UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF: The City of Helena, Montana, Respondent NPDES Permit No. MT0022641	Docket No. CWA-08-2021-0018 AMENDED ADMINISTRATIVE ORDER FOR COMPLIANCE Proceeding under Section 309(a)(3) of the Clean Water Act, 33 U.S.C. § 1319(a)(3)

INTRODUCTION

1. This Administrative Order for Compliance (Order) is issued pursuant to section 309(a) of the Clean Water Act (Act), 33 U.S.C. § 1319(a). This authority has been properly delegated to the undersigned official. The respondent in this order is the City of Helena, Montana (City).

STATUTORY AND REGULATORY BACKGROUND

The NPDES Program

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters, except as in compliance with other sections of the Act, including section 402, 33 U.S.C. § 1342, which allows discharges authorized by National Pollutant Discharge Elimination System (NPDES) permits.
3. The Act defines "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12).
4. The Act defines "pollutant" to include "sewage . . . chemical wastes, biological materials . . . and industrial, municipal, and agricultural waste discharged into water." 33 U.S.C. § 1362(6).
5. The Act defines "navigable waters" as the "waters of the United States." 33 U.S.C. § 1362(7).
6. "Waters of the United States" are defined in 40 C.F.R. § 122.2.

7. The Act defines "point source" to include any "discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure [or] container . . . from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).

8. The EPA, and states with NPDES programs approved by the EPA, may issue NPDES permits that authorize discharges of pollutants into waters of the United States, subject to conditions and limitations set forth in such permits. 33 U.S.C. § 1342.

9. Among the types of dischargers that can receive NPDES permits authorizing pollutants to be discharged into waters of the United States are publicly owned treatment works, or POTWs. The term "POTW" encompasses a treatment works itself and a municipality with jurisdiction over discharges to and from such a treatment works. 40 C.F.R. § 403.3(q).

The EPA's Pretreatment Program

10. Pollutants from non-domestic sources that are introduced into a POTW are subject to the EPA's pretreatment regulations at 40 C.F.R. chapter I, subchapter N, parts 400 through 471 (the Pretreatment Regulations) and section 307 of the Act, 33 U.S.C. § 1317.

11. Non-domestic sources that introduce pollutants into POTWs are known as "Industrial Users" or "IUs," as defined in 40 C.F.R. § 403.3(j).

12. The introduction of pollutants from an IU to a POTW is known as "Indirect Discharge" or "Discharge," as defined in 40 C.F.R. § 403.3(i). Unless otherwise stated, any reference to a "discharge" in this Order shall be the introduction of pollutants from an IU to a POTW, as distinguished from the POTW's discharge of pollutants to waters of the United States.

13. The Pretreatment Regulations include regulations containing pollutant discharge limits. These regulations are known as Pretreatment Standards. 40 C.F.R. § 403.3(l). Other requirements relating to pretreatment are known as Pretreatment Requirements. 40 C.F.R. § 403.3(t).

ED_014374_00000120-00002

14. The Pretreatment Regulations also include requirements for IUs in specific industrial categories, as described in 40 C.F.R. § 403.6 and 40 C.F.R. parts 405-471. In this Order, these regulations are referenced as the Categorical Pretreatment Standards.

15. According to 40 C.F.R. § 403.3(v), the term "Significant Industrial User," also referenced as "SIU," includes, with exceptions provided in 40 C.F.R. §§ 403.3(v)(2) and 403.3(v)(3):

    (i) Any IU subject to the Categorical Pretreatment Standards (a Categorical Industrial User, or "CIU"); and

    (ii) Any other IU that discharges an average of at least 25,000 gallons per day of process wastewater (excluding sanitary, non-contact cooling and boiler blowdown water) to a POTW; contributes a process wastestream that makes up five or more percent of the average dry weather hydraulic or organic capacity of the POTW's treatment plant; or is designated as an SIU by the relevant Control Authority (defined in 40 C.F.R. § 403.3(f)) on the basis of having a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or Requirement (in accordance with 40 C.F.R. § 403.8(f)(6)).

16. The Pretreatment Regulations require certain POTWs to establish EPA-approved pretreatment programs. An NPDES permit issued to a POTW must, among other things, incorporate the requirements of the POTW's approved pretreatment program as enforceable terms of the permit. 40 C.F.R. §§ 122.44(j) and 403.8(c).

17. According to 40 C.F.R. § 403.8, a POTW with an approved pretreatment program must develop and implement procedures to ensure compliance with its pretreatment program. These procedures must ensure the POTW is able, among other things:

- to operate pursuant to enforceable legal authority that authorizes or enables the POTW to apply and to enforce the requirements of sections 307(b) and (c) and 402(b)(8) of the Act

ED_014374_00000120-00003

and any regulations implementing those sections (per 40 C.F.R. § 403.8(f)(1));

- to issue permits, orders, or other control mechanisms to control Indirect Discharges by IUs (per 40 C.F.R. § 403.8(f)(1)(iii));
- to identify IUs that may be subject to the pretreatment program (per 40 C.F.R. § 403.8(f)(2)(i));
- to identify the character and volume of pollutants contributed to the POTW by these IUs (per 40 C.F.R. § 403.8(f)(2)(ii));
- to notify Industrial Users of applicable Pretreatment Standards and any applicable requirements under sections 204(b) and 405 of the Act, 33 U.S.C. §§ 1284(b) and 1345, and subtitles C and D of the Resource Conservation and Recovery Act (per 40 C.F.R. § 403.8(f)(2)(iii));
- to receive and analyze the self-monitoring reports and other notices that 40 C.F.R. § 403.12 requires IUs to submit (per 40 C.F.R. § 403.8(f)(2)(iv));
- to randomly sample and analyze the effluent from IUs and conduct surveillance activities in order to identify, independent of information supplied by IUs, occasional and continuing noncompliance with Pretreatment Standards and to inspect and sample the effluent from each SIU at least once a year (per 40 C.F.R. § 403.8(f)(2)(v));
- to evaluate SIUs for the need to develop a plan or other actions to control Slug Discharges, as defined in 40 C.F.R. § 403.8(f)(2)(vi) (per 40 C.F.R. § 403.8(f)(2)(vi));
- to investigate instances of noncompliance by IUs with Pretreatment Standards and Requirements, as indicated in reports and notices required by 40 C.F.R. § 403.12 or by analysis, inspection, and surveillance activities described in 40 C.F.R. § 403.8(f)(2)(v) (per 40 C.F.R. § 403.8(f)(2)(vii));

ED_014374_00000120-00004

- to comply with the public participation requirements of 40 C.F.R. part 25, including developing and implementing a procedure to evaluate and provide annual public notices of any Significant Non-Compliance (SNC), as defined in 40 C.F.R.§ 403.8(f)(2)(viii), by any IUs (per 40 C.F.R.§ 403.8(f)(2)(viii));
- to have sufficient resources and qualified personnel to carry out its authorities and procedures (per 40 C.F.R.§ 403.8(f)(3));
- to develop and effectively enforce specific limits, known as "local limits," as required by 40 C.F.R. § 403.5(c)(1), to ensure IUs comply with the prohibitions in 40 C.F.R. § 403.5(a)(1) and (b) (per 40 C.F.R.§ 403.8(f)(4)); and
- to develop and implement an enforcement response plan for investigating and responding to instances of noncompliance by IUs (per 40 C.F.R.§ 403.8(f)(5)).

18. Permits that POTWs issue to IUs or SIUs to authorize discharges of pollutants into POTWs are known as "IU permits" or "SIU permits," respectively.

FINDINGS OF FACT AND LAW

The following findings apply at all times relevant to this matter, unless otherwise stated.

The City's POTW

19. The City is a "municipality" as defined by section 502(4) of the Act, 33 U.S.C. § 1362(4), and a "person" as defined by section 502(5) of the Act, 33 U.S.C. § 1362(5).

20. The City owns and operates a wastewater treatment plant (WWTP) located at 2108 Custer Avenue East, Helena, Montana, 59602.

21. The WWTP discharges treated wastewater into Prickly Pear Creek.

22. Prickly Pear Creek is a year-round tributary, via Lake Helena, of the Missouri River, which is navigable-in-fact.

23. Prickly Pear Creek, Lake Helena, and the Missouri River are each a "water of the United States"

ED_014374_00000120-00005

as defined in 40 C.F.R. § 122.2 and a "navigable water" as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7).

24. The WWTP and the sewers, pipes, and other conveyances leading to it are part of the City's POTW.

25. As a municipality with jurisdiction over discharges to and from its treatment works, the City itself is a "POTW" as defined in 40 C.F.R. §§ 122.2 and 403.3(q).

26. Unless otherwise stated, any references to "the POTW" below in this Order shall mean the POTW owned and operated by the City, or the City itself, as the context requires.

27. The SIUs that discharge to the POTW include the following SIUs:

- Decorative Industrial Plating (DIP), which performs electroplating, a core process subject to the Metal Finishing Point Source Category regulations in 40 C.F.R. part 433 and, therefore, a CIU; and
- Montana Rail Link (MRL), which collects wastewater from a train yard facility and has been designated by the City as a SIU, pursuant to 40 C.F.R. § 403.3(v)(ii), on the basis that MRL has a reasonable potential for adversely affecting the POTW's operation.

The City's 1997 and 2012 MPDES Permits

28. On December 11, 1996, the State of Montana Department of Environmental Quality (MDEQ) issued NPDES Permit Number MT0022641 (the 1997 MPDES Permit) to the City, effective January 1, 1997, and expiring October 31, 2001. When the City applied to renew the 1997 MPDES Permit, it was administratively extended until September 30, 2012.

29. On August 22, 2012, MDEQ issued NPDES Permit Number MT0022641 (the 2012 MPDES Permit) to the City, effective October 1, 2012, and expiring September 30, 2017.

30. On June 14, 2017, the City applied to renew the 2012 MPDES Permit, but the application was not complete. On September 21, 2017, the City submitted additional information to correct the

ED_014374_00000120-00006

noticed deficiency. On September 26, 2017, the City's renewal application was deemed complete, which administratively extended the 2012 MPDES Permit. The administrative extension continues, and the 2012 MPDES Permit has been in effect at all times relevant to this Order.

31. The 2012 MPDES Permit authorizes the City to discharge from the WWTP into Prickly Pear Creek.

The City's Approved Pretreatment Program

32. The State of Montana is an "NPDES State" as defined in 40 C.F.R. § 403.3(o) because the EPA has approved the State of Montana's NPDES program pursuant to section 402(b) of the Act, 42 U.S.C. § 1342(b).

33. The State of Montana has not, however, sought or received approval for a pretreatment program from the EPA. Therefore, at all times relevant to this Order, the State of Montana did not have an "Approved POTW Pretreatment Program" as defined in 40 C.F.R. § 403.3(d) and the EPA has been the "Approval Authority" as defined in 40 C.F.R. § 403.3(c).

34. The EPA approved the City's pretreatment program on July 24, 1986, at which time the City became the "Control Authority" as defined in 40 C.F.R. § 403.3(f).

35. On June 5, 2002, the EPA approved an update to the City's local limits.

36. The City's pretreatment program as approved by the EPA on July 24, 1986, with the modification approved on June 5, 2002, will be referenced in this Order as the "City's Pretreatment Program."

37. Part I.E of the 2012 MPDES Permit requires the City to develop, implement, document, and enforce a pretreatment program in accordance with the Pretreatment Regulations.

The EPA's 2009 Audit

38. On July 14-16, 2009, the EPA conducted an audit of the City's Pretreatment Program (2009 Audit). The EPA mailed a report of the 2009 Audit (2009 Audit Report) to the City on September 8, 2009. The City responded to the 2009 Audit Report on November 19, 2009.

ED_014374_00000120-00007

The EPA's 2017 Audit

39. On September 11-13, 2017, the EPA conducted an audit of the City's Pretreatment Program (2017 Audit). The EPA mailed a report of the 2017 Audit (2017 Audit Report) to the City on December 21, 2017. The City responded to the 2017 Audit Report on January 22, 2018 and February 14, 2018.

40. As part of the 2017 Audit, the EPA, along with the City, inspected one IU in Helena, Montana, that introduces non-domestic pollutants into the POTW: DIP, located at 2531 Dodge Avenue, Helena, Montana.

Count I: Failure to Operate Pursuant to Adequate Legal Authority

41. As set forth in Paragraph 17, above, the City is required to operate pursuant to legal authority enforceable in federal, state or local courts, which authorizes or enables the City to apply and to enforce the requirements of sections 307(b) and (c) and 402(b)(8) of the Act and any regulations implementing those sections. 40 C.F.R. § 403.8(f)(1). Such authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements the City is authorized to enact, enter into, or implement, and which are authorized by state law. *Id.*

42. The City's legal authority must, at a minimum, enable the City to exercise all functions enumerated in 40 C.F.R. § 403.8(f)(1)(i) through (vi).

43. Where necessary, the City is required to establish legally binding agreements with other jurisdictions to ensure compliance by any IUs in those jurisdictions. Part I.E.a of the 2012 MPDES Permit.

44. The Fort Harrison military installation, which is located three miles west of Helena, is a jurisdiction outside of the City's service area that contributes wastewater to the POTW.

45. As part of the 2017 Audit, the EPA determined that the City did not have an intergovernmental agreement (IGA) with the Fort Harrison military installation. The Veterans Affairs Hospital

ED_014374_00000120-00008

located on the Fort Harrison military installation generates non-domestic pollutants that discharge to the City's sanitary sewer system. These pollutants may impact the POTW. Therefore, the City did not have the authority to implement the City's Pretreatment Program fully within the Fort Harrison military installation as required by 40 C.F.R. § 403.8(f)(1) and part I.E.a of the 2012 MPDES Permit.

46. On April 2, 2001, the City, the Department of Veterans Affairs (DVA), and the Montana Department of Military Affairs (DMA) entered into a Memorandum of Understanding (MOU) allowing the DVA and the DMA "full use" of a sewer line connecting the Fort Harrison military installation to the POTW. In response to the EPA's finding in Paragraph 45, above, the City proposed a draft Addendum to the MOU. The City provided the EPA with a draft Addendum to the MOU. The draft Addendum did not include the DVA as a party. The City did not respond to the EPA's inquiries as to the reason for this omission.

47. On July 26, 2021, the City and the DMA executed the Addendum to the MOU referenced in paragraph 46, above. The Addendum indicated that it was specific to the DMA and did not address, impact, or otherwise affect in any way the DVA's contribution of pollutants to the POTW.

48. The City's operation without required legal authorities, as described in Paragraphs 45 through 47, above, violated and continues to violate 40 C.F.R. § 403.8(f)(1) and part I.E.a of the 2012 MPDES Permit.

Count II: Failure to Identify and Locate IUs

49. The City is required to develop and implement a procedure to identify and locate all possible IUs that might be subject to the City's Pretreatment Program and to make any inventory of IUs available to the EPA upon request. 40 C.F.R. § 403.8(f)(2)(i); part I.E.a.i of the 2012 MPDES Permit. The City is also required to update this information at least yearly or sufficiently

ED_014374_00000120-00009

frequently to ensure all IUs are properly permitted or controlled (part I.E.a.i of the 2012 MPDES Permit) and to include updated lists of IUs in the annual reports it is required to submit to the EPA (40 C.F.R. § 403.12(i)(1) and part I.E.f.i of the 2012 MPDES Permit).

50. Prior to the 2017 Audit, the City developed an IU inventory of its service area (the City's IU Inventory), which it is required to keep updated and maintained as set forth in Paragraph 49, above. The City's IU Inventory was a listing of IUs in the City's service area that was generated by a computer program known as the JobCal program. The City's IU Inventory identified approximately 525 industrial users in the service area and provided names, addresses, and a broad characterization of the IUs. Based on a review of available IU survey and inspection records during the 2017 Audit, the EPA determined that the City had not invested resources in using the methods discussed in its own inventory procedure. For example, the City had not performed drive-by inspections and facility inspections as identified in its inventory procedure. Additionally, the City had not conducted an inventory of the non-domestic users, including dental facilities, in the Aspen Meadows service area.

51. Based on the EPA's evaluation of the City's IU Inventory mentioned in Paragraph 50, above, the City's IU Inventory had not been updated or maintained as of the date of the 2017 Audit.

52. On July 30, 2020, the City provided the EPA a narrative of the City's IU survey procedures and an industrial waste survey (IWS) form. On August 18, 2020, the EPA provided comments on the IU survey procedures, including citations to requirements that were missing, an observation that the procedures differed from the IU survey procedures presented during the 2017 Audit, and feedback on the City's IWS form. The City and the EPA engaged in additional email discussions concerning the IU survey procedures and the IWS form between August 24, 2020, and August 27, 2020.

53. On August 27, 2020, the City sent the EPA the City's final Industrial User Inventory and

ED_014374_00000120-00010

Characterization Procedures and indicated that these new procedures superseded the prior IU survey procedures.

54. Also on August 27, 2020, the City notified the EPA that the new Industrial User Inventory and Characterization Procedures were effective immediately and that the City had already begun sending out the IWS form to IUs.

55. Also on August 27, 2020, the EPA asked the City to submit, by April 1, 2021, a summary of the City's inspections of potential IUs. The City has not submitted that information to the EPA.

56. The City's failure to implement its procedure to identify and locate all possible IUs that might be subject to the City's Pretreatment Program violated and continues to violate 40 C.F.R. § 403.8(f)(2)(i) and part I.E.a.i of the 2012 MPDES Permit. In addition, the City's failure to update this information at least yearly or sufficiently frequently to ensure all IUs are properly permitted or controlled violated and continues to violate 40 C.F.R. § 403.12(i)(1) and parts I.E.a.i and I.E.f.i of the 2012 MPDES Permit.

Count III: Failure to Provide Notifications of Pretreatment Standards and Applicable Requirements to IUs

57. The City is required to notify the IUs it has identified under 40 C.F.R. § 403.8(f)(2)(i) of applicable Pretreatment Standards and any applicable requirements of sections 204(b) and 405 of the Act and subtitles C and D of the Resource Conservation and Recovery Act. 40 C.F.R. § 403.8(f)(2)(iii) and part I.E.a.i of the 2012 MPDES Permit and, as to the RCRA notifications, part I.E.a.x of the 2012 MPDES Permit.

58. The 2017 Audit found that the City's industrial waste survey procedure did not address notifying IUs of applicable Pretreatment Standards and any applicable requirements under sections 204(b) and 405 of the Act and subtitles C and D of the Resource Conservation and Recovery Act.

59. On August 18, 2020, in the course of providing comments to the City on the City's IWS

ED_014374_00000120-00011

procedure (see Count II, above), the EPA noted that the City's procedures were still missing notifications to IUs of applicable Pretreatment Standards and other requirements referenced in Paragraph 57, above. The EPA also referred the City to the 2017 Audit for more information on this requirement.

60. On August 27, 2020, the City provided the EPA the City's final IWS procedure, which included notification to IUs of applicable Pretreatment Standards and other requirements referenced in Paragraph 57, above. The City has not, however, demonstrated that it has implemented its procedure by notifying any IUs as required by 40 C.F.R. § 403.8(f)(2)(iii) and part I.E.a.i of the 2012 MPDES Permit and, as to the RCRA notifications, part I.E.a.x of the 2012 MPDES Permit.

61. The City's failure to implement its procedure to notify IUs of applicable Pretreatment Standards and other requirements referenced in Paragraph 57, above, violated and continues to violate 40 C.F.R. § 403.8(f)(2)(iii) and part I.E.a.i of the 2012 MPDES Permit and, as to the RCRA notifications, part I.E.a.x of the 2012 MPDES Permit.

Count IV:
Failure to Sample, Analyze, and Conduct Surveillance of IUs and Failure to Implement Procedures to Investigate Noncompliance

62. According to 40 C.F.R. § 403.8(f)(2)(v), the City is required:

    a. to conduct random sampling and analysis of effluent from IUs and to conduct surveillance activities to identify, independent of information supplied by IUs, occasional and continuing noncompliance with Pretreatment Standards, and

    b. to develop and implement procedures to inspect and sample each SIU at least once a year, with exceptions not applicable here.

63. The City is required to develop and implement procedures to investigate instances of noncompliance with Pretreatment Standards and Requirements, as indicated in reports and notices

ED_014374_00000120-00012

required under § 403.12, or indicated by analysis, inspection, and surveillance activities. 40 C.F.R. § 403.8(f)(2)(vii) and part I.E.a.ii of the 2012 MPDES Permit.

64. The 2017 Audit found that the City failed to conduct independent pH sampling at DIP.

65. DIP discharges from the electrolytic cleaner an average of eight hours per day. The City sampled the facility using a grab sampling technique that is not representative of the discharge.

66. On August 3, 2020, the City provided the EPA with the City's Industrial Pretreatment Sampling and Analysis Plan (Plan) for sampling the City's SIUs. On August 18, 2020, the EPA provided comments to the City on the Plan. On August 31, 2020, the City addressed EPA's comments, except for the comment that the Plan did not address creating and maintaining required records needed to assure compliance with 40 C.F.R. § 403.12(o).

67. The City's failure to develop an adequate sampling and analysis plan, as described in Paragraph 66, above, violated and continues to violate 40 C.F.R. §§ 403.8(f)(2)(v) and 403.8(f)(2)(vii).

Count V: Failure to Update Local Limits

68. The City is required either to develop specific local limits on discharges to the POTW to implement the prohibitions in 40 C.F.R. § 403.5(a)(1) and (b) or to demonstrate these limits are not necessary. 40 C.F.R. §§ 403.5(c)(1) and 403.8(f)(4); part I.E.b of the 2012 MPDES Permit.

69. The City is required to continue to develop its local limits as necessary based, for example, on current data and standards, and to enforce these limits effectively. 40 C.F.R. §§ 403.5(c)(1); part I.E.b of the 2012 MPDES Permit.

70. In developing and enforcing local limits, the City is required to provide notice to persons who have requested notice and an opportunity to respond. 40 C.F.R. § 403.5(c)(3).

71. Part I.E.b of the 2012 MPDES Permit states:

> The Permittee shall establish and enforce specific local limits to implement the provisions of 40 CFR Section 403.5(a) and (b), as required by 40 CFR Section 403.5(c). The Permittee shall continue

ED_014374_00000120-00013

> to develop these limits as necessary and effectively enforce such limits.
>
> In accordance with EPA policy and with the requirements of 40 CFR sections 403.8(f)(4) and 403.5(c), the Permittee shall determine if technically based local limits are necessary to implement the general and specific prohibitions of 40 CFR sections 403.5(a) and (b).
>
> This evaluation should be conducted in accordance with the latest revision of the "EPA Region VIII Strategy for Developing Technically Based Local Limits[,"] and after review of EPA's "Local Limits Development Guidance" July 2004. Where the Permittee determines that revised or new local limits are necessary, the Permittee shall submit the proposed local limits to the Approval Authority in an approvable form in accordance with 40 CFR Section 403.18.

72. The City included local limits with its original program submission to the EPA in 1986.

73. The EPA approved updated local limits for the City in 2002.

74. The 2009 Audit found that the City had not updated its local limits since 2002 and indicated that the City needed to update its local limits as a corrective action.

75. In response to the October 1, 2012 MPDES permit reissuance and the 2009 Audit Report, the City provided a technical memorandum to the EPA on June 28, 2013. The City's technical memorandum stated that its local limits needed to be updated. The City proposed to provide a first draft of its local limits to the EPA by February 1, 2016.

76. The City submitted the first draft of its revised local limits to the EPA on April 21, 2016, and the EPA provided comments to ensure the local limits were approvable. The City submitted a second draft of local limits on November 21, 2016. On April 21, 2017, the City indicated to the EPA that it would update its municipal ordinance and submit it with the final draft of its local limits.

77. The 2017 Audit, like the 2009 Audit, found that the City had not updated its local limits since 2002 and indicated that the City needed to update its local limits as a corrective action.

ED_014374_00000120-00014

78. On February 14, 2018, the City indicated that MDEQ was in the process of writing the City's new MPDES Permit and that once the City received the permit with new discharge limits, the City would continue working on development of the local limits.

79. On February 12, 2019, the City sent its draft local limits to the EPA for approval. On April 15, 2019, the EPA provided comments on the City's draft local limits.

80. On June 11, 2020, the City submitted its reevaluation of local limits for EPA approval. On September 8, 2020, the EPA notified the City that the submittal did not consider all of the EPA comments referenced in Paragraph 79, above, and was otherwise not complete.

81. On October 2, 2020, the City notified the EPA that the City had hired a contractor to provide assistance with updating the local limits. On October 19, 2020, the City notified the EPA that it would address the EPA's comments referenced in Paragraph 79, above, and would provide updated local limits in early 2021.

82. On April 15, 2021, the City sent the EPA, for review and approval, two local limits spreadsheets, a local limits re-evaluation document dated January 2019, a local limits re-evaluation document, dated June 11, 2020, and copies of emails dated September 8, 2020 and October 19, 2020.

83. On June 17, 2021, the EPA commented on the City's April 15, 2021 submission. In response the City submitted revised local limits to the EPA in a July 8, 2021 email.

84. On August 5, 2021, the EPA sent an email to the City indicating that the local limits submitted on July 8, 2021 corrected issues previously identified by the EPA. The EPA indicated that the local limits update would constitute a substantial program modification requiring approval at the local level and from the EPA as the Approval Authority. The EPA requested that the City submit the local limits to the City Council for a first approval reading during a public meeting. The EPA's email indicated that if no changes were made during the first City Council reading, the local limits should be formally submitted to the EPA for public notice and approval.

ED_014374_00000120-00015

85. The City's failure to update its local limits violated and continues to violate 40 C.F.R. §§ 403.5(c) and 403.8(f)(4) and part I.E.b of the 2012 MPDES Permit.

ORDER

Based on the foregoing findings and pursuant to section 309(a) of the Act, 33 U.S.C. § 1319(a), it is hereby ORDERED that:

86. Upon the effective date of this Order (see Paragraph 102, below), unless this Order specifically provides a later deadline for compliance, the City shall:

    a. comply with all requirements of the 2012 MPDES Permit and 40 C.F.R. part 403; and

    b. implement the City's Pretreatment Program in accordance with 40 C.F.R. part 403 and the 2012 MPDES Permit.

87. Within 10 business days after the effective date of this Order, the City shall submit to the EPA written notice of the City's intent to comply with the requirements of this Order.

88. Within 30 days after the effective date of this Order, the City shall enter into an MOU with the DVA to provide the City the authority to implement the City's Pretreatment Program fully within the Fort Harrison military installation. The City shall provide EPA a copy of the final MOU 10 days after entering into it.

89. Within 120 days after the effective date of this Order, the City shall provide a demonstration to the EPA of having notified each IU contributing pollutants to the POTW of all applicable Pretreatment Standards and the requirements of sections 204(b) and 405 of the Act, and subtitles C and D of the Resource Conservation and Recovery Act.

90. Within 120 days after the effective date of this Order, the City shall provide the EPA a report that details the City's implementation of its Industrial User Inventory and Characterization Procedures identified in Paragraph 53, above. For each IU included in the IU Inventory, the City shall identify and include in its report:

ED_014374_00000120-00016

a. the name of the IU;

b. the location of the IU;

c. the type of business conducted by the IU;

d. the date the IU was inspected, if required by the Industrial Waste Survey Procedure;

e. the date the IU was sampled, if required by the Industrial Waste Survey Procedure;

f. the character and volume of pollutants contributed by the IU to the POTW;

g. the characterization/categorization of the IU with respect to applicable pretreatment requirements, including whether the IU is subject to Categorical Pretreatment Standards, is a non-categorical Significant Industrial User, requires best management practices, or is not significant to pretreatment;

h. the date the IU was notified of all applicable requirements as set forth in Paragraph 89, above;

i. the date the IU was issued an SIU permit for any IU identified as subject to Categorical Pretreatment Standards or as a non-categorical SIU; and

j. a report of each inspection conducted pursuant to Paragraph 90.d, above.

91. Within 60 days after the effective date of this Order, the City shall update and submit to the EPA its sampling procedure to ensure that required records listed in 40 C.F.R. § 403.12(o) are created and maintained.

92. Within 30 days after the effective date of this Order, the City shall submit its proposed local limits to the Helena City Council for a first reading, in a public meeting. The local limits the City submits to the City Council shall be the same as those submitted to the EPA on July 8, 2021. The City shall adhere to all relevant requirements in obtaining City Council review of the local limits. If no changes occur to the proposed local limits during the City Council approval process, the City shall, within 14 days of the City Council's approval, provide the EPA with the proposed

ED_014374_00000120-00017

local limits for EPA approval. However, if changes occur to the proposed local limits during the City Council approval process, then within 14 days after City Council approval of the changed limits, the City shall submit to EPA a set of revised proposed local limits for review, specifying the changes that have occurred since the previous submittal and seeking the EPA's approval. Upon notification from EPA that the EPA has approved the revised local limits, the City shall implement the proposed local limits.

93. At the EPA's sole discretion, the EPA may extend deadlines required by this Order or change the identity of the notification recipient in Paragraph 95, below, with written notice to the City but without further formal amendment of this Order. All other modifications to this Order may be made only by written agreement of the parties.

94. The time periods in this Order are calendar days unless otherwise specified. If any due date specified in this Order falls on a weekend or federal holiday, the relevant deadline shall be the first business day following that date.

95. All notices and reports required by the Order to be given to the EPA shall be sent to:

Emilio Llamozas
Environmental Engineer
U.S. EPA Region 8
1595 Wynkoop Street
8ENF-W-NW
Denver, Colorado 80202
Llamozas.emilio@epa.gov
Phone: 303-312-6407

96. All reports and information required by this Order shall include the following certification statement, signed and dated by an individual meeting the definition in 40 C.F.R. § 122.22(a)(3) of a principal executive officer or ranking elected official:

> I hereby certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or

ED_014374_00000120-00018

persons responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations.

97. Any failure to comply with the requirements of this Order shall constitute a violation of this Order and may subject the City to penalties as provided under section 309 of the Act, 33 U.S.C. § 1319.

98. This Order is not a permit and does not constitute a waiver or modification of the terms and conditions of the 2012 MPDES Permit, which remains in full force and effect.

99. This Order does not constitute a waiver or election by the EPA to forego any civil or criminal action to seek penalties, fines, or other relief as it may deem appropriate under the Act. Section 309(d) of the Act, 33 U.S.C. § 1319(d), authorizes civil penalties of up to $56,460 (as adjusted for inflation by 40 C.F.R. part 19) per day for each violation of the Act. Section 309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the Act.

100. Compliance with the terms and conditions of this Order shall not be construed to relieve the City of its obligation to comply with any applicable federal, state, or local law or regulation.

101. This Order constitutes final agency action. The City may seek federal judicial review of this Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at http://uscode.house.gov/download/pls/05C7.txt, states the scope of such review.

ED_014374_00000120-00019

102. This Order shall be effective immediately upon receipt by the City Manager (see Certificate of Service, below).

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

Date: _____ By: SUZANNE BOHAN Digitally signed by SUZANNE BOHAN Date: 2022.06.10 16:49:27 -06'00'

Suzanne Bohan, Director
Enforcement and Compliance Assurance Division
Region 8, U.S. EPA
1595 Wynkoop Street
Denver, Colorado 80202
(303) 312-6925

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CERTIFICATE OF SERVICE

I certify that the foregoing Amended Administrative Order for Compliance was sent or delivered on this day as follows:

Copy by email to:

Shea Love
Regional Hearing Clerk
U.S. Environmental Protection Agency (8RC)
Region 8
1595 Wynkoop Street
Denver, Colorado 80202
R8_Hearing_Clerk@epa.gov

Copy by email to Tim Burton, Interim City Manager, at tburton@helenamt.gov.

Copy by email to Catherine Laughner, counsel for the City of Helena, at cathyl@bkbh.com.

By: MARGARET LIVINGSTON Digitally signed by MARGARET LIVINGSTON Date: 2022.06.10 16:53:49 -06'00' Date: _____

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