**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
**REGION 8**

| IN THE MATTER OF:<br><br>The City of Helena, Montana,<br><br>Respondent<br><br>NPDES Permit No. MT0022641 | Docket No.<br><br>ADMINISTRATIVE ORDER FOR COMPLIANCE ON CONSENT |
|---|---|

## INTRODUCTION

1. This Administrative Order for Compliance on Consent (Consent Order) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and the City of Helena, Montana (City), which is the Respondent in this matter. The EPA has authority to issue this Consent Order pursuant to section 309(a)(3) of the Clean Water Act (Act), 33 U.S.C. § 1319(a)(3).

2. The Findings of Fact and of Violation (Findings) in Paragraphs [ REF _Ref377392699 \r \h ] through [ REF _Ref40857644 \r \h ], below, are made solely by the EPA. In signing this Consent Order, the City neither admits nor denies the Findings. Without any admission of liability, the City consents to the issuance of this Consent Order and agrees to abide by all of its conditions. The City waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review the City may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review of this Consent Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-706. The City further agrees not to challenge the jurisdiction of the EPA or any of the Findings in any proceeding to enforce this Consent Order or in any action under this Consent Order.

## STATUTORY AND REGULATORY BACKGROUND

### The NPDES Program

3. 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.

4. 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).

5. 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).

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

7. "Waters of the United States" are defined in 40 C.F.R. § 122.2.

8. 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).

9. 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.

10. 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**

11. 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.

12. 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).

13. 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 Consent 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.

14. 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).

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

16. 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)).

17. 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).

18. 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 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, which include specific information required by 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));



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- 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 and to perform sampling and inspections with sufficient care to produce admissible evidence in enforcement proceedings (per 40 C.F.R. § 403.8(f)(2)(vii));
- 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));

19. 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 OF VIOLATION

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

### The City's POTW

20. 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).

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

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

23. Prickly Pear Creek is navigable-in-fact.

24. Prickly Pear Creek is 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).

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

26. 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).



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

28. 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 is 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 and the City's Approved Pretreatment Program**

29. 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. The City applied to renew the permit and it was administratively extended until September 30, 2012.

30. 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.

31. 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 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 Consent Order.



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

33. 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).

34. 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 Consent 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).

35. 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).

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

37. 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 Consent Order as the "City's Pretreatment Program."

38. 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**

39. 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.

## The EPA's 2017 Audit

40. 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.

41. 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

42. As set forth in Paragraph [ REF _Ref377739701 \r \h ], 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(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.*

43. 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).

### A. Legal Authority in An Ordinance

44. In the 2017 Audit Report, the EPA noted that the City's municipal ordinance (the City Code of Helena, Montana, at Title 6, Public Utilities, Chapter 4, Industrial Wastewater Regulations) needed to be updated, finding that the City's legal authority lacks the following:

(a) The correct definition of SIU, as required by 40 C.F.R. § 403.3(v);

(b) The ability to enforce Best Management Practices, as required by 40 C.F.R. § 403.5(c)(4);

(c) The specific prohibition for toxic gases, vapors and fumes in the ordinance did not align with the equivalent Federal regulations, as required by 40 C.F.R. § 403.5(b)(7);

(d) The enforcement authority to immediately and effectively halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent endangerment to the health or welfare of persons or which presents or may present an endangerment to the environment or which threatens to interfere with the operation of the POTW, as required by 40 C.F.R. § 403.8(f)(1)(vi)(B).

45. On April 15, 2019, the City submitted draft updates to its municipal ordinance addressing the deficiencies described in Paragraph [ REF _Ref40863791 \r \h ] (2019 Draft Ordinance). On June 17, 2019, the EPA sent two emails to the City indicating that the 2019 Draft Ordinance was approvable and that the City should take the 2019 Draft Ordinance to the Helena City Council for their first approval reading and public participation meeting. The June 17, 2019 emails also indicated that the City needed to submit the following information to EPA:

- A statement of basis for the proposed modification;
- An attorney's statement that confirms the modified legal authority will:
    - allow the municipality to fully implement and enforce Pretreatment Standards and Requirements,
    - be processed and adopted by administrative procedures established in local laws and regulations and will include an opportunity for the public to participate,
    - assure the changes will be in compliance with state laws and established standards and requirements in the municipality's NPDES discharge permit.



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- A copy of the draft legal authority that shows additions (by means of **CAPITALIZATION AND BOLDING**) and deletions (by means of **strikethroughs and bolding**) at a minimum; and,
- A copy of the draft legal authority showing all changes as they will look in final format.

46. The City adopted a 2019 Draft Ordinance (Ordinance 3265) on November 18, 2019 (Adopted Ordinance 3265).

47. On July 27, 2020, the City provided to the EPA the information listed in Paragraph [ REF _Ref48630175 \r \h ] above, including a document proposed as the final Title 6, Chapter 4 of Helena City Code, Industrial Wastewater Regulations.

48. On July 31, 2020, the EPA provided comments to the City on the submittal of information provided above in Paragraph [ REF _Ref54089920 \r \h ]. The Adopted Ordinance 3265 was identical to the 2019 Draft Ordinance the EPA considered approvable. However, Title 6, Chapter 4 of Helena City Code, Industrial Wastewater Regulations did not incorporate the approvable modifications in the Adopted Ordinance 3265.

49. On July 31, 2020, the City indicated that the City's codifier had not completed the formal codification of the changes shown by Adopted Ordinance 3265.

50. On August 3, 2020, the City provided the November 4, 2019 and November 18, 2019 City Council Readings affirming that Ordinance 3265 was adopted and indicated that the changes would be codified in three to four weeks.

51. On August 11, 2020, the EPA indicated that based on the submittal on July 27, 2020 referenced in Paragraph [ REF _Ref54089920 \r \h ] and a supplemental submittal on August 3, 2020 referenced in Paragraph [ REF _Ref54090039 \r \h ], the Title 6, Chapter 4 of Helena City Code, Industrial Wastewater Regulations were approvable by the EPA, subject to public notice

(Approvable Ordinance 3265).

52. On October 29, 2020, the EPA public noticed the modifications to the Approvable Ordinance 3265 in the Helena Independent Record for a period of thirty days. No substantive comments were received during the public notice period. On December 1, 2020, pursuant to 40 CFR Section 403.18(c), the Approvable Ordinance 3265 was approved by the EPA.

53. The City's operation without required legal authorities, as described in Paragraph [ REF _Ref23339999 \r \h ], above, has violated 40 C.F.R. § 403.8(f)(1) and part I.E.a of the 2012 MPDES Permit.

**B. Legal Authority in An Intergovernmental Agreement**

54. 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.

55. 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.

56. 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 located on the Fort Harrison military installation generates non-domestic pollutants that discharge to the City's sanitary sewer system that may impact the POTW. Therefore, the City does 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.

57. On April 2, 2001, the City and the Fort Harrison military installation entered into a Memorandum of Understanding (*Memorandum of Understanding with VA Medical & Regional*

*Office Center, Fort Harrison Montana*) regarding a sewer line connecting the Fort Harrison military installation to the City of Helena's POTW (2001 Fort Harrison MOU). In an effort to address EPA's finding in Paragraph [ REF _Ref70333134 \r \h ], the City proposed a draft Addendum to the Fort Harrison MOU for the Fort Harrison military installation's consideration and signature, which is still outstanding as of April 26, 2021.

58. The City's operation without required legal authorities, as described in Paragraph [ REF _Ref39671586 \r \h ], above, has 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 Update Local Limits**

59. The City is required 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.

60. 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.

61. 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).

62. 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 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", [*sic*] 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."

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

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

65. The EPA's 2009 Audit found the City had not updated its local limits since 2002. The EPA's 2009 Audit identified the need to update local limits as a corrective action.

66. The City provided a technical memorandum to EPA on June 28, 2013 in response to the October 1, 2012 MPDES permit reissuance and the 2009 Audit Report. The City's technical memorandum stated that its local limits need to be updated and proposed a delay in development and implementation because the City was in the process of evaluating and implementing water and POTW treatment process modifications which would reduce copper, zinc, total nitrogen, and total phosphorus. At that time, the City was concerned that the local limits calculations would not be based on accurate treatment removal efficiencies and result in overly stringent local limits for its SIUs. The City was also investigating the hardness values used in the 2012 MPDES permit because these values would directly impact the local limits calculations. The City proposed a schedule to provide first draft local limits to EPA by February 1, 2016.

67. The City submitted the first draft local limits to the EPA on April 21, 2016 and EPA provided comments to ensure the local limits were approvable. The City resubmitted its second draft local limits on November 21, 2016 in response to the EPA's comments. The November 21, 2016 local limits submittal included correspondence that contained the City's response to the EPA's



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comments (Part I) and the current steps taken by the City to implement local limits (Part II). The City calculated a zero discharge maximum allowable industrial loading (MAIL) for copper, which would have resulted in an economic disadvantage for the service area. The City requested in Part II of the correspondence to gather additional copper data to supplement the uncontrollable sector (domestic and commercial) dataset and to perform the system-wide copper reduction to minimize the copper loading to the POTW, which included water system sampling, watershed sampling, water distribution system corrosion control, and POTW optimization and process modification. The City indicated to the EPA that it would update the municipal ordinance and submit it with the final draft of the local limits on April 21, 2017.

68. The EPA's 2017 Audit found the City had not updated its local limits. The EPA's 2017 Audit identified the need to update local limits as a corrective action.

69. 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 the development of the local limits.

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

71. On June 11, 2020, the City submitted its reevaluation of local limits for EPA approval, but EPA determined that the submittal did not consider all of the EPA comments referenced in Paragraph [ REF _Ref53915977 \r \h ] and was otherwise not complete. EPA notified the City of this position on September 8, 2020.

72. On October 2, 2020, the City notified 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 [ REF _Ref54079878 \r \h ] and

would provide updated local limits in early 2021.

73. On April 15, 2021, the City sent two local limits spreadsheets, a local limits re-evaluation document, dated January 2019, a local limits re-evaluation document, dated June 11, 2020, and correspondence emails dated September 8, 2020 and October 19, 2020 to the EPA for review and approval. The local limits spreadsheets included domestic and commercial sampling results for samples collected on November 4, 2020 and January 13, 2021 seeking to receive EPA's position on whether they are technically based, comply with the Pretreatment Regulations, and are approvable by EPA, prior to offering public notice of the updates as set forth in Paragraphs [ REF _Ref70342472 \r \h ] and [ REF _Ref70342477 \r \h ]. As of the date of this Consent Order, EPA's review is ongoing.

74. The City's failure to update its local limits has 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.

**Count III: Failure to Identify and Locate IUs**

75. 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 Regional Administrator 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 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).

76. The City had 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 [ REF _Ref46137521 \r \h ]. The City's IU Inventory was a listing of IUs in the service area that was generated in the JobCal

program and contained approximately 525 industrial users in the service area. The City's IU Inventory provided the facility name, address, and a broad characterization of the IUs. Based on a review of available IU survey and inspection records during the 2017 Audit, the City had not invested resources in using the methods discussed in the industrial user inventory procedure. The City had not performed drive-by inspections and facility inspections as identified in the City's procedure for the industrial user inventory. Additionally, the City had not conducted an inventory of the non-domestic users, including dental facilities, in the Aspen Meadows service area.

77. Based on the EPA's evaluation of the City's IU Inventory mentioned in Paragraph [ REF _Ref40277389 \r \h ] City's IU Inventory was not kept updated and maintained as of the date of the 2017 Audit.

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

79. On August 27, 2020, the City sent the EPA the City's final Industrial User Inventory and Characterization Procedures and indicated that these new procedures superseded the old IU survey procedures.

80. Also, on August 27, 2020, the City notified 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.

81. The City's failure to identify and locate all possible IUs that might be subject to the City's Pretreatment Program has 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 has violated and continues to violate 40 C.F.R. § 403.12(i)(1) and part I.E.a.i and part I.E.f.i of the 2012 MPDES Permit.

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

82. The City is required to notify the IUs it has identified under 40 C.F.R. § 403.8(f)(1)(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.

83. The 2017 Audit found that the City's industrial waste survey procedure did not address the notification of 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.

84. The City's failure to notify IUs of applicable Pretreatment Standards has 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 V: Failure to Include All Required Elements in SIU Permits**

85. In each SIU permit it issues, the City is required to include, among other things:

(a) a statement of duration (in no case more than five years), under 40 C.F.R.

§ 403.8(f)(1)(iii)(B)(*1*) and part I.E.a.vi(A) of the 2012 MPDES Permit;

(b) a statement of non-transferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator, under 40 C.F.R. § 403.8(f)(1)(iii)(B)(*2*) and part I.E.a.vi(B) of the 2012 MPDES Permit;

(c) effluent limits, including Best Management Practices, based on applicable general Pretreatment Standards in 40 C.F.R. part 403, categorical Pretreatment Standards, local limits, and State and local law, under 40 C.F.R. § 403.8(f)(1)(iii)(B)*(3)* and part I.E.a.vi(C) of the 2012 MPDES Permit;

(d) self-monitoring, sampling, reporting, notification, and recordkeeping requirements, under 40 C.F.R. § 403.8(f)(1)(iii)(B)*(4)* and part I.E.a.vi(D) of the 2012 MPDES Permit; and

(e) a statement of applicable civil and criminal penalties for violation of Pretreatment Standards and requirements, under 40 C.F.R. § 403.8(f)(1)(iii)(B)(*5*) and part I.E.a.vi(E) of the 2012 MPDES Permit.

86. The City's municipal ordinance does not authorize providing for administrative extensions in permits. Thus, a permit cannot be administratively extended to exceed five years in duration because this would result in the City acting beyond the authority of the municipal ordinance and failing to implement the Pretreatment Regulations at 40 C.F.R. § 403.8(f)(1)(iii)(B)(1), which limit permit duration to five years at a maximum.

**A. DIP IU Permit**

87. At the time of the 2017 Audit, the IU permit that the City issued to DIP, permit number DIP005, effective October 1, 2016, to September 30, 2020 (DIP IU Permit), allowed for administrative extensions of permits. On August 11, 2020, the City reissued the DIP IU Permit and removed this allowance, as set forth in Paragraph [ REF _Ref54767395 \r \h ].

88. At the time of the 2017 Audit through August 11, 2020, the DIP IU Permit:

(a) failed to have a defensible basis or justification for the daily and monthly limits for arsenic, chromium III, chrome VI, and the daily permit limits for mercury, molybdenum and selenium. These permit limits are not found in the City's local limits nor are these Pretreatment Standards for New Sources (PSNS) under the Metal Finishing Point Source Category;

| Pollutant | Daily Maximum (mg/L) | Monthly Average (mg/L) |
|---|---|---|
| Arsenic | 0.01 | 0.006 |
| Chromium III | 2.36 | 1.46 |
| Chromium VI | 0.41 | 0.25 |
| Mercury | 0.25 | - |
| Molybdenum | 1.28 | - |
| Selenium | 0.95 | - |

(b) Failed to include a Total Toxic Organics (TTO) daily maximum permit limit of 2.13 mg/L, as required by the Pretreatment Standards for New Sources (PSNS) under the Metal Finishing Point Source Category at 40 C.F.R. § 433.17(a).

(c) Failed to include semiannual monitoring for Total Toxic Organics.

(d) Allowed for grab sampling for compliance purposes. The grab sample requirement does not appear to be representative of the 8-hour discharge from the facility. The permit rationale does not provide adequate justification regarding representative sampling techniques.

89. On August 11, 2020, the City reissued the DIP IU Permit, permit number DIP005, effective August 15, 2020 to August 14, 2025 (Reissued DIP IU Permit) to remove the administrative extension allowance and correct the issues identified in Paragraph [ REF _Ref40881871 \r \h ] above.

90. The City's past failure to include each required condition in the DIP IU Permit and the City's previous allowance of administrative extensions of the permit have violated 40 C.F.R. § 403.8(f)(1)(iii)(B) and part I.E.a.vi of the 2012 MPDES Permit.

**B. MRL IU Permit**

91. The IU permit that the City issued to MRL, permit number 0002-A, effective January 1, 2016 through December 31, 2020 (MRL IU Permit), allows for and continues to allow for administrative extension of permits.

92. The MRL IU Permit also:

(a) has a monitoring requirement that allows for sampling of the discharge of wastewater "before discharging to [the] sanitary sewer," instead of requiring MRL to sample during the discharge event to ensure a sample representative of daily operations pursuant to 40 C.F.R. § 403.12(b)(5).

(b) allows for electronic submittals of reports; even though the City is not Cross-Media Reporting Rule (CROMERR) certified pursuant to 40 C.F.R. part 3 and as required by 40 C.F.R. § 403.8(g).

(c) allows for reopening of the permit to incorporate new or revised requirements contained in the National Categorical Pretreatment Standards promulgated for the metal finishing category (40 C.F.R. part 433); even though MRL is not subject to that categorical standard.

(d) allows for permit appeals; even though the City's ordinance does not have allowances for permit appeals.

(e) does not allow for permit transfers; even though the ordinance has allowances for permit transfers if certain requirements are met.

(f) failed to incorporate the hazardous waste notification requirements found in Section 6-4-17.I of the City's ordinance.

(g) had the incorrect citation to the City's ordinance sections for penalties for violation of the permit conditions.

93. On January 1, 2021 the City reissued the MRL permit (January 2021 MRL Permit). The January 2021 MRL Permit addressed the issues identified in paragraphs [ REF _Ref70340181 \r \h ] and [ REF _Ref55209387 \r \h ].d, [ REF _Ref55209387 \r \h ].e, [ REF _Ref55209387 \r \h ].f and [ REF _Ref55209387 \r \h ].g above. The January 2021 MRL Permit did not address the issues identified in paragraphs [ REF _Ref55209387 \r \h ].a, [ REF _Ref55209387 \r \h ].b and [ REF _Ref55209387 \r \h ].c above.

94. The City's failure to include each required condition in the MRL IU Permit and the City's allowance of administrative extensions of the permit has violated and continues to violate 40 C.F.R. § 403.8(f)(1)(iii)(B) and part I.E.a.vi of the 2012 MPDES Permit.

**Count VI: Failure to Conduct Inspections and Sampling with Sufficient Care**

95. 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 required under §403.12, or indicated by analysis, inspection, and surveillance activities. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions. 40 C.F.R. § 403.8(f)(2)(vii) and part I.E.a.ii of the 2012 MPDES Permit.

96. According to 40 C.F.R. § 403.8(f)(2)(v), the City is required to develop and implement procedures to inspect and sample each SIU at least once a year.

97. The 2017 Audit found that the City's inspection reports for DIP and MRL were not adequate to determine compliance with Pretreatment Standards and Requirements. The SIU inspection reports were not based on current information gathered during the facility inspection. The inspection reports failed to contain an evaluation of the facility's potential for slug discharge control and failed to contain information regarding the facility's discharge practices to ensure compliance sampling was based on representative sampling. Based on the EPA's review of past years' inspection report records, the inspection reports were copied and pasted from the previous year dating back at least three years.

98. The 2017 Audit found that the City failed to perform independent pH samples at DIP.

99. DIP discharges from the electrolytic cleaner an average of 8 hours per day. The City of Helena samples the facility using a grab sampling technique that is not representative of the discharge.

100. The 2017 Audit found that the City had not evaluated DIP to determine if it discharges TTOs in quantities that may impact the TTO daily maximum limit found in 40 C.F.R. § 433.17(a).

101. On June 11, 2020, the City indicated that during annual inspections of DIP, the City's staff evaluates DIP for chemicals to determine that the facility is not discharging any total toxic organics found in 40 C.F.R. part 433. The City indicated that DIP has been submitting the Toxic Organic Management Plan and the TTO certification statement throughout 2018. On August 11, 2020, the DIP IU Permit was reissued, as set forth above in Paragraph [ REF _Ref54767395 \r \h ], to require that DIP keep Safety Data Sheets (SDS) on file at the facility and notify the City with each quarterly report of any new chemicals used in the DIP process.

102. <u>On August 3, 2020, the City provided the EPA with the City of Helena Industrial Pretreatment Sampling and Analysis Plan for sampling its significant industrial users. On August 18, 2020, the EPA provided comments to the City on the Plan. On August 31, 2020 the City addressed EPA's</u>

comments on the City of Helena Industrial Pretreatment Sampling and Analysis Plan, except for the following comments:

(a) The City indicated that the POTW would sample each SIUs once per year. However, it did not indicate when the TTO sampling will occur for DIP during the permit cycle. For facilities that have a Toxic Organic Management Plan (TOMP) and are providing the TTO certification in their semi-annual reports, the POTW must sample for all TTOs once per industrial user permit cycle to ensure compliance with TTO limits.

(b) The sampling and analysis did not address the creation and maintenance of required records, as listed in 40 C.F.R. § 403.12(o).

103. The City's failures to conduct sampling and inspections with sufficient care to produce admissible evidence in enforcement proceedings or in judicial actions and to sample each SIU at least once per calendar year has violated and continues to violate of 40 C.F.R. § 403.8(f)(2)(vii) and part I.E.a.ii of the 2012 MPDES Permit.

**Count VII. Failure to Analyze Self-Monitoring Report to Identify Noncompliance and Issuance of an IU Permit that Fails to Require Compliance with Applicable Pretreatment Standards and Procedures**

104. The City must require IUs to comply with applicable Pretreatment Standards and Requirements and issue permits (or similar authorizing documents) to control each IUs contribution to the POTW and ensure compliance with the City's Pretreatment Standards and Requirements. 40 C.F.R. § 403.8(f)(1)(ii)-(iii) and part I.E.a.vi of the 2012 MPDES Permit.

105. The City is required to develop and implement procedures to ensure compliance with all requirements of its approved Pretreatment program. 40 C.F.R. § 403.8(f)(2); *see* 40 C.F.R. § 403.9 (approval requirements). These procedures must, among other things, enable the City to identify pollutants contributed by each IU, notify IUS of applicable Pretreatment Standards, receive and

analyze self-monitoring reports and other notices submitted by IUs (pursuant to 40 C.F.R. § 403.12), and randomly sample and analyze effluent from IUS to identify, independent of information supplied by IUs, noncompliance with Pretreatment Standards and Requirements. 40 C.F.R. § 403.8(f)(2)(ii)-(v).

106. If an IU fails to comply with Pretreatment Standards and Requirements, the City is required to investigate instances of noncompliance, regardless of whether the City receives and analyzes a self-monitoring report or notice from the IU, required under 40 C.F.R. § 403.12, that reveals the noncompliance or the City independently discovers the noncompliance. 40 C.F.R. § 403.8(f)(2)(vii) and part I.E.a.iv of the 2012 MPDES Permit.

107. The 2017 Audit found that MRL sampled the final batch tank prior to discharge and submitted the results to the City for permission to discharge. MRL did not sample the effluent from the final batch tank during the actual discharge to collect a representative sample, and the self-monitoring report that MRL provided to the City included information to reveal the non-representative nature of the sample.

108. The City's failure to analyze the MRL self-monitoring report, described above in Paragraph [ REF _Ref54947749 \r \h ], and identify that MRL was not collecting a sample representative of the discharge to the City's POTW, has violated and continues to violate §§ 403.8(f)(2)(iv) and 403.8(f)(2)(vii) and part I.E.a.iv of the 2012 MPDES Permit.

109. The MRL Permit was reissued by the City on January 1, 2021; however, Part 2.a of the MRL Permit's monitoring frequency section indicates that MRL must sample "Prior to discharging to the sanitary sewer" instead of sampling during the discharge event to ensure the sample is representative of daily operations pursuant to 40 C.F.R. § 403.12(b)(5).

110. Additionally, the City's issuance of the MRL IU Permit with a provision that allowed MRL to collect a non-representative sample does not require MRL to comply with applicable Pretreatment Standards and Requirements and does not otherwise ensure compliance with the City's Pretreatment Standards and Requirements. The City's issuance of the MRL IU Permit with this provision has violated and continues to violate 40 C.F.R. § 403.8(f)(1)(ii)-(iii).

**Count VIII: Failure to Notify MRL of Inadequate Permit Term per the City's Enforcement Response Plan and Failure to Reissue the MRL IU Permit to Ensure Compliance with Pretreatment Standards and Requirements to Enforce**

111. The City is required to develop and implement an enforcement response plan (ERP) containing detailed procedures indicating how the City will investigate and respond to instances of IU noncompliance. 40 C.F.R. § 403.8(f)(5) and part I.E.a.ix of the 2012 MPDES Permit.

112. Based on the MRL sampling violation and inappropriate permit term cited above in Paragraphs [ REF _Ref54948972 \r \h ] - [ REF _Ref54948981 \r \h ], the City has failed to notify MRL of the inadequate permit term in accordance with the City's ERP, and to revise and reissue the MRL IU Permit so that it ensures compliance with applicable Pretreatment Standards and Requirements. Thus, the City has violated and continues to violate 40 C.F.R. § 403.8(f)(5) and part I.E.a.ix of the 2012 MPDES Permit or 40 C.F.R. § 403.8(f)(1)(ii)-(iii) and part I.E.a.vi of the 2012 MPDES Permit, respectively

**Count IX: Failure to Have Qualified Personnel to Implement the Pretreatment Program**

113. The City is required to have sufficient resources and qualified personnel to carry out the authorities and procedures described in 40 C.F.R. § 403.8(f)(1) and (2). 40 C.F.R. § 403.8(f)(3) and part I.E.a.vii of the 2012 MPDES Permit.

114. Based on the 2017 Audit, the City appears to have adequate resources to implement the Pretreatment program, but the City is not implementing the pretreatment program adequately. Based on the 2009 and 2017 Audit, the Pretreatment Coordinator does not meet the "qualified personnel" criteria in 40 C.F.R. § 403.8(f)(3). Additionally, the City's failure to include required conditions in IU permits, conduct sampling and inspections with sufficient care to produce admissible evidence, or sample each SIU at least once per calendar year, as set forth in the 2017 Audit Report, demonstrates the City's failure to implement its pretreatment program adequately. Finally, the 2009 and 2017 Audit found that it appears that the City's staff are not properly trained to conduct effective facility inspections or representative and defensible control authority monitoring.

115. On March 22, 2021, the City notified the EPA that the City had created a new position within its Department of Public Works for an Environmental Regulation Pre-Treatment Manager, and that the City planned to advertise and fill the position in the future. The notification included a job description for the new position, including official duties.

116. The City's failure to have "qualified personnel" to implement the pretreatment program has violated and continues to violate 40 C.F.R. § 403.8(f)(3), the 1997 MPDES Permit, and part I.E.a.vii of the 2012 MPDES Permit.

## CONSENT ORDER

The EPA orders, and the City agrees:

117. Upon the effective date of this Consent Order (see Paragraph [ REF _Ref377723138 \r \h * MERGEFORMAT ], below), unless this Consent 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 for 40 C.F.R. part 403 and the 2012 MPDES Permit.

118. Within 30 days after the effective date of this Consent Order, the City shall enter into an IGA with the Fort Harrison military installation to give 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 IGA with the Fort Harrison military installation, 10 days after it is entered.

119. Following completion of EPA's review of the City's updated set of local limits, as set forth in Paragraph [ REF _Ref70343252 \r \h ], if EPA provides to the City a position that the City's proposed updated local limits are not approvable because they are not technically based and/or do not comply with the Pretreatment Regulations, then the City shall have 30 days to address the deficiencies and further update its proposed local limits. Within 5 days of further updating its proposed local limits pursuant to the preceding sentence, the City shall resubmit proposed local limits to EPA to receive EPA's position on whether they are technically based, comply with the Pretreatment Regulations, and are approvable by EPA, prior to offering public notice of the updates as set forth in Paragraphs [ REF _Ref70342472 \r \h ] and [ REF _Ref70342477 \r \h ].

120. Upon receipt of EPA's position that the City's proposed local limits, submitted pursuant to Paragraph [ REF _Ref70343252 \r \h ] or Paragraph [ REF _Ref70346155 \r \h ], are approvable, the City shall have 14 days to seek approval of the proposed local limits by the Helena City Council in a meeting open to the public for adequate public participation and comments, as set forth in 40 CFR 403.5(c)(3) and part I.E.b of the 2012 MPDES Permit. If no changes occur to the proposed local limits during the City Council approval processes, then within 14 days after City Council approval the City shall provide EPA with the proposed 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, 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 EPA's approval. Upon notification from EPA that the proposed local limits have been approved, the City shall implement the proposed local limits.

121. Following the provision in any renewed MPDES Permit that complies with 40 C.F.R. § 122.44(j)(2)(ii), within 12 months after the renewal of the City's 2012 MPDES Permit the City shall conduct a technical evaluation of the need to develop or revise local limits. This evaluation should be conducted in accordance with EPA's "Local Limits Development Guidance" dated July 2004. If new proposed local limits are required by the technical evaluation, then the City shall submit the proposed local limits to the EPA for approval in accordance with 40 C.F.R. § 403.18 within 12 months after renewal of the 2012 MPDES Permit.

122. Within 120 days after the effective date of this Consent Order, the City shall notify each IU contributing pollutants to the POTW of all applicable Pretreatment Standards and the requirements of sections 204(b) and 402 of the Act, and subtitles C and D of the Resource Conservation and Recovery Act.

123. Within 120 days after the effective date of this Consent 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 [ REF _Ref54167316 \r \h ]. The report must include a list of all IUs contributing pollutants to the IU (IU Inventory). For each IU included in the IU Inventory, the City shall identify:

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 [ REF _Ref54090931 \r \h ].

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 115.[ REF _Ref54096703 \r \h ], above.

124. Within 30 days after the effective date of this Consent Order, the City shall update the IU permit for MRL to address the deficiencies identified in Paragraphs [ REF _Ref55209387 \r \h ].a, [ REF _Ref55209387 \r \h ].b, and [ REF _Ref55209387 \r \h ].c, above, and submit the draft MRL permit to the EPA for review and comments. Fourteen days after receiving the comments from the EPA, the City shall issue the final MRL permit and provide the final issued copy to the EPA.

125. Within 60 days after the effective date of this Consent Order, the City shall submit to the EPA for review and comment an inspection procedure to ensure that the City properly collects and maintains IU inspection information. The procedure shall address, at a minimum, inspection processes, note taking, photographic information, and inspection reports. After the City submits

this inspection procedure to EPA, it shall implement the procedure in accordance with Paragraph [ REF _Ref53926607 \r \h * MERGEFORMAT ], below.

126. Within 60 days after the effective date of this Consent Order, the City shall submit to the EPA for review and comment a sampling procedure to ensure that:

   a. the City collects random and independent samples of effluent from all SIUs for all permitted pollutants at least annually, except where the City's legal authority and/or 40 C.F.R. § 403.8(f)(2)(v) requires otherwise, to independently verify compliance or identify noncompliance,
   b. all samples meet the requirements of 40 C.F.R. part 136 (e.g., holding time, proper sample type, chemical or temperature preservation, analytical techniques, etc.),
   c. required records listed in 40 C.F.R. § 403.12(o) are created and maintained, and
   d. where necessary, the procedure addresses random and independent sampling of non-SIUs.
   e. pH equipment calibration logs are maintained.

   After the City submits this sampling procedure to EPA, it shall implement the procedure in accordance with Paragraph [ REF _Ref53926607 \r \h * MERGEFORMAT ], below.

127. Within 30 days after the effective date of this Consent Order, the City shall submit to the EPA for review and comment a review procedure, including a checklist, for receiving and analyzing reports and other notices from SIUs, including but not limited to periodic self-monitoring reports, 24-hour noncompliance notifications, 30-day resampling submittals, upset notifications and reports, bypass notifications and reports, and other required written reports or verbal notifications. After the City submits this review procedure to EPA, it shall implement the procedure in accordance with Paragraph [ REF _Ref53926607 \r \h * MERGEFORMAT ], below.

128. The City shall take enforcement response(s) in accordance with its ERP to address the incorrect

collection techniques described in Paragraphs [ REF _Ref491775760 \r \h ] and [ REF _Ref482799078 \r \h ] and revise and reissue the MRL IU Permit so that it ensures compliance with applicable Pretreatment Standards and Requirements. Within 60 days after the effective date of this Consent Order, the City shall submit to the EPA a description of the enforcement response(s) taken to address the incorrect collection techniques and provide a copy of the revised reissued permit.

129. The City shall ensure that it has qualified personnel to implement the pretreatment program, including by formally designating at least one employee as the "Pretreatment Coordinator" whose official duties include oversight of the City's pretreatment program. Within 10 days after the effective date of this Consent Order, the City shall identify its designated Pretreatment Coordinator to EPA and provide a description of the official duties.

130. After the effective date of this Consent Order, the City shall submit four quarterly reports to the EPA on the City's activities to implement the Pretreatment Program. The reports will be due 30 days following the relevant calendar year quarter. For example, the first report, due July 30, 2021, would cover the period from the effective date of this Consent Order through June 30, 2021, and the last report, due April 30, 2022, would cover January 1, 2022, through March 31, 2022. Each report shall include:

a. the identity of the Pretreatment Coordinator required by Paragraph [ REF _Ref54097222 \r \h ];

b. a summary of the City's staff time and external funds used to implement the Pretreatment Program and comply with this Consent Order;

c. a summary of all IU violations identified by the City during the previous quarter or, if there were no violations, a statement to that effect;

d. a summary of all enforcement actions taken or planned by the City against IUs or, if none were taken or are planned, a statement to that effect;

e. a list of any new SIUs identified;

f. a list of inspections performed and summary of inspection findings; and

g. a summary of any sample results collected by the City during the relevant quarter from any SIU or, if no such samples were collected, a statement to that effect.

131. No later than 270 days after the effective date of this Consent Order, the City shall submit an itemized list of all costs incurred to implement the actions specified in Paragraphs [ REF _Ref24980035 \r \h ] through [ REF _Ref54090902 \r \h ] and Paragraphs [ REF _Ref54090931 \r \h ] through [ REF _Ref420074795 \r \h ], above. The itemized lists of costs shall include at a minimum:

a. the cost of any full-time equivalent staff added to the City's budget to comply with this Consent Order, not including the cost of any reassignments of existing non-pretreatment employees to the pretreatment program;

b. the cost of contractor support in order to comply with this Consent Order; and

c. any other itemized costs incurred to implement the required actions.

132. For each procedure referenced in Paragraphs [ REF _Ref70431648 \r \h ], [ REF _Ref54097129 \r \h ] and [ REF _Ref70431670 \r \h ], above:

a. If, within 30 days after the City's submission, the EPA has neither disapproved nor provided comments on it, the City shall, no later than 45 days after submittal, implement that procedure as submitted; and

b. If, within 30 days after the City's submission, the EPA disapproves or provides comments on the procedure, the City shall, no later than 15 days after receiving the EPA's

disapproval or comments, submit a revised procedure to the EPA for review. Thereafter, the City shall implement the revised procedure as directed by the EPA.

c. If, within 30 days after the City's submission, the EPA approves the procedure, the City shall, no later than 15 days after receiving the EPA's approval, implement the procedure.

133. At the EPA's sole discretion, the EPA may extend deadlines required by this Consent Order or change the identity of the notification recipient in Paragraph [ REF _Ref53928470 \r \h ] with written notice to the City, without further formal amendment of this Consent Order. All other modifications to this Consent Order may be made only by written agreement of the parties.

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

135. All notices and reports required by the Consent 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

136. All reports and information required by this Consent 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 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.

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

138. This Consent 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.

139. This Consent 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 $55,800 (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.

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

141. Each undersigned individual has the authority to bind the respective party to this Consent Order. This Consent Order may be signed in part and counterpart by any party.

142. This Consent Order shall be effective immediately upon the City's receipt of a fully executed copy. The City waives any right to personal service of this Order and consents to receipt of service of this Order by email at ADD email address.

**UNITED STATES**
**ENVIRONMENTAL PROTECTION AGENCY**

Date: _____ By: _____

Colleen Rathbone, Chief
Water Enforcement Branch
Enforcement and Compliance Assurance Division
Region 8, U.S. EPA
1595 Wynkoop Street
Denver, Colorado 80202
(303) 312-6133

**CITY OF HELENA**
Respondent

Date: _____ By: _____

ADD SIGNATORY INFO



ED_014374_00000453-00036

**CERTIFICATE OF SERVICE**

I certify the foregoing Administrative Order for Compliance on Consent was emailed on this day to the City of Helena, at [ADD email].

_____ By: _____
Date

Robyn Hanson Emeson
Senior Assistant Regional Counsel
Region 8, U.S. EPA
1595 Wynkoop Street
Denver, Colorado 80202
(303) 312-6485
hanson.robyn@epa.gov



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