UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
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DOCKET NO.: CWA-08-2017-0027

IN THE MATTER OF:	)	
	)	
THE CITY OF LOUISVILLE	)	**FINAL ORDER**
	)	
	)	
	)	
	)	
RESPONDENT	)	

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 14th **DAY OF** December**, 2017.**

for Katherine Ethan
Elyana Sutin
Acting Regional Judicial Officer

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HEARING CLERK

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF: The City of Louisville Louisville, Colorado NPDES Permit No. CO0023078 Respondent	Docket No. CWA-08-2017-0027 COMBINED COMPLAINT AND CONSENT AGREEMENT Proceeding under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g)

The U.S. Environmental Protection Agency and the City of Louisville, Colorado (Respondent), by their undersigned representatives, hereby consent and agree as follows:

I. AUTHORITY

1. This Combined Complaint and Consent Agreement (Agreement) is issued under the authority of section 309(g) of the Clean Water Act (Act), 33 U.S.C. § 1319(g).

II. STATEMENTS OF THE PARTIES

2. With this Agreement, the parties intend to commence and conclude this matter simultaneously, as authorized by 40 C.F.R. §§ 22.13(b) and 28.18(b)(2) and (3).

3. Solely for the purposes of this proceeding, Respondent admits the jurisdictional allegations contained in paragraphs 4 and 5 of this Agreement. Respondent consents to the assessment of the civil penalty referenced below, waives any right to a hearing before any tribunal or to contest any statement of law or fact in this Agreement, and waives any right to appeal any final order approving this Agreement (Final Order). Respondent does not admit or deny any matter the EPA has alleged in paragraphs 7 through 112 of this Agreement.

III. JURISDICTIONAL ALLEGATIONS

4. This Agreement is issued pursuant to section 309(g) of the Act, 33 U.S.C. §1319(g), which authorizes the EPA to assess civil administrative penalties for violations of, among other things, section 307 of the Act, 33 U.S.C. § 1317, or any permit issued pursuant to section 402 of the Act, 33 U.S.C. § 1342.

5. This proceeding is subject to the EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22, a copy of which has been provided to Respondent.

IV. PARTIES BOUND

6. This Agreement, upon incorporation into a Final Order, applies to and is binding upon the EPA and upon Respondent, and Respondent's officers, directors, and agents.

V. STATUTORY AND REGULATORY BACKGROUND

The following findings apply at all times relevant to this proceeding.

A. The NPDES Program

7. 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.

8. 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).

9. 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).

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10. The Act defines "navigable waters" as the "waters of the United States." 33 U.S.C. § 1362(7).

11. The term "waters of the United States" is defined in 40 C.F.R. § 122.2.

12. 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, container . . . from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).

13. The Act defines "effluent limitation" to include any restriction the EPA or a state establishes on the quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged from point sources into navigable waters. 33 U.S.C. § 1362(11).

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

15. 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.

16. The term "POTW" encompasses a treatment works itself and a municipality with jurisdiction over discharges to or from such a treatment works. 40 C.F.R. § 403.3(q).

B. <u>The EPA's Pretreatment Program</u>

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

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

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19. The introduction of pollutants from an IU to a POTW is known as "Indirect Discharge," as defined in 40 C.F.R. § 403.3(i).

20. The Pretreatment Regulations prohibit, among other things, Pass Through, which is defined as an Indirect Discharge that alone or in conjunction with other sources of pollutants causes a violation of any requirement of a POTW's NPDES permit. 40 C.F.R. §§ 403.3(p) and 403.5(a)(1).

21. Those Pretreatment Regulations that contain pollutant discharge limits 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).

22. The Pretreatment Regulations distinguish between categorical and non-categorical dischargers. Categorical dischargers are IUs in specific industrial categories for which the EPA has promulgated industry-specific regulations in 40 C.F.R. parts 405-471. Dischargers not covered by any of these specific categories are known as non-categorical dischargers.

23. According to 40 C.F.R. § 403.3(v), an IU is a "Significant Industrial User" or "SIU" if, among other things,

- it is subject to the EPA's categorical pretreatment standards under 40 C.F.R. § 403.6 and 40 C.F.R. chapter I, subchapter N;
- it discharges an average of at least 25,000 gallons per day of wastewater other than sanitary, non-contact cooling water, or boiler blowdown water to a POTW; or
- it is designated by an appropriate authority as an SIU on the basis of having a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or Requirement.

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

25. To ensure that IUs comply with its pretreatment program, a POTW must, according to 40 C.F.R. § 403.8, among other things,

- identify IUs that may be subject to the pretreatment program,
- issue permits, orders, or other control mechanisms to control Indirect Discharges by IUs,
- receive and analyze the self-monitoring reports that 40 C.F.R. § 403.12 requires IUs to submit,
- investigate instances of noncompliance by IUs with Pretreatment Standards and Requirements,
- 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,
- develop specific limits, known as "local limits," to ensure that IUs comply with the prohibitions in 40 C.F.R. § 403.5(a) and (b), and
- develop and implement an enforcement response plan for investigating and responding to instances of noncompliance by IUs.

C. Respondent's POTW

26. Respondent 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).

27. Respondent owns and operates a wastewater treatment plant (WWTP) located at 1601 Empire Road in Louisville, Colorado.

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28. The WWTP discharges treated wastewater into Coal Creek.

29. Coal Creek is a relatively permanent tributary of Boulder Creek, which flows into the St. Vrain River, which flows into the South Platte River. Boulder Creek, the St. Vrain River, and the South Platte River are traditionally navigable waters.

30. Coal Creek, Boulder Creek, the St. Vrain River, and the South Platte River are each a "water of the United States" 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).

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

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

33. Unless otherwise stated, any references to "the POTW" below in this Agreement shall mean the POTW that is owned and operated by Respondent, or Respondent itself, as the context requires.

D. Respondent's NPDES Permit

34. The State of Colorado has issued NPDES Permit Number CO0023078 (the NPDES Permit) to Respondent, effective October 1, 2011, and expiring September 30, 2016. The NPDES Permit has been administratively continued. It authorizes Respondent to discharge from the WWTP into Coal Creek. The State of Colorado is an "NPDES State," because the EPA has approved the State of Colorado's NPDES program pursuant to section 402(b) of the Act, 42 U.S.C. § 1342(b).

35. The State of Colorado has not received the EPA's approval of its pretreatment program. Therefore, the EPA is the "Approval Authority" as defined in 40 C.F.R. § 403.3(c).

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36. The NPDES Permit requires Respondent to develop, implement, document, and enforce an industrial pretreatment program in accordance with the Pretreatment Regulations. Part I.B.7.a of the NPDES Permit.

37. The EPA approved Respondent's pretreatment program on May 23, 1986, at which time Respondent became the "Control Authority" as defined in 40 C.F.R. § 403.3(f). The program as approved by the EPA on May 23, 1986, and subsequently modified (most recently on May 6, 2013) will be referenced in this Agreement as the "Pretreatment Program."

38. Respondent has enacted pretreatment provisions in its municipal code (the Municipal Code). These provisions were most recently approved by the EPA on May 6, 2013, and are part of the Pretreatment Program.

E. The EPA's Pretreatment Compliance Inspection

39. On July 11 and 12, 2013, the EPA conducted a Pretreatment Compliance Inspection (PCI) of Respondent's pretreatment program. The PCI report was mailed to Respondent with a letter of potential violation dated September 30, 2013.

40. The EPA and Respondent met on November 12, 2013, for a PCI follow-up meeting.

41. As part of its PCI, the EPA reviewed Respondent's files for the following IUs:

- two drinking water treatment plants (Water Plants),
- Mountainside Medical, LLC (Mountainside Medical),
- Oracle America, Inc. RHO (Oracle),
- Kiosk Information Systems (Kiosk), and
- Mark Williams Enterprises, Inc., which is a zero-discharge IU with a categorical process.

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42. Respondent provided the EPA with additional information regarding the findings of the PCI in an email dated October 21, 2013, and during the November 12, 2013 meeting.

F. Water Plants

43. The Water Plants consist of a north plant (North Plant) and a south plant (South Plant).

44. The Water Plants are IUs as defined in 40 C.F.R. § 403.3(j).

45. The Water Plants are owned and operated by Respondent.

46. According to information Respondent had gathered as of the date of the PCI, the Indirect Discharges of wastewater from the Water Plants, which resulted from solid residuals generated during the drinking water treatment process, ranged from approximately 150,000 to 600,000 gallons per day. Respondent notified the EPA on August 14, 2013, that the North Plant discharges daily and the South Plant discharges every other day.

47. Respondent has measured manganese (Mn) concentrations in the Water Plants' Indirect Discharges from two sources at the Water Plants, known as "sludge" and "recycle." The data from two sample events in 2013 are listed below.

Sample Date	Source of Wastewater	Mn Concentration (µg/L)
January 22, 2013	North Plant – sludge	132
	South Plant – sludge	39.0
February 3, 2013	North Plant – sludge	185
	South Plant – sludge	34.6
	South Plant – recycle	3.6

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48. With a letter dated June 23, 2017, from Respondent to the EPA, Respondent provided copies of a July 2012 "Water System Facilities Plan" (Water Plan) and an April 2013 "Wastewater Facility Plan" (Wastewater Plan).

49. The Water Plan recommended discontinuing the discharge of solids residuals from the Water Plants to the POTW due to concerns with the POTW's ability to meet "biosolids quality and regulatory compliance...due to arsenic, other metals, and volume." (Section 11, under "Project No. 2A and 2B – Residuals Handling for the [North Plant] and [South Plant], in the unnumbered series of pages following page 65.) The Water Plan also identified a capital improvement project to construct drying beds to handle the solids residuals at the North Plant and South Plant.

50. The Wastewater Plan stated, "Daily maximum levels of arsenic and manganese periodically exceed the monthly average effluent limits included in the [NPDES Permit]." (Page 1-3.) It recommended the discharge of solids residuals to the POTW be discontinued. The Wastewater Plan went on to state, "It is believed that the elevated concentrations of manganese, mercury, and arsenic observed in the [wastewater treatment plant] effluent are caused by the [Water Plants'] residuals." (Page 1-3.)

51. During the PCI, Respondent informed the EPA that Respondent had determined that the Water Plants caused Pass Through of Mn in the WWTP in October 2012, July 2013, and August 2013.

52. Because each Water Plant discharges more than 25,000 gallons per day of process wastewater to the POTW, each Water Plant is an SIU as defined in 40 C.F.R. § 403.3(v).

53. In addition, because each Water Plant presents a reasonable potential for causing Pass Through, each Water Plant is an SIU as defined in 40 C.F.R. § 403.3(v).

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54. Because Respondent determined that the Water Plants caused Pass Through in October 2012, July 2013, and August 2013, the Water Plants were in SNC, as described in 40 C.F.R. § 403.8(f)(2)(viii)(C), during those months.

55. After Respondent was notified in the PCI report that the Water Plants were SIUs without a control mechanism, Respondent issued each Water Plant an SIU permit, effective December 1, 2013.

56. Neither Water Plant submitted a permit application, in violation of section 13.32.060.D.2 of the Municipal Code. Prior to December 1, 2013, the Water Plants contributed Indirect Discharge to the POTW without a permit, in violation section of 13.32.060.F.1 of the Municipal Code.

G. Mountainside Medical

57. Mountainside Medical manufactures metal parts for medical devices and is a categorical SIU. It is subject to the Metal Finishing Point Source Category described at 40 C.F.R. part 433.

58. Respondent issued an SIU permit to Mountainside Medical (the Mountainside Medical SIU Permit) effective March 8, 2012, and expiring March 8, 2015.

H. Oracle

59. Oracle manufactures semiconductors for computers. Oracle is a categorical IU. It is subject to the Semiconductor Subcategory of the Electrical and Electric Components Point Source Category in 40 C.F.R. part 469, subpart A, which applies to Indirect Discharges from all process operations associated with the manufacture of semiconductors, except sputtering, vapor deposition, and electroplating. Oracle performs electroplating during the wafer fabrication process, not during final assembly and, therefore, its electroplating process is covered by 40 C.F.R. part 469.

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60. Respondent issued Oracle an SIU permit (the Oracle SIU Permit) effective April 1, 2011, and expiring on April 1, 2014.

61. Consistent with 40 C.F.R. § 403.12(l) and section 13.32.070(D)(1) of the Municipal Code, the Oracle SIU Permit required periodic compliance reports to be signed and certified by an authorized representative.

62. The Oracle self-monitoring report received by Respondent on April 3, 2013, had an electronically generated mark, not a signature, on the certification statement. Although 40 C.F.R. § 403.8(g) allows POTW to receive electronically generated documents upon satisfying the requirements of 40 C.F.R. part 3, Respondent has not done so and is not authorized to receive reports with electronically generated signatures. (See also 40 C.F.R. §§ 122.22(d) and 403.12(l).)

I. Kiosk

63. Kiosk manufactures metal parts for kiosks and assembles kiosks. Kiosk is a categorical IU. It is subject to the Metal Finishing Point Source Category described at 40 C.F.R. part 433.

64. Respondent issued an SIU permit to Kiosk (the Kiosk SIU Permit) effective January 8, 2012. The Kiosk SIU Permit was amended on October 20, 2012. It expired on January 8, 2014.

65. The Kiosk SIU Permit required periodic compliance reports to be submitted to the POTW based on a calendar quarter reporting period.

66. Kiosk submitted a periodic compliance report to Respondent on January 23, 2013, which listed a reporting period of September 12, 2012, through December 13, 2012, rather than a calendar quarter reporting period.

67. Kiosk submitted a periodic compliance report to Respondent on April 10, 2013, which listed a reporting period of December 13, 2012, through March 14, 2013, rather than a calendar quarter reporting period.

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68. The Kiosk SIU Permit required periodic compliance reports to include a statement about compliance with Kiosk's best management practices plan (the Kiosk BMPP).

69. The Kiosk periodic compliance reports received by Respondent on January 23, 2013, and April 10, 2013, did not include a statement about compliance with the Kiosk BMPP.

J. Administrative Order for Compliance on Consent

70. On March 7, 2014, the EPA and the City of Louisville entered into an Administrative Order for Compliance on Consent (Consent Order) pursuant to section 309(a)(3) of the Act, 33 U.S.C. 1319(a)(3), in which the EPA found the following violations:

a. exceedances of the 30-day average maximum effluent limit of 26 micrograms per liter (μg/L) for manganese (part I.A.2 of the NPDES Permit);

b. failure to include pass through information in the POTW's annual pretreatment program report (40 C.F.R. § 403.12(i) and part I.B.7.h.v of the NPDES Permit),

c. failure to maintain a list of SIUs (40 C.F.R. § 403.8(f)(6) and part I.B.7.h.i of the NPDES Permit);

d. failure to control indirect discharges from SIUs (40 C.F.R. § 403.8(f)(1)(iii) and part I.B.7.a.vii of the NPDES Permit);

e. failure to include all required elements in SIU permits (40 C.F.R. § 403.8(f)(1)(iii)*(B)(2)*, *(3)*, *(4)*, and *(6)*; 40 C.F.R. 403.12(g)(2); 40 C.F.R. 403.8(f)(2)(vi); and parts I.B.7.a.vii of the NPDES Permit);

f. failure to sample each SIU at least once per year (40 C.F.R. § 403.8(f)(2)(v) and part I.B.7.a.iii of the NPDES Permit);

g. failure to create required sampling records (40 C.F.R. § 403.8(f)(2)(vii) and part I.B.7.a of the NPDES Permit);

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h. failure to develop and implement procedures to determent and document significant non-compliance (40 C.F.R. § 403.8(f)(2)(viii) and part I.B.7.a.xi of the NPDES Permit);

i. failure to publish notification of IUs in significant non-compliance (40 C.F.R. § 403.8(f)(2)(viii) and part I.B.7.h of the NPDES Permit);

j. failure to analyze periodic compliance reports (40 C.F.R. § 403.8(f)(2)(iv) and part I.B.7.a of the NPDES Permit);

k. failure to implement procedures to investigate instances of noncompliance (40 C.F.R. § 403.8(f)(1) and part I.B.7.a.v of the NPDES Permit);

l. failure to implement Respondent's legal authority (40 C.F.R. § 403.8(f)(1) and part I.B.7.a of the NPDES Permit); and

m. failure to enforce against IUs according to Respondent's Enforcement Response Plan (40 C.F.R. § 403.8(f)(5) and parts I.B.7.a.vi and I.B.7.a.x of the NPDES Permit).

71. Respondent has advised the EPA that the POTW has corrected the pretreatment program violations alleged in the Consent Order.

VI. COUNTS OF VIOLATION

Count One: Exceedances of Effluent Limit

72. Part I.A.2 of the NPDES Permit establishes a 30-day average maximum effluent limit of 26 micrograms per liter (μg/L) for Respondent's discharges of Mn.

73. In October 2012, Respondent's 30-day average discharge of Mn was 27.7 μg/L, according to a discharge monitoring report (DMR) covering October 1, 2012, through December 31, 2012, which Respondent submitted to the Colorado Department of Public Health and Environment (CDPHE) on January 9, 2013.

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74. In July 2013 and August 2013, Respondent's 30-day average discharges of Mn were 41.5 µg/L and 36.8 µg/L, respectively, according to a DMR covering July 2013 through September 2013 that Respondent submitted to CDPHE on October 16, 2013.

75. Respondent's discharges of Mn in October 2012, July 2013, and August 2013 in concentrations exceeding 26 µg/L violated part I.A.2 of the NPDES Permit.

Count Two: Pass Through

76. IUs are prohibited from discharging into a POTW any pollutant(s) that cause Pass Through. 40 C.F.R § 403.5(a)(1).

77. Each of Respondent's discharges from the Water Plants that caused Pass Through of Mn in October 2012, July 2013, and August 2013 violated 40 C.F.R § 403.5(a)(1).

Count Three: Omission of Required Information from Annual POTW Report

78. Respondent is required to submit annual pretreatment program reports (Annual POTW Reports) to the EPA with specific information, including any information requested by the EPA. Part I.B.7.h of the NPDES Permit and 40 C.F.R. § 403.12(i).

79. In a January 17, 2013 memorandum from the EPA with an attached Annual POTW Report, the EPA requested information on Pass Through in Respondent's 2012 Annual POTW Report.

80. Respondent's 2012 Annual POTW Report stated that in 2012 Respondent had experienced no instances of Pass Through. Respondent's failure to report its October 2012 violation of the Mn effluent limitation as an instance of Pass Through was a violation of 40 C.F.R. § 403.12(i) and part I.B.7.h.v of the NPDES Permit.

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Count Four: Failure to Maintain List of SIUs

81. Respondent's 2012 Annual POTW Report included a list of IUs but listed the two drinking water treatment plants (Water Plants) owned by Respondent as non-SIUs.

82. Part I.B.7.h. of the NDPES Permit and 40 C.F.R. § 403.8(f)(6) require Respondent to prepare and maintain a list SIUs and submit it with the Annual POTW Report. The list must identify the criteria applicable to each SIU.

83. Respondent's failure to list the Water Plants as SIUs and identify them as such in its 2012 Annual POTW Report violated 40 C.F.R. § 403.8(f)(6) and part I.B.7.h.i of the NPDES Permit.

Count Five: Failure to Control Indirect Discharges from SIUs

84. Respondent is required to control the contribution of pollutants by each SIU to the POTW through a permit, order, or similar means that, among other things, includes effluent limitations and reporting requirements. Part I.B.7.a.vii of the NPDES Permit and 40 C.F.R. § 403.8(f)(1)(iii).

85. Respondent failed to control the Indirect Discharges from the Water Plants through any permit, order, or similar means prior to December 1, 2013, in violation of 40 C.F.R. § 403.8(f)(1)(iii) and part I.B.7.a.vii of the NPDES Permit.

Count Six: Failure to Include All Required Elements in SIU Permits

86. In each permit it issues to an SIU, Respondent is required to include a statement that the permit is not transferable without, at a minimum, prior notification to Respondent and provision of a copy of the existing permit to the new owner or operator. Part I.B.7.vii.B of the NPDES Permit and 40 C.F.R. § 403.8(f)(1)(iii)(B)*(2)*; see also section 13.32.060.J of the Municipal Code.

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87. Respondent did not include any statement of non-transferability in the Mountainside Medical SIU Permit, the Oracle SIU Permit, or the Kiosk SIU Permit reviewed during the PCI. For each of these three permits, this is a violation of part I.B.7.a.vii of the NPDES Permit and 40 C.F.R. § 403.8(f)(1)(iii)*(B)(2)*.

88. In each permit it issues to an IU, Respondent is required to include effluent limits, based, among other things, on applicable categorical Pretreatment Standards and local limits. Part I.B.7.a.vii.C of the NPDES Permit and 40 C.F.R. § 403.8(f)(1)(iii)(B)*(3)*.

89. The Municipal Code applies local limits to "[e]very permitted significant industrial user of the POTW, except where mass limits have been established." Section 13.32.120.A of the Municipal Code. As of the date of the PCI, no mass limits had been established for Kiosk.

90. Respondent did not include any local limits for arsenic, cadmium, hexavalent chromium, trivalent chromium, copper, lead, manganese, mercury, molybdenum, nickel, selenium silver, or zinc in the Kiosk SIU Permit reviewed during the PCI and, therefore, violated part I.B.7.a.vii.C of the NPDES Permit and 40 C.F.R. § 403.8(f)(1)(iii)(B)*(3)*.

91. Respondent based the limits in the Oracle SIU Permit reviewed during the PCI on a combined wastestream formula for wastewater regulated under the Electronic Components Point Source Category, Subpart A – Semiconductor Subcategory (40 C.F.R. part 469, subpart A) and the Metal Finishing Point Source Category (40 C.F.R. part 433). Because only the former applied, Respondent did not correctly apply categorical Pretreatment Standards to the Oracle SIU Permit and, therefore, violated part I.B.7.a.vii.C of the NPDES Permit and 40 C.F.R. § 403.8(f)(1)(iii)(B)*(3)*.

92. In each permit it issues to an SIU, Respondent is required to include a requirement that if an SIU has violated an effluent limit, the SIU must perform repeat sampling and submit the

results to Respondent within 30 days of becoming aware of the violation. Part I.B.7.a.vii.D of the NPDES Permit and 40 C.F.R. §§ 403.8(f)(1)(iii)(B)*(4)* and 403.12(g)(2).

93. In the Mountainside Medical SIU Permit, the Oracle SIU Permit, and the Kiosk SIU Permit reviewed during the PCI, Respondent did not require the permittees to submit repeat sample results to Respondent within 30 days of becoming aware of a violation. Therefore, for each of these SIU permits, Respondent violated part I.B.7.a.vii.D of the NPDES Permit and 40 C.F.R. §§ 403.8(f)(1)(iii)(B)*(4)* and 403.12(g)(2).

94. In each permit it issues to an SIU, Respondent is required to include a requirement to control Slug Discharges (defined in 40 C.F.R. § 403.8(f)(2)(vi) to include accidental spills) if determined by Respondent to be necessary. Part I.B.7.a.vii.F of the NPDES Permit and 40 C.F.R. § 403.8(f)(1)(iii)(B)*(6)*. By enacting section 13.32.050.G.2 of the Municipal Code, Respondent has determined that it is necessary to require SIUs to submit a written report within five days of any accidental discharge.

95. In the Mountainside Medical SIU Permit, the Oracle SIU Permit, and the Kiosk SIU Permit reviewed during the PCI, Respondent required reports of Slug Discharges to be submitted within five working days, not five days. Therefore, for each of these permits, Respondent violated part I.B.7.a.vii.F of the NPDES Permit and 40 C.F.R. §§ 403.8(f)(1)(iii)(B)*(6)* and 403.8(f)(2)(vi).

Count Seven: Failure to Create Required Sampling Records

96. Respondent is required to maintain records of all monitoring, including but not limited to the method of sampling for each sample. Part I.B.7.a of the NPDES Permit and 40 C.F.R. § 403.12(o).

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97. When Respondent sampled Kiosk's Indirect Discharge October 12, 2012, and when Respondent sampled Mountainside Medical's Indirect Discharge on December 3, 2012, Respondent did not record the sample method. Each failure to record and maintain a sample method constitutes a separate violation of part I.B.7.a of the NPDES Permit and 40 C.F.R. § 403.8(f)(2)(vii).

Count Eight: Failure to Develop and Implement Procedures to Determine and Document Significant Non-Compliance

98. Respondent is required to develop and implement procedures for determining when IUs are in SNC. 40 C.F.R. § 403.8(f)(2)(viii) and part I.B.7.a.xi of the NPDES Permit.

99. Prior to the EPA's PCI, Respondent had not developed any procedure for determining whether IUs were in SNC. This was in violation of part I.B.7.a.xi of the NPDES Permit and 40 C.F.R. § 403.8(f)(2)(viii).

Count Nine: Failure to Analyze Periodic Compliance Reports

100. Respondent is required to receive and analyze periodic compliance reports and other notices submitted by industrial users in accordance with the self-monitoring requirements in 40 C.F.R. § 403.12. Part I.B.7.a of the NPDES Permit and 40 C.F.R. § 403.8(f)(2)(iv).

101. Respondent failed to fully analyze the SIU periodic compliance reports referenced in paragraphs 62, 66, 67, and 69, above.

102. Each failure by Respondent failure to fully analyze an SIU periodic compliance report cited in paragraph 101, above, constitutes a violation of part I.B.7.a of the NPDES Permit and 40 C.F.R. § 403.8(f)(2)(iv).

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Count Ten: Failure to Implement Procedures to Investigate Instances of Noncompliance

103. Respondent is required to develop and implement procedures to investigate instances of noncompliance with Pretreatment Standards and Requirements, as indicated in the reports and notices required under 40 C.F.R. § 403.12, or as indicated by analysis, inspection, and surveillance activities. Part I.B.7.a.v of the NPDES Permit and 40 C.F.R. § 403.8(f)(2)(iv).

104. Although Respondent's sampling of the Water Plants, referenced in paragraph 47, above, should have alerted Respondent to the possibility that the Water Plants had caused Pass Through (i.e., had caused Respondent to violate the Mn effluent limit in the NPDES Permit), Respondent failed to implement timely procedures to investigate this possibility adequately.

105. Respondent's failure to implement procedures to investigate instances of noncompliance with Pretreatment Standards and Requirements constitutes a violation of part I.B.7.a.v of the NPDES Permit and 40 C.F.R. § 403.8(f)(1).

Count Eleven: Failure to Enforce According to Enforcement Response Plan

106. Respondent developed an Enforcement Response Plan titled, "City of Louisville / Industrial Pretreatment Program / Enforcement Response Guide" (the ERP).

107. Respondent failed to initiate any enforcement response to the multiple SIU violations described above. For example, as of the date of the PCI, Respondent had not initiated any enforcement response for:

a. the Water Plants' Pass Through, as described in paragraph 51, above;

b. the Water Plants' unpermitted contribution of Indirect Discharge to the POTW, as described in paragraph 56, above;

c. Oracle's failure to include a signature on the certification statement for a report, as described in paragraph 62, above; or

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d. Kiosk's failure to include a statement about compliance with the Kiosk best management practices plan (BMPP) in a report, as described in paragraph 69, above.

For each of these failures to initiate an enforcement response, Respondent failed to implement the ERP, in violation of parts I.B.7.a.vi and I.B.7.a.x of the NPDES Permit and 40 C.F.R. § 403.8(f)(5).

Count Twelve: Failure to Implement Legal Authority

108. Respondent is required to implement and exercise its legal authority fully and effectively. Part I.B.7.a of the NPDES Permit and 40 C.F.R. § 403.8(f)(1).

109. As of the time of the Consent Order, Respondent had not taken steps to update any of its SIU permits to incorporate the changes to its Municipal Code that had been approved by the EPA by letter dated May 6, 2013 (as indicated in paragraph 38, above).

110. By failing to update its SIU permits to incorporate changes to its Municipal Code, Respondent failed to implement its legal authority fully and effectively, in violation of part I.B.7.a of the NPDES Permit 40 C.F.R. § 403.8(f)(1).

111. As of the time of the Consent Order, the ERP was not consistent with the enforcement remedies in the Municipal Code. For example,

a. section 13.32.130.B of the Municipal Code provides 10 days for IUs to respond to a notice of violation, but the ERP provides only five days,

b. the ERP did not include SNC criteria set forth in section 13.32.020 of the Municipal Code, and

c. the ERP did not include suspension of service or revoking SIU permits as a response to the following IU violations: for an actual or proposed Indirect Discharge that endangers, or may reasonably endanger, individual health, safety or welfare, or the

environment; for all instances of interference or Pass Through; for failing to notify Respondent of changes in the Indirect Discharge; for refusing timely access to facilities or records; failing to pay fines; or for failing to complete a wastewater survey. Section 13.32.130.E and I of the Municipal Code provide for suspension or termination of service or SIU permits for each of these IU violations.

112. By failing to ensure that the ERP was consistent with its Municipal Code, Respondent failed to implement its legal authority fully and effectively, in violation of part I.B.7.a of the NPDES Permit and 40 C.F.R. § 403.8(f)(1).

VII. CIVIL PENALTY

113. Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. part 19 (7-1-16 ed.) authorize the EPA to impose Class I administrative penalties of up to $16,000 per violation, up to a total of $37,500, for violations occurring after January 12, 2009, through December 6, 2013. The EPA proposes to assess a penalty of **$25,000** for the violations alleged above.

114. In proposing this penalty amount, the EPA has considered the applicable statutory factors, which, according to section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), are the nature, circumstances, extent and gravity of the violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

115. Respondent consents and agrees to pay a civil penalty in the amount stated in paragraph 113, above, in the manner described below:

a. Payment shall be due no later than 30 calendar days after the date of the Final Order. If the due date for the payment falls on a weekend or federal holiday, then

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the due date is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank, as described below. Payment must be received by 11:00 a.m. Eastern Time to be considered as received that day.

b. Payment shall be made by any method provided on the following website https://www.epa.gov/financial/makepayment, following the instructions under the heading "Civil Penalties."

c. Copies of the check or record of payment shall be sent to:

Christina Carballal
U.S. Environmental Protection Agency (8ENF-W-NP)
1595 Wynkoop Street
Denver, Colorado 80202-1129

and

Melissa Haniewicz
Regional Hearing Clerk
U.S. Environmental Protection Agency (8RC)
1595 Wynkoop Street
Denver, Colorado 80202-1129

A transmittal letter identifying the case title and docket number (see page 1, above) must accompany the remittance and each copy of the check or record of payment.

VIII. PUBLIC NOTICE

116. As required by section 309(g)(4) of the Act, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45, the EPA will provide public notice and a reasonable opportunity to comment on the penalty that Respondent has agreed to pay in this matter. The EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper, or inadequate.

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117. If comments received during the public comment period do not require modification or withdrawal by the EPA from this Agreement, the parties agree to submit this Agreement to the Regional Judicial Officer for Region 8 following the close of the public comment period specified in 40 C.F.R. § 22.45, with a request that it be incorporated into a Final Order.

IX. CONSULTATION WITH STATE

118. Prior to the issuance of this Complaint, the EPA consulted with the State of Colorado regarding the assessment of this administrative penalty by providing a copy of this Agreement to CDPHE and inviting CDPHE to comment.

X. GENERAL PROVISIONS

119. Nothing in this Agreement shall relieve Respondent of the duty to comply with the Act and any regulation, order, or permit issued pursuant to the Act.

120. Any failure by Respondent to comply with this Agreement shall constitute a breach of this Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Agreement and such other relief as may be appropriate.

121. Nothing in this Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of any failure by Respondent to comply with this Agreement.

122. Each party shall bear its own costs and attorney's fees in connection with this matter.

123. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into, and bind Respondent to, this Agreement.

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124. This Agreement, upon incorporation into a Final Order and full satisfaction by the parties, shall be a full settlement of the United States' claims for civil penalties against Respondent for the violations and facts alleged in this Agreement.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8

Date: 10/27/17

By: _____
Stephanie DeJong, Chief
NPDES Enforcement Unit
Water Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice (8ENF-W-NP)
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202
Complainant

Date: 10.27.17

By: Margaret J. (Peggy) Livingston, Atty for
James H. Eppers, Supervisory Attorney
Regulatory Enforcement Unit
Legal Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice (8ENF-L)
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202
Complainant

CITY OF LOUISVILLE
Respondent

Date: 10/26/17

By: _____
Heather A. Balser, Interim City Manager
City Hall
749 Main Street
Louisville, Colorado 80027

CITY OF LOUISVILLE SEAL COLORADO

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT** in the matter of **THE CITY OF LOUISVILLE; DOCKET NO.: CWA-08-2017-0027** was filed with the Regional Hearing Clerk on October 31, 2017, **and the FINAL ORDER** was filed on December 15, 2017.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Peggy Livingston, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on December 15, 2017, to:

Respondent

Samuel J. Light
City Attorney, City of Louisville
Light Kelly PC
101 University Avenue
Denver, Colorado 80206

And emailed to:

Jessica Chalifoux
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

December 15, 2017

Melissa Haniewicz
Regional Hearing Clerk