

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

IN THE MATTER OF:

NOR-AM COLD STORAGE, INC.

Plymoth County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2022-WW-05

TO: NOR-AM Cold Storage, Inc.
801 6th St. SW
Le Mars, Iowa 51031

I. SUMMARY

This administrative consent order (Order) is entered into between NOR-AM Cold Storage, Inc. (NOR-AM), and the Iowa Department of Natural Resources (DNR) for the purpose of resolving violations related to the improper discharge of wastewater. The Order requires NOR-AM to operate the Facility in a manner that complies with applicable laws and rules related to the discharge of wastewater, submit a plan of action to DNR Field Office 3 regarding the future disposal of ammonia, and pay an administrative penalty of \$10,000. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Jacob Simonsen
Iowa Department of Natural Resources
Field Office 3
1900 N Grand Ave, Ste E-17
Spencer, Iowa 51301
712-262-4177

Relating to legal requirements:

Noah Poppelreiter
Iowa Department of Natural Resources
Legal Services Bureau
502 E. 9th Street
Des Moines, IA 50319-0034
515-669-8752

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East 9th Street
Des Moines, IA 50319-0034

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II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director of the DNR to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 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

1. NOR-AM owns and operates a cold storage facility at 801 6th Street SW, Le Mars, Iowa (Facility). The Facility utilizes an anhydrous ammonia refrigeration system in its cold storage process. This anhydrous ammonia refrigeration system is located, at least in part, on the roof of the Facility.
2. On November 5, 2018, the DNR issued, and NOR-AM agreed to, Administrative Consent Order 2018-WW-16 (Prior Order). The facts and terms of the Prior Order are hereby incorporated by reference into this Order. Notably, the DNR issued the Prior Order due to an illegal discharge of ammonia to West Floyd Park Creek (Creek) during the cleaning and maintenance of the Facility's anhydrous ammonia refrigeration system. This discharge was caused due to the release of ammonia to the Facility's roof drains, which lead directly to the City's storm sewer and the Creek. This discharge caused toxic conditions in the Creek which resulted in a fish kill.
3. On September 14, 2021, the City of Le Mars contacted DNR environmental specialist senior Tom Roos to report a fish kill in the Creek.
4. Mr. Roos contacted NOR-AM regarding the September 14 fish kill. NOR-AM admitted that the facility had discharged anhydrous ammonia to the Creek on or about September 11, 2021.
5. On September 15, 2021, DNR environmental specialist Jacob Simonsen investigated the Creek. Mr. Simonsen noted dead fish in and around the creek.
6. Mr. Simonsen also contacted NOR-AM during his investigation. NOR-AM again confirmed the discharge of anhydrous ammonia to the Creek.
7. On October 22, 2021, the DNR issued NOR-AM a Notice of Violation for the violations related to the September 11, 2021, discharge of anhydrous ammonia.
8. On or about October 29, 2021, NOR-AM sent a letter to DNR Field Office 3 detailing the events of September 11, 2021. NOR-AM stated in the letter that ammonia was released from the roof of the Facility through the Facility's roof drains. These roof drains continue to connect directly to the City's storm sewer, causing the released

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ammonia to discharge to the storm sewer and the Creek. NOR-AM estimated approximately four pounds of anhydrous ammonia was discharged to the Creek.

IV. CONCLUSIONS OF LAW

The following Conclusions of Law are applicable to this matter:

1. Iowa Code section 455B.173 provides that the Environmental Protection Commission (Commission) shall adopt rules related to water quality standards, pretreatment standards, and effluent standards. The Commission has adopted such rules at 567 IAC chapters 61 and 62.

2. Iowa Code 455B.186 and 567 IAC 62.1 prohibit the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged in accordance with rules adopted by the Environmental Protection Commission. NOR-AM discharged anhydrous ammonia to the City of Le Mars' storm sewer and to the Creek. The facts of this case indicate a violation of these provisions.

3. 567 IAC 61.2(3) prohibits the violation of the general water quality criteria, including but not limited to the requirement of 567 IAC 61.3(3)"d" that all waters be free of substances toxic to aquatic life. NOR-AM discharged anhydrous ammonia to the Creek in quantities that caused toxic conditions for the aquatic life in the Creek. The facts of this case indicate a violation of these provisions.

4. Iowa Code 455B.386 requires any person storing or handling a hazardous substance to notify the DNR and local law enforcement of a hazardous condition caused by the storage or handling of the hazardous substance as soon as possible, but no later than six hours from the onset of the hazardous condition. Anhydrous ammonia is a hazardous substance. The discharge of the anhydrous ammonia to storm sewers and the Creek constitute a hazardous condition. NOR-AM failed to notify the DNR and local law enforcement of the hazardous condition until notified by the DNR of fish kill three days later. The facts of this case constitute a violation of this code section.

V. ORDER

Therefore, DNR orders and NOR-AM agrees to do the following:

1. NOR-AM shall operate the Facility in a manner that does not allow illegal discharges to waters of the state and complies with all applicable laws related to wastewater.

2. Within 30 days of the date the Director signs this order, NOR-AM shall submit a plan of action to DNR Field Office 3 detailing the procedures it will take for the future disposal of anhydrous ammonia.

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3. Within 30 days of the date the Director signs this Order, NOR-AM shall pay an administrative penalty of \$10,000.00.

VI. PENALTY

1. Iowa Code 455B.191 authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the violations involved in this matter. 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 and criteria for assessment of penalties at 567 IAC chapter 10. DNR is assessing a penalty of \$10,000.00 for the violations described above. 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.” NOR-AM gained an avoided cost benefit by failing to implement, operate, and maintain the Facility in a manner that prevents the discharge of anhydrous ammonia; by failing to properly dispose of all anhydrous ammonia at the Facility; and by failing to properly train staff and contractors handling anhydrous ammonia at the Facility. Using a reasonable estimate for these costs, \$3,000.00 is 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. The discharges in this case were direct discharges of anhydrous ammonia to the City’s storm sewer and the Creek. The discharge caused a toxic condition in the environment, resulting in a fish kill. NOR-AM has discharged anhydrous ammonia to the Creek previously. The repeated nature of these discharges harms the wastewater program. \$3,000.00 is assessed for this factor.

Culpability – NOR-AM has a duty to maintain and operate the Facility in a manner that does not cause violations of wastewater law. As a result of the prior order, NOR-AM knew that release of ammonia to the Facility’s roof drains caused toxic conditions in the environment. NOR-AM continued to release ammonia in this manner. As a person who stores and handles anhydrous ammonia, NOR-AM has a duty to report all spills and other hazardous conditions created by its anhydrous ammonia. NOR-AM failed to report the hazardous condition as required. \$3,000.00 is assessed for this factor.

Aggravating Circumstances – NOR-AM has shown a reckless disregard for the anhydrous ammonia under its control, releasing it to the environment in a manner that has

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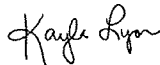
caused multiple discharges and related fish kills. After the discharge in 2018, NOR-AM should have ceased the release of ammonia to the Facility's storm drains, yet it failed to do so. Given repeated release of liquid anhydrous ammonia through the storm drains, an additional \$1,000.00 is assessed in this Order.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of NOR-AM. For that reason, NOR-AM waives their right to appeal this Order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order, and constitutes a permanent remedy of the conditions which caused the violations. 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.



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KAYLA LYON, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Marissa Molland

NOR-AM Cold Storage, INC.

Dated this 11 day of

March, 2022

Field Office #3; EPA; I.C.1