

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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| <p>IN THE MATTER OF:</p> <p>The City of Louisville Louisville, CO NPDES Permit No. CO0023078</p> <p>Respondent</p> | <p>Docket No. CWA-08-2014-0014</p> <p>ADMINISTRATIVE ORDER FOR COMPLIANCE ON CONSENT</p> <p>Proceeding under Section 309 of the Clean Water Act, 33 U.S.C. § 1319</p> |
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FILED
EPA REGION VII
HEARING CLERK

INTRODUCTION

1. This Administrative Order for Compliance on Consent (Consent Order) is entered into voluntarily by the City of Louisville (Respondent) and the United States Environmental Protection Agency (EPA). 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), which authorizes the EPA to issue an order requiring compliance by a person found to be in violation of certain provisions of the Act. This authority has been delegated to the undersigned official.
2. The Findings of Fact and of Violation (Findings) in paragraph numbers 21 through 73, below, are made solely by the EPA. In signing this Consent Order, Respondent neither admits nor denies the Findings. Without any admission of liability, Respondent consents to issuance of this Consent Order and agrees to abide by all of its conditions. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent 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. Respondent 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, container . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).
9. 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).
10. 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.
11. 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 or from such a treatment works. 40 C.F.R. § 403.3(q).

The EPA’s Pretreatment Program

12. 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.
13. 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).
14. 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).
15. 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).
16. The Pretreatment Regulations include regulations containing pollutant discharge limits, 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).
17. 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.
18. 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.
19. 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).
20. 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)(vii), 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 (ERP) for investigating and responding to instances of noncompliance by IUs.

FINDINGS OF FACT AND OF VIOLATION

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

Respondent's POTW

21. 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).
22. Respondent owns and operates a wastewater treatment plant (WWTP) located at 1601 Empire Avenue in Louisville, Colorado.
23. The WWTP discharges treated wastewater into Coal Creek.
24. 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.
25. 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).
26. The WWTP and the sewers, pipes, and other conveyances leading to it are part of Respondent's POTW.
27. 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).
28. Unless otherwise stated, any references to "the POTW" below in this Consent Order shall mean the POTW that is owned and operated by Respondent, or Respondent itself, as the context requires.

Respondent's NPDES Permit

29. 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

- authorizes Respondent to discharge from the WWTP into Coal Creek.
30. The State of Colorado is a "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).
 31. The State of Colorado has not received the EPA's approval of its pretreatment program. Therefore, at all times relevant to this Consent Order, the EPA has been the "Approval Authority" as defined in 40 C.F.R. § 403.3(c).
 32. 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.
 33. 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 Consent Order as the "Pretreatment Program."
 34. Respondent has enacted pretreatment provisions in its municipal code (the Municipal Code), which was most recently approved by the EPA on May 6, 2013, and is part of the Pretreatment Program.

The EPA's Pretreatment Compliance Inspection

35. 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.
36. The EPA and Respondent met on November 12, 2013, for a PCI follow-up meeting.
37. As part of its PCI, the EPA reviewed Respondent's files for the following IUs:
 - two drinking water treatment plants owned by the City of Louisville (DWTPs),
 - 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.

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

DWTPs

39. The DWTPs consist of a north plant (North Plant) and a south plant (South Plant).

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

41. According to information Respondent had gathered as of the date of the PCI, the Indirect Discharges of wastewater from the DWTPs 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.

42. Respondent has measured manganese (Mn) concentrations in the DWTPs' Indirect Discharges from two sources at the DWTPs, 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 |

43. Prior to the PCI, Respondent had made no determination concerning the possibility that the DWTPs had caused Pass Through of Mn in the WWTP. However, during the PCI, Respondent determined that the DWTPs had, in fact, caused Pass Through of Mn in the WWTP in October 2012, July 2013, and August 2013.

44. Because each DWTP discharges more than 25,000 gallons per day of process wastewater to the POTW, each DWTP is an SIU as defined in 40 C.F.R. § 403.3(v).
45. In addition, because each DWTP presents a reasonable potential for causing Pass Through, each DWTP is an SIU as defined in 40 C.F.R. § 403.3(v).
46. Because Respondent has determined that the DWTPs caused Pass Through in October 2012, July 2013, and August 2013, the DWTPs were in SNC, as described in 40 C.F.R. § 403.8(f)(2)(viii)(C), during those months.
47. After Respondent was notified in the PCI report that the DWTPs were SIUs without a control mechanism, Respondent issued each DWTP an SIU permit effective December 1, 2013.
48. The DWTPs failed to submit a permit application, in violation of section 13.32.060.D.2 of the Municipal Code. Prior to December 1, 2013, the DWTPs contributed Indirect Discharge to the POTW without a permit, in violation section 13.32.060.F.1 of the Municipal Code.

Mountainside Medical

49. 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.
50. Based on information provided by Respondent to the EPA at the meeting on November 12, 2013, Respondent first identified Indirect Discharge from Mountainside Medical subject to 40 C.F.R. part 433 during an inspection on September 13, 2011.
51. Having begun its Indirect Discharge after the EPA's proposal of the Metal Finishing Point Source Category regulations (see 47 Fed. Reg. 38462 (August 31, 1982)), Mountainside Medical is a New Source as defined in 40 C.F.R. § 403.3(m).
52. As documented by Respondent in records provided to the EPA in the November 12, 2013, meeting, Respondent collected a sample of the Indirect Discharge from Mountainside Medical on September 13, 2011. The sample had a pH of 4.87 standard units.

53. Section 13.32.040.A.2 of the Municipal Code prohibits Indirect Discharges with a pH of less than 6.0 standard units. An EPA regulation, 40 C.F.R. § 403.5(b)(2), prohibits Indirect Discharges with a pH of less than 5.0 standard units.
54. Based on its Indirect Discharge having commenced on or before September 13, 2011, Mountainside Medical was required by 40 C.F.R. § 403.12(b) to submit a baseline monitoring report (BMR) to Respondent on or before June 15, 2011.
55. Based on its Indirect Discharge having commenced on or before September 13, 2011, Mountainside Medical was required by 40 C.F.R. § 403.12(d) to submit a report on compliance with categorical Pretreatment Standards (90-Day Report) to Respondent on or before December 12, 2011.
56. The first report submitted by Mountainside Medical to Respondent that contained any elements required by 40 C.F.R. § 403.12 for a BMR or for a 90-Day Report was in a letter dated January 27, 2012, from Foothills Environmental, Inc. to Mountainside Medical. This letter was submitted to Respondent on an unknown date. This letter contained some but not all elements that 40 C.F.R. § 403.12(b) requires for BMRs and that 40 C.F.R. § 403.12(d) requires for 90-Day Reports. For example, it included sample results for metals in Mountainside Medical's Indirect Discharge. However, it did not include the name(s) of Mountainside Medical's owner(s) and operator(s), its SIC code(s), any list of its environmental permits, any schematic process diagram identifying points of Indirect Discharge to the POTW, any statement of which Pretreatment Standards applied, any sampling results or estimates for cyanide or total toxic organics, the time and place of sampling and the methods of analysis for the metals that had been sampled, or a certification that sampling had been representative of normal work cycles and expected pollutant discharges to the POTW.
57. Mountainside Medical first submitted an SIU permit application to Respondent on February 17, 2012. This permit application contained some, but not all, of the elements required by 40 C.F.R. § 403.12 for a BMR and a 90-Day Report. Missing elements included other

environmental control permits, average production rate, the SIC code (NAICS code was listed), an indication on a schematic of the discharge point, the method of pretreatment, and an estimate of pollutants. (Note: for BMRs, an estimate, rather than a measurement, is required.)

58. Respondent issued an SIU permit to Mountainside Medical (the Mountainside Medical SIU Permit) effective March 8, 2012, and expiring March 8, 2015.
59. The monthly flow records that Mountainside Medical submitted with its July 19, 2012, self-monitoring results to Respondent show that Mountainside Medical contributed Indirect Discharge to the POTW on several days in December 2011, January 2012, and February 2012.
60. Prior to March 8, 2012, Mountainside Medical had no authorization by an SIU permit or other control mechanism referenced in 40 C.F.R. § 403.8(f)(1)(iii) to introduce Indirect Discharge to the POTW.
61. Mountainside Medical's failure to submit a complete BMR within 45 days of its due date (i.e., by July 30, 2011, which is 45 days after the due date of June 15, 2011, based on its Indirect Discharge commencing on September 13, 2011) constitutes SNC, according to 40 C.F.R. § 403.8(f)(2)(viii)(F).
62. Mountainside Medical's failure to submit a complete 90-Day compliance report within 45 days of its due date (i.e., by January 26, 2012, which is 45 days after the due date of December 12, 2011, based on its Indirect Discharge commencing on September 13, 2011) constitutes SNC, according to 40 C.F.R. § 403.8(f)(2)(viii)(F).

Oracle

63. 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.

64. Respondent issued Oracle an SIU permit (the Oracle SIU Permit) effective April 1, 2011, and expiring on April 1, 2014.
65. Consistent with 40 C.F.R. § 403.12(l) and section 13.32.070(D)(1) of the Municipal Code, the Oracle SIU Permit requires periodic compliance reports to be signed and certified by an authorized representative.
66. The Oracle self-monitoring report received by Respondent on April 3, 2013, had an electronically generated mark, not a signature, on the certification statement. Electronically generated signatures are not authorized for reports submitted to POTWs pursuant to 40 C.F.R. § 403.12(l).

Kiosk

67. 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.
68. 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.
69. The Kiosk SIU Permit required periodic compliance reports to be submitted to the POTW based on a calendar quarter reporting period.
70. 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.
71. Kiosk submitted a 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.

72. The Kiosk SIU Permit required periodic compliance reports to include a statement about compliance with Kiosk's best management practices plan (the Kiosk BMPP).
73. 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.

Count I: Violation of Effluent limit

74. Part I.A.2 of the NPDES Permit establishes a 30-day average maximum effluent limit of 26 micrograms per liter ($\mu\text{g/L}$) for Respondent's discharges of Mn.
75. In October 2012, Respondent's 30-day average discharge of Mn was 27.7 $\mu\text{g/L}$, according to a discharge monitoring report (DMR) covering October 2012 through December 2012 that Respondent submitted to the Colorado Department of Public Health and Environment (CDPHE) on January 9, 2013.
76. In July 2013 and August 2013, Respondent's 30-day average discharges of Mn were 41.5 $\mu\text{g/L}$ and 36.8 $\mu\text{g/L}$, respectively, according to a DMR covering July 2013 through September 2013 that Respondent submitted to CDPHE on October 16, 2013.
77. Respondent's discharges of Mn in October 2012, July 2013, and August 2013 in concentrations exceeding 26 $\mu\text{g/L}$ violated Part I.A.2 of the NPDES Permit.

Count II: 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; 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. The 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.

Count III: Failure to Maintain List of SIUs

81. The Respondent's 2012 Annual POTW Report included a list of IUs but listed the two DWTPs as non-SIUs.
82. Part I.B.7.h. of the NPDES 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. Respondent's failure to identify the DWTPs as SIU was a violation of 40 C.F.R. § 403.8(f)(6) and Part I.B.7.h.i of the NPDES Permit.

Count IV: Failure to Control Indirect Discharges from SIUs

83. 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).
84. The Respondent failed to control the Indirect Discharges from the DWTPs 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 V: Failure to Include All Required Elements in SIU Permits

85. 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, 40 C.F.R. § 403.8(f)(1)(iii)(B)(2); see also section 13.32.060.J of the Municipal Code.
86. Respondent did not include any statement of non-transferability in the Mountainside Medical SIU Permit, the Oracle SIU Permit, or the Kiosk SIU Permit. For each of these three permits, this is a violation of 40 C.F.R. § 403.8(f)(1)(iii)(B)(2) and Part I.B.7.a.vii of the NPDES Permit.

87. 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).
88. 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. No mass limits have been established for Kiosk.
89. 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 and, therefore, has violated Part I.B.7.a.vii.C of the NPDES Permit and 40 C.F.R. § 403.8(f)(1)(iii)(B)(3).
90. Respondent based the limits in the Oracle SIU Permit 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 Metal Finishing Point Source Category (40 C.F.R. part 433). Because only Electronic Components Point Source Category, Subpart A – Semiconductor Subcategory 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).
91. 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 perform repeat sample results and submit the results to Respondent within 30 days of becoming aware of the violation. 40 C.F.R. §§ 403.8(f)(1)(iii)(B)(4) and 403.12(g)(2), Part I.B.7.a.vii.D of the NPDES Permit.
92. Respondent did not include a requirement in the Mountainside Medical SIU Permit, the Oracle SIU Permit, or the Kiosk SIU Permit that the permittees submit repeat sample results to Respondent within 30 days of becoming aware of a violation. Therefore, for each of these SIU

permits, Respondent violated 40 C.F.R. § 403.8(f)(1)(iii)(B)(4), 40 C.F.R. § 403.12(g)(2), and Part I.B.7.a.vii.D of the NPDES Permit.

93. 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. 40 C.F.R. §§ 403.8(f)(1)(iii)(B)(6) and Part I.B.7.a.vii.F of the NPDES Permit. 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.
94. Respondent included a requirement in the Mountainside Medical SIU Permit, the Oracle SIU Permit, and the Kiosk SIU Permit that reports of Slug Discharges 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 VI: Failure to Sample Each Significant Industrial User at Least Once Per Year

95. Respondent is required to sample and inspect each SIU at least once per calendar year. Part I.B.7.a.iii of the NPDES Permit and 40 C.F.R. § 403.8(f)(2)(v).
96. Respondent did not sample the Indirect Discharge of Oracle, Mountainside Medical, or Kiosk for total toxic organics (TTOs) in 2012. Each of these three failures to sample is a separate violation of 40 C.F.R. § 403.8(f)(2)(v) and Part I.B.7.a.iii of the NPDES Permit.

Count VII: Failure to Create Required Sampling Records

97. Respondent is required to maintain records of all monitoring, including but not limited the method of sampling for each sample. 40 C.F.R. § 403.12(o). This requirement is incorporated into the NPDES Permit under Part I.B.7.a of the NPDES Permit.
98. 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 40 C.F.R. § 403.8(f)(2)(vii) and Part I.B.7.a of the NPDES Permit.

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

99. Respondent is required to develop and implement procedures for determining when IUs are in SNC. Part I.B.7.a.xi of the NPDES Permit.
100. 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.

Count IX: Failure to Publish Notification of IU in Significant Non-Compliance

101. Respondent is required to develop a procedure for publishing notifications of any IUs having been in SNC during the preceding 12 months. The notification is to be published at least annually in at least one newspaper of general circulation within the jurisdiction served by Respondent. 40 C.F.R. § 403.8(f)(2)(viii) and Part I.B.7.h of the NPDES Permit.
102. Prior to the EPA's PCI, Respondent had not developed any procedure to publish notifications of IUs in SNC.
103. Respondent did not publish any notification of Mountainside Medical having been in SNC for failure to submit a BMR or a 90-Day compliance report (as described in paragraphs 61 and 62, above) within 12 months of Mountainside Medical's failures to make those submissions.
104. Each of Respondent's failures to make such a publication is a violation of 40 C.F.R. § 403.8(f)(2)(viii) and Part I.B.7.h of the NPDES Permit.

Count X: Failure to Analyze Periodic Compliance Reports

105. Pursuant to 40 C.F.R. § 403.8(f)(2)(iv), which is incorporated into the NPDES Permit by Part I.B.7.a of the NPDES Permit, 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.

106. Respondent failed to fully analyze the SIU periodic compliance reports referenced in paragraphs 66, 70, 71, and 73, above.
107. Each failure by Respondent failure to fully analyze an SIU periodic compliance report cited in paragraph 106, above, constitutes a violation of 40 C.F.R. § 403.8(f)(2)(iv) and Part I.B.7.a of the NPDES Permit

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

108. Pursuant to 40 C.F.R. § 403.8(f)(2)(iv) and Part I.B.7.a.v of the NPDES Permit, 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.
109. Although Respondent's sampling of the DWTPs, referenced in paragraph 42, above, should have alerted Respondent to the possibility that the DWTPs had caused Pass Through (i.e., had caused Respondent to violate the Mn effluent limit in the NPDES Permit), Respondent failed to implement procedures to investigate this possibility.
110. Respondent's failure to implement procedures to investigate instances of noncompliance with Pretreatment Standards and Requirements constitutes a violation of 40 C.F.R. § 403.8(f)(1) and Part I.B.7.a.v of the NPDES Permit.

Count XII: Failure to Implement Legal Authority

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

112. Respondent has not taken steps to update any of its SIU permits to incorporate changes to its Municipal Code, which were approved by the EPA in a letter dated May 6, 2013.
113. By failing to update its SIU permits to incorporate changes to its Municipal Code, Respondent has failed to implement its legal authority fully and effectively, in violation of 40 C.F.R. § 403.8(f)(1) and Part I.B.7.a of the NPDES Permit.
114. By failing to require a BMR or 90-Day Report from Mountainside Medical, Respondent has failed to implement its legal authority fully and effectively, in violation of 40 C.F.R. § 403.8(f)(1) and Part I.B.7.a of the NPDES Permit.
115. The ERP is 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 does not include SNC criteria set forth in section 13.32.020 of the Municipal Code, and
 - (c) the ERP does 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.
116. By failing to ensure that the ERP is consistent with its Municipal Code, Respondent has failed to implement its legal authority fully and effectively, in violation of 40 C.F.R. § 403.8(f)(1) and Part I.B.7.a of the NPDES Permit.

Count XIII: Failure to Enforce According to Enforcement Response Plan

117. Respondent has developed an Enforcement Response Plan titled, "CITY OF LOUISVILLE / INDUSTRIAL PRETREATMENT PROGRAM / ENFORCEMENT RESPONSE GUIDE" (the ERP).
118. Respondent failed to initiate any enforcement response to multiple SIU violations described above. For example, Respondent did not initiate any enforcement response for
- (a) the DWTPs' Pass Through, as described in paragraphs 42 and 43, above;
 - (b) the DWTPs' unpermitted contribution of Indirect Discharge to the POTW, as described in paragraph 48, above;
 - (c) Mountainside Medical's unpermitted contribution of Indirect Discharge to the POTW, pH violations, and failure to submit required reports, as described in paragraphs 49 - 62, above;
 - (d) Oracle's failure to include a signature on the certification statement for a report, as described in paragraph 66, above; or
 - (e) Kiosk's failure to include a statement about compliance with the Kiosk BMPP in a report, as described in paragraphs 73, above).

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

CONSENT ORDER

Based upon the foregoing Findings of Fact and of Violation, and pursuant to the authority vested in the Administrator of the EPA pursuant to section 309 of the Act, 33 U.S.C. § 1319, as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance, and Environmental Justice, it is hereby ORDERED:

119. Respondent shall (a) comply with all requirements of the NPDES Permit and 40 C.F.R. part 403 and (b) properly implement the Pretreatment Program.

120. Within ten (10) days of the effective date of this Consent Order (see paragraph 139, below), Respondent shall provide the EPA with a letter correcting the 2012 Annual POTW Report regarding the violations alleged in Count II, above.
121. Within thirty (30) days of the effective date of this Consent Order, Respondent shall review all SIU files from January 2011 to the present and shall take appropriate enforcement action in all instances where Respondent failed previously to take enforcement action according to the ERP.
122. Within sixty (60) days of the effective date of this Consent Order, Respondent shall provide the EPA with documentation of all enforcement actions taken against IUs for noncompliance with any Pretreatment Standards and Requirements identified above.
123. Within sixty (60) days of the effective date of this Consent Order, Respondent shall, in accordance with 40 C.F.R. § 403.8(f)(2)(viii), submit proof of newspaper publication of each instance of SNC by an IU identified in paragraph 103, above.
124. Within sixty (60) days of the effective date of this Consent Order, Respondent shall submit to the EPA a procedure for evaluating 90-Day Reports. This may include SIU specific self-monitoring report checklists with specific limits and requirements for each SIU.
125. Within ninety (90) days of the effective date of this Consent Order, Respondent shall update its ERP to be consistent with the Municipal Code.
126. Within ninety (90) days of the effective date of this Consent Order, Respondent shall submit to the EPA a sampling procedure. The sampling procedure may include SIU-specific sampling protocols. The sampling procedure shall assure compliance with 40 C.F.R. part 136 and 40 C.F.R. § 403.8(f)(2)(vii), and it shall ensure all records are created and maintained as required by 40 C.F.R. § 403.12(o). The procedure shall include, at a minimum, creation and preservation of documentation of analytical methods, bottle type(s), any chemical preservatives used, temperature preservation, dates and times of sampling and analysis, equipment calibration

- records, exact sampling locations, names of individuals conducting the sampling, who performed the analysis, equipment cleaning protocols, and sample results.
127. Within ninety (90) days of the effective date of this Consent Order, Respondent shall submit to the EPA an industrial wastewater permit template that includes all required elements listed in 40 C.F.R. § 403.8(f)(1)(B).
 128. Within ninety (90) days of the effective date of this Consent Order, Respondent shall submit to the EPA a procedure for ensuring New Sources submit all required BMRs and 90-Day Reports. This may include requiring submission of a permit application that includes all information required for BMRs and issuing SIU Permits that require submission of all information required for the 90-Day Report.
 129. On May 31, 2014, August 31, 2014, November 30, 2014, and February 28, 2015, Respondent shall submit to the EPA reports on Respondent's activities to implement its Pretreatment Program during the previous full calendar quarter. For example, the May 31, 2014, report would cover January 1, 2014, through March 31, 2014. Each report shall include:
 - a. a summary of all IU violations identified by Respondent during the previous quarter or, if there were no violations, a statement to that effect,
 - b. a summary of all enforcement actions taken or planned by Respondent against IUs or, if none were taken or are planned, a statement to that effect.
 - c. a list of any sample results collected by Respondent during the previous quarter from any SIU or, if no such samples were collected, a statement to that effect, and
 - d. with the February 28, 2015 report, documentation showing evaluation for SNC of each SIU and any SNC documentation for other IUs for the previous calendar year.
 130. By September 1, 2014, Respondent shall submit a revised local limit to the EPA for Mn, to be developed in accordance with 40 C.F.R. § 403.5(c).

131. Within thirty (30) days of receiving approval of the Mn local limit from the EPA, Respondent shall implement the Mn local limit through SIU permits.
132. With the February 28, 2015 quarterly report, Respondent shall submit an itemized list of all costs incurred to implement the actions specified in paragraphs 119 through 131, above. The itemized list of costs shall include at a minimum:
- a. the cost of any full-time equivalent (FTE) staff added to the Respondent's budget due to any reassignment of pretreatment or non-pretreatment duties that were formerly performed by pretreatment FTEs in order to comply with this Consent Order;
 - b. the cost to publish the SNC notifications, including whether any portion of that cost was billed back to the SIUs in SNC;
 - c. the annual cost to sample Oracle, Mountainside Medical, or Kiosk for TTOs in 2014 and a list of any portion of sampling costs that were billed back to the SIUs;
 - d. the cost to resample IUs for the revised Mn local limit;
 - e. the cost of constructing and implementing alternative disposal methods or treatment processes at the DWTPs; and
 - f. any other itemized costs incurred to implement the actions specified in paragraphs 119 through 131, above.
133. All notices and reports required by the Consent Order to be given to the EPA shall be sent to:

Stephanie Gieck
U.S. EPA Region 8
1595 Wynkoop Street
8ENF-W-NP
Denver, CO 80202
gieck.stephanie@epa.gov
Fax: 303-312-7202
Phone: 303-312-6362

134. 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.

135. Any failure to comply with the requirements of this Consent Order shall constitute a violation of this Consent Order and may subject Respondent to penalties as provided under section 309 of the Act, 33 U.S.C. § 1319.
136. This Consent Order does not constitute a waiver or modification of the terms and conditions of the NPDES Permit, which remains in full force and effect.
137. 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 the assessment of civil penalties of up to \$37,500 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.
138. Compliance with the terms and conditions of this Consent Order shall not be construed to relieve Respondent of its obligation to comply with any applicable federal, state, or local law or regulation.

139. This Consent Order shall be effective immediately upon Respondent's receipt of a fully executed copy.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

Date: 3-7-2014

By: Eddie A. Sierra
for Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance, and
Environmental Justice

CITY OF LOUISVILLE,
Respondent

By: Paul Bremser
Paul Bremser, Wastewater Plant Superintendent
City of Louisville, Colorado

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one true and correct copy of the foregoing administrative order for compliance on consent were hand-carried to the Regional Hearing Clerk:

Tina Artemis, Region 8 Hearing Clerk
United States Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129
By Hand Delivery – Original and one true copy

and that a true copy of the same was sent via United States Postal Service, certified mail, return receipt to each of the following:

Paul Bremser
Wastewater Plant Superintendent
City of Louisville WWTP
749 Main Street
Louisville, CO 800027
Certified Mail No. 7008 3230 0003 0726 0078

Date: March 7, 2014

By: 
Dayle Aldinger