

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**

IN THE MATTER OF:  VITALIX, INC.	ADMINISTRATIVE ORDER NO. 2020-WW- 06
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TO: Vitalix, Inc.  
Greg Olson, President  
1820 10<sup>th</sup> Avenue  
Sydney, Nebraska 69162

**I. SUMMARY**

The Director of the Iowa Department of Natural Resources (DNR) through this administrative order (Order) requires Vitalix, Inc. (Vitalix)<sup>1</sup> to comply with the provisions of Section V of this Order, subject to your appeal rights stated in this Order.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

Benjamin Stracuzzi  
Field Office 6  
Iowa Department of Natural Resources  
1023 W Madison Street  
Washington, IA 52353  
Ph. 319-653-2135

**Relating to legal requirements:**

Noah Poppelreiter  
Legal Services Bureau  
Iowa Department of Natural Resources  
502 E. 9<sup>th</sup> Street  
Des Moines, IA 50319-0034  
Ph. 515-725-8248

**Payment of penalty to:**

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

**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

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<sup>1</sup> Vitalix is incorporated in the state of Nebraska and does not have a certificate of authority from the Iowa Secretary of State to transact business in the state of Iowa. Additionally, the address on file at the Secretary of State for Nebraska is not current. Vitalix provided the DNR the address on this order. The DNR considers this address the last known address for Vitalix.

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

**III. STATEMENT OF FACTS**

1. Vitalix manufactures livestock feed supplements at a facility in Wilton, Iowa (Facility). The manufacturing process at the Facility produces a dark brown wastewater. Vitalix disposes of its wastewater through the City of Wilton wastewater treatment facility. Vitalix does not have a NPDES permit authorizing the discharge of wastewater to a water of the United States.

2. On May 28, 2019, the DNR issued Administrative Order 2019-WW-06 (Prior Order) to Vitalix for a discharge of wastewater from the Facility that occurred July 18, 2018. Vitalix appealed the Prior Order, and the appeal was pending at all times relevant to this Order.

3. At or about 2:50 p.m. on August 9, 2019, Vitalix employee Zac Clymer contacted the voicemail of DNR Field Office 6 environmental specialist senior Kurt Levetzow. Mr. Clymer stated that five to ten gallons of wastewater released from the Facility, but no wastewater reached the storm sewer inlets and that Vitalix had created a berm to contain the wastewater release.

4. At or about 4:30 p.m. on August 9, 2019, employees of HR Green, Inc., and Eurofins Test America (jointly and to include all employees, Consultants) were at unrelated project for the City of Wilton near the Facility. The Consultants observed and documented the following.

5. The Consultants observed a large volume of wastewater ponding in the Facility's gravel lot. The pond had significantly more volume than ten gallons. The wastewater was dark orange and brown in color and smelled of molasses. The Consultants observed wastewater stored in an underground tank. The wastewater in the tank matched the color and consistency of the wastewater ponding on the ground. The Consultants collected samples of the wastewater in the tank and from the ground for laboratory testing.

6. The wastewater was being released from a hose coming from the Facility. The hose was pointed in the direction the storm sewer inlet at the west of the Facility. The wastewater flowed from the hose directly toward the western storm sewer inlet. The Consultants observed that fresh dirt had been placed over the inlet by Vitalix. The dirt appeared to have been placed on the inlet after the start of the discharge and was not containing the wastewater in any meaningful fashion. No other attempt to control the wastewater was present. The Consultants took samples of the wastewater from the western storm sewer for laboratory testing.

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7. The western storm sewer flows to the south towards the front of the Facility and merges with the main storm sewer system. Another storm sewer inlet is present at the front of the Facility. The storm sewer system discharges at Mud Creek (Creek). The Consultants inspected the southern storm sewer inlet and observed wastewater at this location as well. The Consultants took samples of the wastewater for laboratory testing from the southern storm sewer inlet. They collected the samples using vacuum tubes. While collecting the samples, the clear tubes turned the distinct dark brown color of the wastewater.

8. The Consultants attempted to contact the DNR at or about 4:45 p.m., but did not make contact due to it being outside of business hours.

9. No rainfall occurred in Wilton, Iowa, on August 9, 2019.

10. On August 12, 2019, DNR Field Office 6 environmental specialist Benjamin Stracuzzi contacted the Consultants. The Consultants provided a statement to Mr. Stracuzzi and agreed to send him the photos taken at the Facility and the laboratory results when they were available.

11. After discussing the matter with the Consultants, Mr. Stracuzzi investigated the Facility. Mr. Stracuzzi observed that wastewater was ponding at the western storm sewer.

12. Mr. Stracuzzi inspected the outlet of the storm sewer. No noticeable evidence of wastewater was present. However, approximately one and one-half inches of rain fell between August 11, 2019, and the morning of August 12, 2019.

13. The Consultants provided Mr. Stracuzzi the results of the laboratory testing on August 20, 2019. The results of laboratory testing of the samples are as follows:

	Oil and Grease (mg/L)	Ammonia (mg/L)	Total Kjeldahl Nitrogen (mg/L)	Total Suspended Solids (mg/L)	Biochemical Oxygen Demand (mg/L)
Underground storage tank	36	134	237	120	2,050
Wastewater Ponding	N/A	N/A	2950	N/A	188,000
Western Storm Sewer	55.6	400	1180	3220	50,500

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Southern Storm Sewer	61.5	26.6	63.4	282	230
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These results indicate wastewater entered the storm sewer.

**IV. CONCLUSIONS OF LAW**

The following Conclusions of Law are applicable to this matter:

1. 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. Vitalix discharged wastewater to the City of Wilton storm sewer and to the Creek. The facts of this case indicate a violation of these provisions.

2. 567 IAC 61.2(3) provides that all wastes discharged to waters of the state must be of such quality that the discharge will not cause the narrative water quality criteria established at 567 IAC 61.3(2) to be exceeded. 567 IAC 61.3(2) establishes narrative water quality criteria. These criteria provide that all waters shall be free from materials attributable to wastewater discharges producing objectionable color, odor, or other aesthetically objectionable conditions. The wastewater discharged was brown in color and contained oil, grease, and other pollutants. The facts of this case indicate a violation of these rules.

**V. ORDER**

Therefore, DNR orders Vitalix to do the following:

1. Vitalix shall cease all illegal discharges to waters of the state.
2. Within 60 days of the date the Director signs this Order, Vitalix shall submit to DNR a written plan describing steps it has taken or will take to prevent future releases of wastewater. The report shall also describe steps Vitalix will take to prevent a release, should one occur, from entering the City of Wilton's storm sewer system.
3. Within 30 days of the date the Director signs this Order, Vitalix shall pay an administrative penalty of \$8,000.00.

**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.

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2. 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 \$8,000.00 for the violations described above. The following factors were considered in the assessment of this penalty:

a. Economic Benefit. 567 IAC 10.2(1) provides that when a violator realizes an economic benefit through the violation, “the department shall take enforcement action which includes penalties which at least offset the economic benefit. Reasonable estimates of economic benefit should be made where clear data are not available.” Vitalix avoided costs of properly disposing of the wastewater. Vitalix also delayed training and equipment costs related to proper wastewater spill management. \$1,000.00 is assessed for this factor.

b. 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. Vitalix discharged high strength wastewater to an Iowa stream. This is the second time Vitalix has discharged wastewater to the City of Wilton’s storm sewers. Repeat violations degrade the wastewater and storm water programs. \$3,000.00 is assessed for this factor.

c. Culpability. Vitalix has a duty to conduct its business in accordance with the environmental laws of the state of Iowa. Vitalix was made aware of the risk associated with the storm sewers at the Facility by way of the Prior Order. Vitalix still has taken no action to set up an appropriate spill management plan. DNR assesses \$3,000.00 for this factor.

d. Aggravating factors. Vitalix used a hose to release wastewater directly toward the western storm sewer. Vitalix stated that only 5-10 gallons of wastewater was released, when the ponding and the presence of wastewater in the storm sewers indicate a substantially larger amount was discharged. The facts of this case show an intentional or reckless discharge by Vitalix. \$1,000.00 is assessed as allowed by 567 IAC 10.3(2).

**VII. APPEAL RIGHTS**

Pursuant to Iowa Code section 455B.175 (through Iowa Code sections 459A.501 and 502) and 567 IAC Chapter 7, a written Notice of Appeal may be filed with the Director, at the address provided above, within 60 days of the date of issuance of this Order. The Notice of Appeal must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code Chapter 17A and 561 IAC Chapter 7.

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**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 455B.191.

  
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KAYLA LYON, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 23rd day of  
April, 2020

Noah Poppelreiter; Field Office #6; EPA; I.C.1