORE, the DNR orders and NMC agrees to do the following:

1. NMC shall take the following actions to prevent further discharges of manure from its facility to a water of the state caused by a similar occurrence to the occurrence that led to the manure release that is the subject of this administrative consent order:
  - a. NMC shall install alarms and/or timers on its pumps and/or personnel at the NMC facility to prevent any future release. The alarms or timers shall be placed into service at the NMC facility within 30 days of the date the Director signs this administrative consent order. NMC shall confirm placement into service to DNR Field Office 3, and DNR Field Office 3 can investigate and confirm the same;
  - b. NMC shall develop a Standard Operating Procedure for all its employees detailing the steps to be taken to prevent any future discharges from occurring. The Standard Operating Procedure shall be submitted to DNR Field Office 3 within 30 days of the date the Director signs this administrative consent order and shall be implemented immediately upon receipt of written approval from DNR Field Office 3; and
2. NMC shall pay an administrative penalty in the amount of \$2,750.00 within 30 days of the date the Director signs this administrative consent 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 each of the water quality 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 DNR has determined that the most effective and efficient means of addressing

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: NMC HOLDINGS, LLC

the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$2,750.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR 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.” Due to the proximity of the NMC facility to a water of the state the NMC facility requires diligent oversight to prevent a discharge. This discharge could have been prevented if NMC had installed alarms or timers on its pumps. NMC gained an economic benefit from delaying the installation of alarms or timers. Based on the above facts, an economic benefit of \$500.00 is being assessed for this factor.

Gravity – 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 that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. DNR Field Office 3 documented a manure discharge that impacted a water of the state. The violations included in this administrative consent order threaten the integrity of the regulatory program because compliance with animal feeding operation requirements is required of all regulated animal feeding operations in this state. Therefore, \$1,250.00 is assessed for this factor.

Culpability – NMC has a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that its conduct is subject to DNR’s rules. However, this was an accidental release that was promptly dealt with to minimize impact and was timely reported to the DNR. Therefore, \$1,000.00 is assessed for this factor.

## **VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of NMC. For that reason NMC waive the right to appeal this administrative consent order or any part thereof.

## **VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: NMC HOLDINGS, LLC

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.

  
\_\_\_\_\_  
CHUCK GIPP, DIRECTOR  
Iowa Department of Natural Resources

Dated this 15<sup>th</sup> day of  
February, 2016.

  
\_\_\_\_\_  
NMC HOLDINGS, LLC  
Michael Bensen, Attorney for  
NMC HOLDINGS, LLC

Dated this 10<sup>th</sup> day of  
FEBRUARY, 2016.

Facility #62972; Kelli Book, DNR Field Office 3, EPA, VIII.D.1.a, VIII.D.3.a