

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

<p>IN THE MATTER OF:</p> <p>NFP of IOWA, LLP</p> <p>Adams County, Iowa</p> <p>AFO #61292</p>	<p style="text-align: center;">ADMINISTRATIVE CONSENT ORDER NO. 2016-AFO- 27</p>
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TO: Jay Moore
NFP of Iowa, LLP
P.O. Box 244
Jackson, MN 56143

Gary Dial, Registered Agent
NFP of Iowa, LLP
2589 Ubben Avenue
Williams, IA 50271

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and NFP of Iowa, LLP (NFP) for the purpose of resolving water quality violations resulting from a manure discharge at NFP's animal feeding operation in Adams 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:

Dan Olson, Field Office 4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, Iowa 50022
Phone: 712/243-1934

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 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.

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III. STATEMENT OF FACTS

1. NFP owns and operates an animal feeding operation located at 1913 Aspen Avenue, Nodaway, Iowa (Section 19, Douglas Township, Adams County, Iowa). The facility is a 2,931.20 animal unit swine farrowing confinement operation. The facility uses shallow pits under the confinement buildings that drain to an earthen lagoon for storage prior to application.

2. On July 30, 2015, Jay Moore, Director of Environmental Services for NFP, contacted DNR Field Office 4 to report a manure release at the NFP facility. He stated the release occurred about an hour earlier when manure overflowed from a clean-out riser in a manure transfer pipe while manure was being transferred from the shallow pit to the earthen lagoon. Mr. Moore stated that approximately 15,000 gallons of manure had been released from the pipe and flowed across a field to a ditch with flowing water to the north.

3. On July 30, 2015, Dan Olson, DNR Field Office 4 environmental specialist senior, and Dan Weber, DNR Field Office 4 environmental specialist, visited the facility. Mr. Olson observed pooled manure on the ground near the transfer pipe clean-out risers at the northwest corner of the facility. He also noted that a large round bale of hay had been placed in the culvert on the south side of 190th Street to stop or slow the flow of manure. Mr. Olson and Mr. Weber followed the path of manure across the pasture to the north to a ravine where a dam had been constructed and another bale of hay had been put in place. Manure was not flowing at the time of the visit, but the field office personnel observed manure was pooled in a depression along a flow path leading to a point where it had entered a small unnamed tributary to the Middle Nodaway River. The field office personnel conducted field tests and collected laboratory samples of the impacted areas and the results were as follows:

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Location	Field Test for Ammonia (mg/L)	Laboratory Sample for Ammonia (mg/L)	Laboratory Sample for E.Coli (MPN/100 mL)	Laboratory Sample for BOD (mg/L)	Comments
Upstream of Discharge Point	<1	0.35	24,000	6	No foam and no odor
Fence Area with Depressions full of Manure	Too turbid for field test	230	2,400,000	910	Dark brown water in the depression
Discharge Point at Unnamed Tributary	Too turbid for field test	280	920,000	1,000	Dark brown water and a manure odor. Water was at a trickle flow
Downstream of the Discharge Point	5	5.2	40,000	17	No foam and no odor

4. On July 31, 2015, Mr. Olson and Mr. Weber returned to the facility and noted that the pooled manure and saturated soil had been excavated and removed from the pasture.

5. On December 9, 2015, DNR issued a Notice of Violation letter to NFP for the violations discovered during the July 2015 inspection.

6. On December 21, 2015, DNR Field Office 4 received a letter from NFP's attorney. The letter stated there was no direct discharge to a water of the state. The letter also stated that NFP implemented quarterly routine service of the discharge lines to ensure that the lines are fully open and operating correctly. The facility also implemented a procedure ensuring that a facility staff person is outside the buildings when the plugs in the pits are pulled.

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 the July 2015

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investigation, DNR Field Office 4 found evidence that the manure from the NFP facility was discharged to an unnamed tributary of the Middle Nodaway River. 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 the July 2015 investigation, DNR Field Office 4 found evidence that the manure from the NFP facility was discharged to an unnamed tributary of the Middle Nodaway River. The above facts indicate violations of this provision.

4. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. During the June 2015 investigation, the field office personnel observed the water impacted by the manure release was brown, turbid and had a manure odor. The above mentioned facts indicate violations of the general water quality criteria.

5. The DNR has determined that there is no likelihood that the violations identified in Paragraphs 2-4, Section IV [Conclusions of Law] will occur again if NFP continues to implement the procedures it provided in the December 2015 letter to the DNR detailed in Paragraph 6, Section III [Statement of Facts] of this administrative consent order.

V. ORDER

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

1. NFP shall continue to implement quarterly routine service of the discharge lines to ensure that the lines are fully open and operating correctly. NFP shall maintain records of the routine service and the records shall be available for inspection on-site;
2. NFP shall continue to implement a procedure ensuring that a facility staff person is outside the buildings when the plugs in the pits are pulled. NFP shall maintain a record indicating when the manure was transferred and the employee who was monitoring the transfer. The records shall be available for inspection on-site; and
3. NFP shall pay an administrative penalty in the amount of \$500.00 within 30 days of the date the Director signs this administrative consent order.

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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 the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$500.00. 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. It is likely NFP recognized little or no economic benefit as a result this manure release; therefore, a minimal amount of \$50.00 is being assessed.

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. The discharge of manure from the NFP facility resulted in the degradation of water quality. The manure discharge from the NFP facility threatens the integrity of the animal feeding operation regulations. Therefore, \$250.00 is assessed for this factor.

Culpability – NFP has a duty to know the regulations and to be aware that its actions are subject to the regulations. In this case, NFP acted immediately upon discovering the release to minimize the impact of the release. Based on the information above, a minimal culpability amount of \$200.00 is being assessed.

VII. WAIVER OF APPEAL RIGHTS

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

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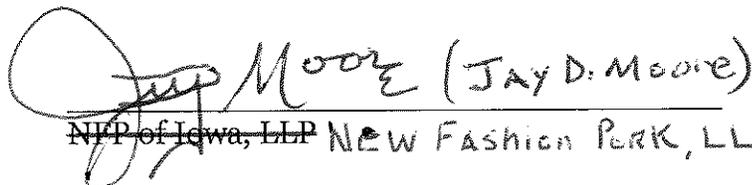
VIII. NONCOMPLIANCE

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 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 29th day of
November, 2016.



NFP of Iowa, LLP NEW FASHION PARK, LLP

Dated this 21 day of
NOVEMBER, 2016.

AFO #61292; Kelli Book, DNR Field Office 4, EPA, VIII.D.1.a, VIII.D.3.a



STATE OF IOWA

TERRY E. BRANSTAD, GOVERNOR
KIM REYNOLDS, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
CHUCK GIPP, DIRECTOR

CERTIFIED MAIL

October 28, 2016

✓ Jay Moore
NFP of Iowa, LLP
P.O. Box 244
Jackson, MN 56143

Gary Dial, Registered Agent
NFP of Iowa, LLP
2589 Ubben Avenue
Williams, IA 50271

Dear Mr. Moore and Mr. Dial,

In July 2015, DNR Field Office 4 visited your animal feeding operation located at 1913 Aspen Avenue; Nodaway, Iowa regarding a manure release reported by the facility. During the visit, it was determined that the manure was released to an unnamed tributary of the Middle Nodaway River. In December 2015, DNR issued a Notice of Violation letter for the violations. The DNR has determined the violations warrant further enforcement. The DNR would like to offer you the opportunity to enter into an administrative consent order to address the violations.

Please review the enclosed administrative consent order. The DNR wishes to resolve this matter with the use of the administrative consent order. If you are interested in resolving the violations with the administrative consent order, please sign and return it to me or contact me by telephone by **Monday, November 28, 2016**. If I do not hear from you by November 28, the DNR will issued a unilateral administrative order with an increased monetary penalty.

If you have questions please contact me at (515) 725-9572 or at kelli.book@dnr.iowa.gov.

Sincerely,

Kelli Book
Attorney for the Department

CC: Dan Olson, DNR Field Office 4 (w/enclosure)
#1430