

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF: VITALIX, INC.	ADMINISTRATIVE CONSENT ORDER NO. 2020-WW- 11
--	---

TO: Vitalix, Inc.
Greg Olson, President
1820 10th Ave.
Sydney NE 69162

I. SUMMARY

This administrative consent order (Order) is entered into between Vitalix, Inc. (Vitalix), and the Iowa Department of Natural Resources (DNR) for the purpose of resolving violations related to the improper discharge of wastewater. Vitalix neither agrees nor disagrees with any fact or conclusion of law in this Order and enters into the Order solely for settlement purposes. The Order requires payment of an administrative penalty of \$5,500.00 and to operate the Facility in a manner that complies with applicable laws and rules related to the discharge of wastewater and storm water. 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:

Kurt Levetzow
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. 9th 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 9th 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

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
VITALIX, INC.**

with Iowa Code chapter 455B, Division III, Part 1 and the rules adopted pursuant thereto; and pursuant to 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. Vitalix restates that it neither admits nor denies any fact contained herein and enters into this Order solely for settlement purposes.
2. Vitalix manufactures livestock feed supplements at a facility in Wilton, Iowa (Facility). The manufacturing process produces a wastewater that is darkly colored and smells of molasses (Wastewater). The Wastewater is stored in tanks prior to disposal. Until approximately November 2017, Vitalix disposed of the Wastewater at the City of Wilton wastewater treatment facility.
3. On June 25, 2015, Vitalix reported to DNR that approximately 4,000 gallons of Wastewater had overflowed from a holding tank on its property. The spill traveled downhill toward a storm sewer intake. Vitalix was able to contain this spill before it entered the intake. DNR staff took pictures documenting the flow path of this spill.
4. On July 15, 2015, staff from the City of Wilton reported to DNR that approximately 5,000 gallons of Wastewater had overflowed from a Vitalix holding tank. The spill traveled downhill toward a storm sewer intake. Vitalix was able to contain this spill before it entered the intake. DNR staff took pictures documenting the flow path of this spill.
5. On July 18, 2018, staff from the City of Wilton reported to DNR that Wastewater from Vitalix was entering the city's storm sewer.
6. Staff from DNR Field Office #6 arrived in Wilton the same day to investigate. DNR staff observed that Wastewater from the Facility was entering a storm sewer intake on the Vitalix property. DNR staff took pictures showing the Wastewater flowed along the same path as in the 2015 spills. The Wastewater flowed from the storm sewer intake to a city storm sewer, then to an unnamed tributary of Mudd Creek along Cherry Street east of Cherrydale Park (Creek). The Creek was darkly colored and smelled of molasses. The Creek is a water of the state.
7. During the investigation, DNR staff took samples from the Creek for laboratory testing. The sample locations and results are detailed as follows:

Results of the July 18, 2018, storm-sewer discharge sampling. All 5-day CBOD values reported in mg/L						
Vitalix storm sewer discharge	Storm sewer 400'	Storm sewer	Dennis Boorn (located	Confluence of unnamed	Mudd Creek upstream of confluence	Mudd Creek downstream of confluence

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
VITALIX, INC.**

into City Sewer	east of Vitalix	discharge at Cherry St	between Cherry St and Mudd Creek	tributary and Mudd Creek		
3,000	13,000	12,000	1500	8	<	<

These results indicate the presence of Wastewater in the Creek.

8. On July 19, 2018, Vitalix employee Sean Clymer explained to DNR staff members that the Wastewater had overflowed from a holding tank due to an improperly functioning butterfly valve on piping leading to the holding tank. DNR issued Vitalix an NOV on July 30, 2018 for the discharge of the Wastewater.

9. On August 11, 2018, Vitalix arranged to have the city storm sewers jetted to remove any remaining Wastewater.

IV. CONCLUSIONS OF LAW

Vitalix restates that it neither admits nor denies any facts or conclusion of law contained herein and enters into this Order solely for settlement purposes. 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 (Commission).

2. 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.

3. 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 61.3(2) to be exceeded.

4. The facts stated in Section III of this Order constitute violations of Iowa Code 455B.186 and 567 IAC 64.3(1) and 61.2(3).

V. ORDER

Vitalix neither admits or denies any of the facts or conclusions of law in this Order and in agreeing to comply with the following terms does so solely for settlement purposes. Therefore, DNR orders and Vitalix agrees to do the following:

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
VITALIX, INC.**

1. Vitalix shall cease all illegal discharges to waters of the state and in the future comply with all laws, rules and permits applicable to wastewater and storm water discharges.
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 releases from its wastewater holding tank. The report shall also describe steps Vitalix has taken or will take to prevent a release, should one occur, from entering the City of Wilton's storm sewer system.
3. Within 60 days of the date the Director signs this Order, Vitalix shall pay an administrative penalty of \$5,500.

VI. PENALTY

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 \$5,500.00 for the violations described above. Vitalix neither admits or denies any of the facts or conclusions of law contained herein and agrees to the penalty determination and enters into this Order solely for settlement purposes. The following factors were considered in the assessment of this penalty:

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 the cost of hauling its wastewater to the Muscatine wastewater treatment facility for proper disposal. The exact quantity of wastewater spilled in the July 2018 incident is not known, but \$250.00 is a reasonable estimate of the hauling costs and other overhead costs Vitalix avoided through its violation. The DNR assesses \$250.00 for this factor.

Gravity. 567 IAC 10.2(2) provides that the DNR shall consider the gravity of the violation when assessing a penalty. Vitalix discharged high strength wastewater to the Creek. The discharge was significant enough to turn the stream dark brown and give it an odor of molasses. The DNR assesses \$2,250.00 for this factor.

Culpability. 567 IAC 10.2(3) provides that the DNR shall consider the culpability of the violator when assessing a penalty, including the degree of negligence exhibited. Vitalix has a duty to conduct its business in accordance with the environmental laws of the state of Iowa. Vitalix was responsible for two spills from its wastewater holding tank in 2015, both of which approached the storm sewer intake at the Facility. In spite of being made aware of the risk of spills from the wastewater holding tanks, Vitalix took no action to protect the storm water intakes on its property from wastewater spills. Lastly, Vitalix

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
VITALIX, INC.**

failed to report the 2018 spill to DNR; the City of Wilton alerted the DNR to the presence of the Wastewater in the storm sewers. The DNR assesses \$3,000.00 for this factor.

VII. WAIVER OF APPEAL RIGHTS

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

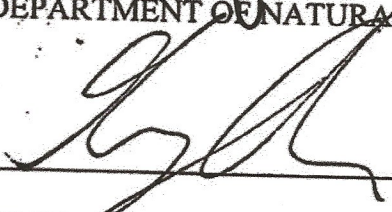
VIII. NONCOMPLIANCE

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 455B.191.



KAYLA LYON, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 27th day of
October, 2020



VITALIX, INC.

Dated this 22 day of
October, 2020

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