

February 10, 2021  
9:25 AM**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**Received by  
EPA Region VIII  
Hearing Clerk

IN THE MATTER OF:  The Boxelder Sanitation District,  Respondent  NPDES Permit No. CO0020478	Docket No. CWA-08-2021-0010  ADMINISTRATIVE ORDER FOR COMPLIANCE ON CONSENT
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**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 Boxelder Sanitation District (District), 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 20 through 138, below, are made solely by the EPA. In signing this Consent Order, the District neither admits nor denies the Findings. Without any admission of liability, the District consents to the issuance of this Consent Order and agrees to abide by all of its conditions. The District waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review the District 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 District 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.

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**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 (POTWs). The term “POTW” encompasses a treatment works itself, the conveyances leading to the treatment works, and a municipality with jurisdiction over discharges to and from such a treatment works. 40 C.F.R. § 403.3(q).

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**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 that apply to IUs. These regulations are known as Pretreatment Standards. 40 C.F.R. § 403.3(l). Other requirements within the Pretreatment Regulations that relate to pretreatment and apply to IUs 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

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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 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));
  - 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));

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

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procedures (per 40 C.F.R. § 403.8(f)(3)); and

- to develop and implement an enforcement response plan (ERP) 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 District’s POTW**

20. The District is a sanitation district under Title 32, Colorado Revised Statutes and now governed by C.R.S. §§ 32-1-101 *et seq.* Accordingly, the District is a political subdivision of the State of Colorado, 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 District owns and operates a wastewater treatment plant (WWTP) located at 2705 SW Frontage Road, Fort Collins, Colorado, 80525.
22. The WWTP discharges treated wastewater into Boxelder Creek.
23. Boxelder Creek is navigable-in-fact.
24. Boxelder 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 District’s POTW.
26. As a municipality with jurisdiction over discharges to and from its treatment works, the District 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 District, or the District itself, as the context requires.
28. The POTW issued control mechanisms to SIUs in the service area, including the following:
- Walker Manufacturing (Walker), which performs coating, a core process subject to the Metal Finishing Point Source Category regulations in 40 C.F.R. part 433 and, therefore, a CIU;
  - Super Vacuum Manufacturing (Super Vac), which performs phosphating, a core process subject to the Metal Finishing Point Source Category regulations in 40 C.F.R. part 433 and, therefore, a CIU;
  - Precision Machined Products (PMP), which performs phosphating, a core process subject to the Metal Finishing Point Source Category regulations in 40 C.F.R. part 433 and, therefore, a CIU; and
  - ALS Environmental (ALS), which discharges laboratory wastewater and is designated by the District as an SIU, pursuant to 40 C.F.R. § 403.3(v)(ii), on the basis that ALS has a reasonable potential for adversely affecting the POTW’s operation.

**The District’s NPDES Permit and Approved Pretreatment Program**

29. On March 25, 2016, the State of Colorado Department of Public Health and Environment (CDPHE) issued NPDES Permit Number CO0020478 to the District, effective May 1, 2016, and expiring April 30, 2021 (the Permit).
30. The Permit authorizes the District to discharge from the WWTP into Boxelder Creek.
31. The State of Colorado is an “NPDES State” as defined in 40 C.F.R. § 403.3(o) 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).
32. The State of Colorado has not, however, sought or received approval for a pretreatment program

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from the EPA. Therefore, at all times relevant to this Consent Order, the State of Colorado 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).

33. The EPA approved the District’s pretreatment program on July 5, 1994, at which time the District became the “Control Authority” as defined in 40 C.F.R. § 403.3(f).
34. The EPA has approved updates to the *Boxelder Sanitation District Rules and Regulations at Part 6, Section 601 through Part 19, Section 1901, Industrial Pretreatment Ordinance* (District’s Rules and Regulations), in 2001, 2006, and 2018. The current version of the District’s Rules and Regulations was approved on January 10, 2018.
35. The EPA has approved updates to the District’s local limits in 2005 and 2011. The current version of the District’s local limits was approved on March 15, 2011.
36. The District’s pretreatment program as approved by the EPA on July 5, 1994, with the modifications approved in 2001, 2005, 2006, 2011, and 2018, is referred to in this Consent Order as the “District’s Pretreatment Program.”
37. Part I.B.6 of the Permit requires the District to develop, implement, document, and enforce a pretreatment program in accordance with the Pretreatment Regulations and the District’s Pretreatment Program.

**The EPA’s 2019 Audit**

38. On December 16-17, 2019, the EPA conducted an audit of the District’s Pretreatment Program (2019 Audit). The EPA emailed a report of the 2019 Audit (2019 Audit Report) to the District on March 24, 2020. The District responded to the Audit Report on April 24, 2020 (2019 Audit Response).
39. As part of the 2019 Audit, the EPA, along with the District, inspected four IUs in Fort Collins,



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Colorado, that introduce, or have potential to introduce, non-domestic pollutants into the POTW, including the following:

- Super Vac, 3842 Redman Drive, Fort Collins, CO 80524;
- PMP, 1017 Smithfield Drive, Fort Collins, CO 80524;
- Front Range Powder Coating, 120 Commerce Drive, Unit 2, Fort Collins, CO 80524; and
- Design Metal Manufacturing (Design Metal), 209 Christman Drive, Fort Collins, CO 80524.

**Count I: Failure to Update Local Limits**

40. The District 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.B.6.c of the NPDES Permit.
41. The District 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.B.6.c of the Permit.
42. In developing and enforcing local limits, the District is required to provide notice to persons who have requested notice and an opportunity to respond. 40 C.F.R. § 403.5(c)(3).
43. Part I.B.6.c of the Permit states:

“The Permittee shall establish and enforce specific local limits to implement the general and specific prohibitions found in provisions of 40 CFR 403.5(a) and (b). The Permittee shall continue to develop these limits as necessary and effectively enforce such limits.

In accordance with 40 CFR 122.44(j)(2)(ii), a technical evaluation of the need to develop or revise local limits shall be submitted to the Approval Authority within 12 months of the effective date of this permit. This evaluation should be conducted in accordance with 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 403.18.”

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44. The District included local limits with its original program submission to the EPA in 1994.
45. The EPA approved updated local limits for the District in 2005 and 2011.
46. The 2019 Audit found that the District had not updated its local limits since 2011.
47. The District's service area has grown significantly since 2011, and the data underlying the 2011 local limits calculations are no longer current.
48. As set forth in Paragraph 29, above, the District's Permit was effective May 1, 2016. Pursuant to part I.B.6.c of the Permit, the District was required to evaluate local limits within 12 months of the Permit's effective date.
49. On October 12, 2020, the District submitted its technical evaluation of local limits for EPA approval.
50. On December 8, 2020, the EPA met with the District to discuss the technical evaluation submitted pursuant to Paragraph 49. On December 22, 2020, the EPA provided the District with comments on the technical evaluation of local limits, submitted as described in Paragraph 49, including identifying ongoing deficiencies and making additional suggested revisions for the document to ensure it would be approvable by the EPA.
51. The District'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.B.6.c of the Permit.

**Count II: Failure to Operate Pursuant to Adequate Legal Authority**

52. The District is required to operate its pretreatment program pursuant to legal authority enforceable in federal, state, or local courts, which authorizes or enables the District 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) and part I.B.6.a.vii of the Permit.

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Such authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements the District is authorized to enact, enter into, or implement, and which are authorized by state law. *Id.*

53. The District's legal authority must, at a minimum, enable the District to exercise all functions enumerated in 40 C.F.R. § 403.8(f)(1)(i) through (vi).
54. In the 2019 Audit Report, the EPA noted that the District's legal authority, found within the District's Rules and Regulations, needed to be updated. Deficiencies included: internal references in the definitions for "best management practices" and "slug load or slug discharge" were outdated; the definition of "interference" was not aligned with the federal regulations; prohibited discharge standards were not applicable to all users; full right of entry authority was not provided; full right to take independent samples was not provided; and SNC criteria were not aligned with the federal regulations.
55. On October 8, 2020, the District indicated to the EPA that the Rules and Regulations had been revised according to the requirements in the 2019 Audit Report. The District also reported that its revised Rules and Regulations were presented to the District's Board of Directors (Board) at a public hearing on October 15, 2020, at which time the revised Rules and Regulations were approved and adopted.
56. The revised Rules and Regulations were not provided to the EPA for approval, pursuant to 40 C.F.R. § 403.18, prior to Board approval and adoption.
57. The revised Rules and Regulations were submitted to the EPA for approval on October 12, 2020.
58. On November 24, 2020, the EPA provided the District with comments on the revised Rules and Regulations, submitted as described in Paragraph 57, including additional suggested revisions for the document to ensure it would be approvable by the EPA.

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59. On December 3, 2020, in response to the EPA comments described in Paragraph 58, the District submitted a second set of revised Rules and Regulations to EPA for approval.
60. On December 22, 2020, the EPA provided the District with comments on the second set of revised Rules and Regulations, submitted as described in Paragraph 57, including additional suggested revisions for the document to ensure it would be approvable by the EPA.
61. The District's operation of its pretreatment program without complete required legal authorities, as described in Paragraph 54, above, has violated and continues to violate 40 C.F.R. § 403.8(f)(1) and part I(B)(7)a of the Permit.

**Count III: Failure to Include All Required Elements in SIU Permits**

**A. SIU Permits, In General**

62. To carry out the requirements of part I.B.6 of the Permit, as summarized in Paragraph 37, the District's Permit requires the District to control, through the legal authority in the District's Pretreatment Program, IU contributions to the District's POTW. In the case of SIUs, this control shall be achieved "through permit, order, or similar means." Part I.B.6.a.vii of the Permit.
63. In each SIU permit it issues, the District is required to include at a minimum, the following conditions:
  - 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.B.6.a.vii(A) of the 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.B.6.a.vii(B) of the 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

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- limits, and State and local law, under 40 C.F.R. § 403.8(f)(1)(iii)(B)(3) and part I.B.6.a.vii(C) of the Permit;
- d. self-monitoring, sampling, reporting, notification, and recordkeeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, under 40 C.F.R. § 403.8(f)(1)(iii)(B)(4) and part I.B.6.a.vii(D) of the Permit;
  - 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.B.6.a.vii(E) of the Permit; and
  - f. requirements to control Slug Discharges, if determined by the POTW to be necessary, under 40 C.F.R. § 403.8(f)(1)(iii)(B)(6) and part I.B.6.a.vii(F) of the Permit.
64. At the time of the 2019 Audit, the District had developed a template for permits (the Permit Template) containing provisions for the District to include when drafting individual SIU permits.
65. At the time of the 2019 Audit, the EPA reviewed the Permit Template and observed several provisions that failed to align with the District’s Rules and Regulations, including: provisions on transferability; the effluent limit for pH; several specific prohibitions; the right of entry; and several definitions. Additionally, the EPA found that the Permit Template did not include the “certification of pollutants not present” provision that is required by the District’s Rules and Regulations.
66. In the 2019 Audit Response, the District provided a revised permit template to the EPA (Revised Permit Template). Based on the EPA’s review of the Revised Permit Template, the EPA found the following deficiencies with the template:
- a. it did not include several specific prohibitions found in the District’s Rules and

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Regulations, specifically prohibitions for: wastewaters which impart color; wastewaters containing radioactive wastes or isotopes; storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, recreational water features, noncontact cooling water, and unpolluted wastewater; sludges, screenings and other residues; wastewaters causing the wastewater treatment plant effluent to fail a toxicity test; and detergents surface active agents, or other substances that may cause excessive foaming;

- b. it did not include a requirement to notify the District of potential problems;
- c. it did not include a statement of applicable civil and criminal penalties; and
- d. it appeared to be tailored to facilities performing processes subject to the Metal Finishing Pretreatment Standards, rather than applicable as a general permit template.

67. The District used and continues to use the Permit Template and/or the Revised Permit Template to draft SIU permits for issuance to SIUs. These issued SIU permits, including the SIU permit recently issued to Walker, as discussed below in Paragraph 69, contain several, if not all, of the deficiencies outlined above in Paragraphs 65 and 66.

68. The District's failure to include each required condition in its SIU permits and align permit conditions with the Rules and Regulations, has violated and continues to violate 40 C.F.R. § 403.8(f)(1)(iii)(B) and part I.B.6.a.vii of the Permit.

**B. Walker Manufacturing Permit**

69. At the time of the 2019 Audit, the IU permit that the District issued to Walker Manufacturing, (Walker Manufacturing IU Permit) had a daily maximum limit for cyanide set at 1.2 mg/L. This permit limit did not have the same number of significant figures as the cyanide daily maximum

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limit of 1.20 mg/L established in 40 C.F.R. § 433.17 of the Metal Finishing Categorical Pretreatment Standards.

70. On November 5, 2020, the District reissued the Walker Manufacturing IU Permit, permit number CIU-019-WMC, to correct the cyanide limit, and on November 11, 2020, the District provided a copy of the reissued permit to the EPA.
71. The District's past failure to accurately include each required condition in the Walker Manufacturing IU Permit has violated 40 C.F.R. § 403.8(f)(1)(iii)(B) and part I.B.6.a.vii of the Permit.

**Count IV: Failure to Identify and Locate All Possible IUs and Update the IU Inventory**

72. The District is required to develop and implement a procedure to identify and locate all possible IUs that might be subject to the District'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) and parts I.B.6.a.i and I.B.6.a.ii of the Permit. The District is also required to update this information at least yearly or sufficiently frequently to ensure all IUs are properly permitted or controlled (part I.B.6.a.ii of the 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.B.6.h of the Permit).
73. At the time of the 2019 Audit, the District had not developed an IU Identification procedure to identify IUs in its service area and maintain an inventory of IUs.
74. In the 2019 Audit Response, the District summarized its procedure to identify IUs in its service area. On October 14, 2020, the District provided to the EPA a written procedure titled "IU Identification Procedure" and updated IU inventory (District's IU Inventory). During a meeting with the EPA, the District provided additional details about its IU Identification Procedure, indicating the utilization of accounting software, drive-bys, an industrial waste survey (IWS)

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form, and staff involvement in development and review processes. Additionally, the District indicated its plan to update the District's IU inventory every three years.

75. Based on the EPA's evaluation of the District's past failure to have a procedure in place for identifying and inventorying IUs, as described in Paragraph 73, the District did not have an inventory of IUs that was kept updated and maintained as of the date of the 2019 Audit.
76. Based on the EPA's evaluation of the District's IU Identification Procedure and the District's IU inventory described in Paragraph 74, the District is now positioned to identify and locate all possible IUs in its service area.
77. The District's failure to identify and locate all possible IUs that might be subject to the District's Pretreatment Program has violated 40 C.F.R. § 403.8(f)(2)(i) and parts I.B.6.a.i and I.B.6.a.ii of the Permit. In addition, the District'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.B.6.h of the Permit.

**Count V: Failure to Characterize IU Contributions and Update the Characterizations**

78. The District is required to develop and implement a procedure to identify the character and volume of pollutants contributed by IUs subject to the District's Pretreatment Program. 40 C.F.R. § 403.8(f)(2)(ii) and part I.B.6.a.i.i of the Permit. The District is also required to update this information at least yearly or sufficiently frequently to ensure all IUs are properly permitted or controlled. Part I.B.6.a.ii of the Permit.
79. At the time of the 2019 Audit, the District had not developed a procedure to characterize IU contribution of pollutants to the District's POTW.
80. During the 2019 Audit, the EPA inspected Super Vac and observed a water jet cutting machine connected to a floor drain for discharge. Wastewater generated from water jet cutting is a



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regulated ancillary process pursuant to 40 C.F.R. §433.10. Because Super Vac is regulated as a zero-discharge CIU, discharge of categorically regulated wastewater is prohibited. Prior to the EPA's inspection, the District had been unaware of this discharge.

81. Prior to the 2019 Audit, the District had not identified Design Metal as an IU. During the 2019 Audit, the EPA inspectors also inspected Design Metal and observed a discharge from the IU's paint booth. The EPA required the District to characterize the discharge to evaluate whether the IU was in compliance with the District's local limits.
82. The EPA has not received any characterization information regarding Design Metal.
83. The 2019 Audit Report required the District to characterize Artech Dental Ceramics, 450 South Link Lane, Fort Collins, CO 80524, to determine if it was subject to the Dental Amalgam Rule at 40 C.F.R. part 441.
84. The EPA did not receive any characterization information regarding Artech Dental Ceramics; however, on December 28, 2020, the District notified the EPA that Artech Dental Ceramics was no longer in business, as confirmed by a District inspection.
85. To date, the District has not developed a procedure to characterize IU contribution of pollutants in its service area.
86. The District's failure to identify the character and volume of pollutants contributed by IUs subject to the District's Pretreatment Program has violated and continues to violate 40 C.F.R. § 403.8(f)(2)(ii) and parts I.B.6.a.i and I.B.6.a.ii of the Permit. In addition, the District's failure to update this information at least yearly or sufficiently frequently to ensure all IUs are properly characterized has violated and continues to violate part I.B.6.a.ii of the Permit.

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

87. The District is required to notify 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 (RCRA). 40 C.F.R. § 403.8(f)(2)(iii) and part I.B.6.a.xii of the Permit.
88. During the 2019 Audit, the EPA reviewed the District's industrial waste survey procedure and inspection records and determined that the District did not have a process for notifying IUs of applicable Pretreatment Standards and any applicable requirements under sections 204(b) and 405 of the Act and subtitles C and D of RCRA.
89. In the 2019 Audit Response, the District relayed its intention to reformat future IU inspection reports to outline deficiencies for the IU, but the District did not mention its intention to otherwise fulfill the notification obligations of 40 C.F.R. § 403.8(f)(2)(iii) and part I.B.6.a.xii of the Permit. To date, the District has not developed nor implemented a procedure to notify IUs of applicable Pretreatment Standards and applicable requirements under sections 204(b) and 405 of the Act and subtitles C and D of RCRA.
90. The District's failure to notify IUs of applicable Pretreatment Standards and applicable requirements under sections 204(b) and 405 of the Act and subtitles C and D of RCRA has violated and continues to violate 40 C.F.R. § 403.8(f)(2)(iii) and part I.B.6.a.xii of the Permit.

**Count VII: Failure to Identify IU Violations and Take Enforcement Action**

91. The District is required to develop and implement a procedure to identify violations of the District's Pretreatment Program by IUs and to take enforcement actions for instances of IU

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noncompliance. 40 C.F.R. §§ 403.8(f)(2)(vii) and 403.8(f)(5); and parts I.B.6.a.v and I.B.6.a.vi of the Permit.

92. The District outlines enforcement actions it will take for instances of noncompliance in an ERP. The current version of the District's ERP was approved by the EPA and adopted by the District on February 17, 2011 (the District's ERP).

**A. Late Permit Application**

93. During the 2019 Audit, the EPA found that District records did not contain a permit application from PMP for the April 10, 2018 permit renewal. Section 907 of the District's Rules and Regulations and part I.10 of the PMP permit require a permit application to be submitted 90 days prior to permit expiration. The District did not identify this violation or take an enforcement action per the District's ERP. The 2019 Audit Report required the District to implement its ERP for this violation.
94. To date, the District has not taken an enforcement action per the District's ERP for the violation alleged in Paragraph 93.
95. The District's failure to identify IU violations of the Pretreatment Standards and Requirements and to take enforcement actions for instances of noncompliance alleged above in Paragraphs 93 and 94 has violated and continues to violate 40 C.F.R. §§ 403.8(f)(2)(vii) and 403.8(f)(5) and parts I.B.6.a.v and I.B.6.a.vi of the Permit.

**B. Reporting Violations**

96. During the 2019 Audit, the EPA discovered three instances of reporting violations: PMP submitted its 1<sup>st</sup> quarter self-monitoring report (SMR) for 2019 on May 7, 2019, past the April 30, 2019 deadline; PMP submitted its 2<sup>nd</sup> quarter SMR for 2019 on June 21, 2019, prior to the end of the monitoring period; and PMP signed its 3<sup>rd</sup> quarter SMR for 2019 on September 4, 2019, prior

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to the end of the monitoring period. The EPA was not able to determine the date of receipt for PMP's 3<sup>rd</sup> quarter SMR. The District did not identify these violations or take an enforcement action per the District's ERP. The 2019 Audit Report required the District to implement the District's ERP for these violations.

97. To date, the District has not taken enforcement actions per the District's ERP for the violations alleged in Paragraph 96.
98. The District's failure to identify IU violations of the Pretreatment Standards and Requirements and to take enforcement actions for instances of noncompliance alleged above in Paragraph 96 has violated and continues to violate 40 C.F.R. §§ 403.8(f)(2)(vii) and 403.8(f)(5); and parts I.B.6.a.v and I.B.6.a.vi of the Permit.

**C. Unpermitted Discharge**

99. During the 2019 Audit, the EPA discovered the unpermitted discharge of categorically regulated wastewater from Super Vac, as alleged above in Paragraph 80. The District did not identify this violation or take an enforcement action per the District's ERP. The 2019 Audit Report required the District to implement the District's ERP for this violation.
100. Following the 2019 Audit, Super Vac ceased the discharge from the water jet cutting machine, by permanently sealing the floor drain.
101. According to the District's ERP, the violation described in Paragraph 99 would be classified as an unpermitted discharge. The District's ERP requires one of the following enforcement actions in response to an unpermitted discharge: notice of violation; administrative order; show cause hearing; cease and desist order; administrative penalty order; judicial action; or termination of discharge. To date, the District has not taken an enforcement action per the District's ERP for the violation alleged above in Paragraph 99.

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102. The District's failure to identify IU violations of the Pretreatment Standards and Requirements and to take enforcement actions for instances of noncompliance alleged above in Paragraph 99 has violated and continues to violate 40 C.F.R. §§ 403.8(f)(2)(vii) and 403.8(f)(5); and parts I.B.6.a.v and I.B.6.a.vi of the Permit.

**Count VIII: Failure to Annually Sample Effluent from Each SIU or Maintain Required Records**

103. With certain exceptions not relevant here, the District is required to develop and implement a procedure to inspect and sample the effluent from each SIU at least once per year. 40 C.F.R. § 403.8(f)(2)(v) and part I.B.6.a.iii of the Permit.

104. Under 40 C.F.R. § 403.12(o), the District is required to "maintain records of all information resulting from any monitoring activities required by this section [of the Pretreatment Regulations]," including information about sampling activities, such as sampling dates and analyses, for a minimum of three years and to make the records available for inspection and copying by the EPA.

105. As detailed in Paragraph 135 below, at the time of the 2019 Audit, the District's Pretreatment Program records were not well organized and, for some SIUs, not complete. Specifically, the 2019 Audit Report stated that the District did not have any record of performing sampling of Walker in 2018 or 2019.

106. The District's failure to sample the effluent from each SIU at least annually or maintain the records of sampling events has violated 40 C.F.R. §§ 403.8(f)(2)(v) or 403.12(o) and part I.B.6.a.iii of the Permit.

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

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

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required under 40 C.F.R. §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.B.6.a.v of the Permit.

108. As stated in the 2019 Audit Report, the District's inspection reports for Super Vac and PMP were deficient. Specifically, the Super Vac inspection report failed to identify the unpermitted discharge of categorically regulated wastewater, inaccurately stated that all process wastewater was plumbed to an onsite evaporator, did not contain an evaluation of non-regulated wastestreams, stated inaccurate shift information, and contained blank sections. The PMP inspection report failed to address and evaluate the categorically regulated process onsite.
109. The 2019 Audit Report also stated that the District had not developed a sampling plan that describes sampling techniques and methods at SIUs to ensure appropriate and representative sampling.
110. In the 2019 Audit Response, the District relayed its intention to develop site-specific sampling plans with specific quality assurance and quality control (QA/QC) measures in 2020.
111. On October 29, 2020, the District provided the EPA with a site-specific sampling plan it had developed for Walker. On November 4, 2020, the EPA responded with comments on the site-specific sampling plan pointing out the following deficiencies: inadequate sample collection bottle capacity; potentially inadequate aliquot collection frequency; facility location information that differed from the permit; failure to include pH calibration procedures and TTO sample collection; failure to discuss sample homogeneity; and failure to include QA/QC protocols and considerations. On December 28, 2020, the District provided the EPA with a revised site-specific sampling plan for Walker. On January 26, 2021, the EPA responded with comments on the revised site-specific sampling plan identifying the following deficiencies: potentially inadequate sample collection

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method; potentially inadequate aliquot collection frequency; and failure to discuss TTO sampling once per permit cycle. Additionally, the EPA identified that previously discussed deficiencies, such as failure to include QA/QC protocols and considerations, were not addressed in the revised site-specific sampling plan.

112. The District's failure to conduct sampling and inspections with sufficient care to produce admissible evidence in enforcement proceedings or in judicial actions has violated and continues to violate 40 C.F.R. § 403.8(f)(2)(vii) and part I.B.6.a.v of the Permit.

**Count X: Failure to Develop an Adequate SNC Determination Procedure**

113. The District is required to develop and implement an adequate procedure for making SNC determinations. 40 C.F.R. § 403.8(f)(2)(viii) and part I.B.6.a.xi of the Permit.
114. As stated in the 2019 Audit Report, the District's SNC Determination Procedure required revision to narrative criteria for late reporting and violations of best management practices.
115. In the 2019 Audit Response, the District provided an updated SNC Determination Procedure.
116. Upon review of the updated SNC Determination Procedure, the EPA observed the following deficiencies:
- a. the numeric chronic criteria are not defined;
  - b. the numeric technical review criteria are not defined;
  - c. the narrative criterion for violations of effluent limits resulting in Pass Through or Interference does not align with federal regulations or the District's Rules and Regulations;
  - d. the narrative criterion for discharge that has caused imminent danger to human health, welfare, or the environment does not align with federal regulations or the District's Rules and Regulations;

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- e. the narrative criterion for failure to meet compliance schedule milestones does not align with federal regulations or the District's Rules and Regulations;
  - f. the SNC threshold for failure to provide required reports does not align with federal regulations or the District's Rules and Regulations; and
  - g. the narrative criterion for violations of best management practices does not align with federal regulations or the District's Rules and Regulations.
117. The District's failures to develop and implement an adequate procedure for making SNC determinations has violated and continues to violate of 40 C.F.R. § 403.8(f)(2)(viii) and part I.B.6.a.xi of the Permit.

**Count XI: Failure to have Sufficient Resources and Qualified Personnel to Implement the Pretreatment Program**

118. The District is required to have sufficient resources and qualified personnel to implement its Pretreatment Program and 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.B.6.a.viii of the Permit.
119. As stated in the 2019 Audit Report, the District did not appear to have sufficient resources and qualified personnel to implement its Pretreatment Program, based on the following observations:
- a. the District had inconsistently reported the number of full-time employees (FTE) committed to its Pretreatment Program, and a recent transition in the staffing left the Pretreatment Coordinator only partially devoted to the Pretreatment Program, a vacancy in the Pretreatment Specialist position, and no single employee devoted to pretreatment duties full-time;



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- b. the District had reported a 2019 budget and projected 2020 budget for its Pretreatment Program that was significantly smaller than the 2018 budget reported to the EPA in an annual report;
  - c. the District had limited details on training opportunities for current staff; and
  - d. the District did not appear to have evaluated the impact of growth in the service area on current and projected resource needs for the Pretreatment Program.
120. As a corrective action, the 2019 Audit Report instructed the District to develop and submit to the EPA a staffing plan that provides details regarding permanent FTEs, training opportunities for current staff, funding levels, and an evaluation of the current and projected scope of the Pretreatment Program to ensure growth of the program's resources commensurate with the growth in the District's service area.
121. In its 2019 Audit Response, the District described changes it made on January 1, 2020, in an effort to better allocate resources and establish a set organizational structure of employees responsible for implementing the District's Pretreatment Program. These changes included identifying positions included in the District's "Pretreatment Team" and setting forth the responsibilities and the percentage of each position's FTE duties that would be allocated to the Pretreatment Program. The District identified the following positions as part of its Pretreatment Team: District Manager; Operations Manager; Pretreatment Specialist; Special Project Manager; Accounting Technician. The 2019 Audit Response also described monthly meetings by the Pretreatment Team and plans for team members to attend the EPA regional training in 2020.
122. On November 13, 2020, the District submitted additional information to the EPA about the 2020 and 2021 budgets, including the District's plan to add a new Staff Engineer as part of its

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Pretreatment Team and increase the 2020 and 2021 budgets from the amounts previously reported in 2018 and 2019 and the amount previously projected for 2020.

123. The District violations alleged in Counts I through X, above, and Counts XII through XIV, below, demonstrate the District's failure to devote sufficient resources and continuing failure to have qualified personnel to implement its Pretreatment Program and carry out the authorities and procedures described in 40 C.F.R. § 403.8(f)(1) and (2).
124. The District's failure to have sufficient resources has violated 40 C.F.R. § 403.8(f)(3) and part I.B.6.a.viii of the Permit and the District'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) and part I.B.6.a.viii of the Permit.

**Count XII: Failure to Maintain the ERP**

125. The District is required to develop, implement, and maintain an enforcement response plan for investigating and responding to instances of noncompliance by IUs. 40 C.F.R. § 403.8(f)(5) and part I.B.6.a.x of the Permit.
126. The District's current ERP is described above in Paragraph 92. The District's failure to implement its ERP in response to IU violations is described in Count VII above.
127. As stated in the 2019 Audit Report, the District's ERP required revision to include the District's pH limits, to specify violations resulting in numeric SNC, and to align the SNC threshold for late reporting with the District's Rules and Regulations.
128. In the 2019 Audit Response, the District provided a revised ERP to the EPA (the District's Revised ERP).
129. On November 24, 2020, the EPA provided the District with comments on the District's Revised ERP, submitted as described in Paragraph 128, including additional suggested revisions for the

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document to ensure it would be approvable by the EPA. On December 22, 2020, the EPA informed the District that it had not yet received a second submittal of the Revised ERP and sought a commitment from the District to provide such submittal.

130. The District's failure to develop and maintain an enforcement response plan for investigating and responding to instances of noncompliance by IUs has violated and continues to violate 40 C.F.R. § 403.8(f)(5) and part I.B.6.a.x of the Permit.

**Count XIII: Failure to Accurately Report Data in Annual Reports**

131. The District is required to provide the EPA with a report that briefly describes the District's Pretreatment Program activities beginning no later than one year after the EPA's approval date of District's Pretreatment Program, set forth above in Paragraph 33, and continuing at least annually thereafter. These annual reports must contain the information specified in 40 C.F.R. § 403.12(i) and part I.B.6.h of the Permit, including information that identifies any changes to the District's Pretreatment Program that have not been previously reported.
132. As set forth above in Paragraph 119, in at least 2018 and 2019, the District did not accurately report information about the District's Pretreatment Program's staffing, resources, and budgeting.
133. The District's failure to accurately report required data to the EPA in the District's pretreatment program annual reports has violated 40 C.F.R. § 403.12(i) and part I.B.6.h of the Permit.

**Count XIV: Failure to Maintain Records and Make Them Available for Inspection**

134. The District is required to comply with the record-keeping requirements of 40 C.F.R. § 403.12(o) and part II.B.2.b of the Permit, including requirements to retain such records and make them available to the EPA for inspection and copying.
135. At the time of the 2019 Audit, the District's records were not well organized or complete. The EPA was unable to inspect sampling records, permit amendments, site-specific plans such as the

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Toxic Organic Management Plan, or SMRs for Walker. Additionally, the EPA was unable to inspect the active permit or slug discharge control plan for Super Vac.

136. In the 2019 Audit Response, the District provided a written procedure in the form of a standard operating procedure (SOP) titled, *Industrial User Record Keeping SOP* (Recordkeeping SOP), that the District had developed to outline pretreatment recordkeeping practices.
137. Upon review of the Recordkeeping SOP, the EPA observed the following deficiencies:
- a. part C inaccurately states that permits are sent to the District from IUs;
  - b. part D implies that reports may be submitted electronically to the District; however, the District is not Cross-Media Electronic Reporting Requirements (CROMERR) compliant, pursuant to 40 C.F.R. part 3, and may not receive electronic reports for the purposes of evaluating IU compliance; and
  - c. the Recordkeeping SOP is not comprehensive, as records of correspondence, enforcement actions, required reports, and site-specific plans such as slug discharge control plans, are not referenced.
138. The District's failure to comply with the record-keeping requirements of 40 C.F.R. § 403.(12)(o) and part II.B.2.b of the Permit, including requirements to retain such records and make them available to the EPA for inspection and copying, has violated and continues to violate 40 C.F.R. § 403.(12)(o) and part II.B.2.b.

**CONSENT ORDER**

The EPA orders, and the District agrees:

139. Upon the effective date of this Consent Order (see Paragraph 174, below, for the effective date), unless this Consent Order specifically provides a later deadline for compliance, the District shall:
- a. comply with all requirements of the NPDES Permit and 40 C.F.R. part 403; and

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

140. Within 365 days after the effective date of this Consent Order, or within 365 days after the issuance date of a new NPDES permit if such permit is issued within 365 days after the effective date of this Consent Order, the District shall submit to the EPA for approval a technical evaluation of the need to revise local limits, and if revised local limits are required, the District shall also submit the proposed local limits to the EPA in an approvable form in accordance with 40 C.F.R. § 403.18. This evaluation shall be conducted in accordance with the EPA's "Local Limits Development Guidance" dated July 2004. If the technical evaluation submitted does not propose developing or revising local limits and is deficient in its rationale, the EPA may require the District to submit proposed local limits to the EPA in an approvable form in accordance with 40 C.F.R. § 403.18. Prior to submission of the revised local limits required by this Paragraph, the District shall provide the public an opportunity to comment on the proposed local limits and shall conduct a technical evaluation in compliance with 40 C.F.R. § 403.5(c)(3) and part I.E.b of the Permit.

141. Within 90 days after the effective date of this Consent Order, the District shall submit revised Rules and Regulations to the EPA in an approvable form in accordance with 40 C.F.R. §403.18. Within 30 days after any EPA approval of revised Rules and Regulations submitted by the District pursuant to this Paragraph, the District shall provide public notice of the revised Rules and Regulations, which shall be at least 30 days in length. Within 45 days of the close of the public notice period, the District shall calendar, to occur within the next 60 days, the revised Rules and Regulations for consideration by the Board for approval and adoption. The District

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shall implement the revised Rules and Regulations immediately upon any approval and adoption by the Board.

142. Within 45 days after the effective date of this Consent Order, the District shall submit to the EPA for review an updated permit template that corrects the deficiencies alleged in Count III, as set forth in Paragraphs 65 and 66. After the District submits this revised template, the District shall implement updated permit template in accordance with Paragraph 164, below.
143. Within 45 days after the District implements the updated permit template required by Paragraph 142, the District shall modify SIU permits, including the SIU permit for Walker, to reflect template revisions. The District shall provide a copy of each modified SIU permit to the EPA for review within 30 days of each permit's reissuance.
144. Upon the effective date of this Consent Order, the District shall continue to implement the IU Identification Procedure described in Paragraph 74.
145. Upon the effective date of this Consent Order, the District shall keep its IU Inventory updated and maintained.
146. Within 45 days after the effective date of this Consent Order, the District shall develop a written procedure for characterizing IU contributions to the POTW and submit the procedure to the EPA for review. After the District submits this procedure, the District shall implement the procedure in accordance with Paragraph 164, below.
147. Within 75 days after the effective date of this Consent Order, the District shall submit to the EPA documentation of characterization at Design Metal.
148. Within 90 days after the effective date of this Consent Order, the District shall develop a written procedure to 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

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the RCRA. After the District submits this procedure, the District shall implement the procedure in accordance with Paragraph 164, below.

149. Within 270 days after the effective date of this Consent Order, the District shall update the IU Inventory to include additional information on characterization and notification for each inventoried IU, including:
- a. the type of business conducted by the IU;
  - b. the date the IU was inspected, if so required following the District's review of submitted IWS forms;
  - c. the date the IU was sampled, if so required following the District's review of the submitted IWS forms;
  - d. the character and volume of pollutants contributed by the IU to the POTW;
  - e. 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 SIU, requires best management practices, or is not significant to pretreatment;
  - f. the date the IU was notified of all applicable requirements as set forth in Paragraph 148;
  - g. 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
  - h. a report of each inspection conducted pursuant to Paragraph 149.b above.
150. Within 30 days after the effective date of this Consent Order, the District shall submit to the EPA for review and comment a procedure, including use of the internal self-monitoring report checklist provided by the District during the 2019 Audit, for receiving and analyzing reports and other notices from SIUs for compliance, including but not limited to periodic self-monitoring

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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 District submits this procedure, the District shall implement the procedure in accordance Paragraph 164, below.

151. Within 30 days after the effective date of this Consent Order, the District shall take enforcement response(s) in accordance with its ERP to address the violations identified in Count VII.
152. Within 30 days after the effective date of this Consent Order, the District shall revise its site-specific sampling plan for Walker to include the elements described in Chapter 3 of the EPA's Guidance Manual titled, *Industrial User Inspection and Sampling Manual for POTWs*, including the following: sampling location(s); sample type(s); flow measurements; analytical parameters; sample volume(s); sample container type(s); sample preservation technique(s); sample identification procedures; sample packaging and shipping; safety; hazardous waste(s); chain-of-custody procedures; and QA/QC procedure. Submit the site-specific sampling plan to the EPA for review. After the District submits this plan, the District shall implement the plan in accordance with Paragraph 164, below.
153. Within 60 days after the effective date of this Consent Order, the District shall develop a site-specific sampling plan for ALS to include the provisions in Paragraph 152 and submit it to the EPA for review. After the District submits this plan, the District shall implement the plan in accordance with Paragraph 164, below.
154. Within 30 days after the effective date of this Consent Order, the District shall submit records of its 2020 annual compliance monitoring events at Walker and ALS to include full laboratory reports, chains-of custody, and any associated evaluation checklists.
155. Within 60 days after the effective date of this Consent Order, the District shall submit to the EPA



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for review and comment a written procedure for inspections, to include an inspection checklist, to ensure that the District 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 District submits this inspection procedure to the EPA, it shall implement the procedure in accordance with Paragraph 164, below.

156. Within 60 days after the effective date of this Consent Order, the District shall submit to the EPA a written procedure to ensure that sampling is conducted with sufficient care including provisions to ensure that:

- a. the District collects random and independent samples of effluent from all SIUs for all permitted pollutants at least annually, except where the District'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;
- d. where necessary, the procedure addresses random and independent sampling of non-SIUs;  
and
- e. pH equipment calibration logs are maintained.

After the District submits the sampling procedure required by this Paragraph, it shall implement the procedure in accordance with Paragraph 164, below.

157. Within 30 days after the effective date of this Consent Order, the District shall further update the SNC Determination Procedure to address deficiencies identified in Paragraph 116 and submit it to

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the EPA for review. After the District submits this procedure, the District shall implement the procedure in accordance with Paragraph 164, below.

158. The District shall ensure that it has qualified personnel to implement the District's Pretreatment Program including maintaining a Pretreatment Team consisting of at least the positions set forth in Paragraphs 121 and 122, and by formally designating at least one employee as the "Pretreatment Team Coordinator" whose official duties include oversight of the District's pretreatment program, management of the Pretreatment Team, and an obligation to ensure the Pretreatment Team receives periodic training relevant to implementation of the District's Pretreatment Program. Within 10 days after the effective date of this Consent Order, the District shall identify its designated Pretreatment Team Coordinator to the EPA and provide a description of the official duties for that position.
159. Within 45 days after the effective date of this Consent Order, the District shall further revise the District's Revised ERP to address the EPA's comments as set forth in Paragraph 129 and ensure the ERP is approvable by the EPA, and the District shall provide the further revised ERP to the EPA for review and approval. After the District submits this further revised ERP, the District shall implement the further revised ERP in accordance with Paragraph 164, below.
160. No later than March 31, 2020, and annually thereafter, the District shall accurately report data on their annual pretreatment report submitted to the EPA. To determine the accurate portion of the District's budget that was utilized by the District's Pretreatment Program during the preceding year, the District shall provide, at a minimum, the sum of the following costs: salaries and benefits for the total number of pretreatment FTEs; direct costs for supplies and testing equipment used for pretreatment; and proportional cost of overall cost for office supplies, vehicle operations, and computer network and internet access used for pretreatment.

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161. Within 45 days after the effective date of this Consent Order, the District shall further update the Recordkeeping SOP, to include a system for records organization and to address deficiencies identified in Paragraph 137, and provide the updated written procedure to the EPA for review and approval. After the District submits the updated procedure required by this Paragraph, it shall implement the procedure in accordance with Paragraph 164.
162. Upon the effective date of this Consent Order, the District shall submit quarterly reports, with quarters based on the calendar year, to the EPA on the District's activities to implement the Pretreatment Program. The District's first quarterly report due under this Paragraph will cover the period of time from the effective date of the Consent Order through the close of the relevant quarter. The reports will be due 30 days following the relevant quarter. For example, in calendar year 2021, the first quarter report, due April 30, 2021, would cover January 1, 2021, through March 31, 2021, and the fourth quarterly report, due January 30, 2022, would cover October 1, 2021, through December 31, 2021. Each report shall include:
  - a. the identities of the Pretreatment Team members and Pretreatment Team Coordinator required by Paragraph 157, and any training related to implementation of the District's Pretreatment Program that occurred during the quarter;
  - b. a summary of all IU violations identified by the District during the quarter or, if there were no violations, a statement to that effect;
  - c. a summary of all enforcement actions taken or planned by the District against IUs during the quarter, or, if none were taken or are planned, a statement to that effect;
  - d. an updated IU Inventory and any completed IWS forms submitted by IUs during the quarter;
  - e. updates to the IU Inventory that occurred during the quarter pursuant to Paragraph 149

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(even if the updates occurred prior to the deadline specified in the Paragraph), including providing a list of any new SIUs identified during the quarter;

- f. a list of inspections performed during the quarter and summary of inspection findings;
- g. a summary of any sample results collected by the District during the quarter from any SIU or, if no such samples were collected, a statement to that effect; and
- h. completed SNC determinations for the quarter.

163. No later than 365 days after the effective date of this Consent Order, or by such date as otherwise permitted by this Paragraph, the District shall submit an itemized list of all costs incurred to implement the actions specified in Paragraphs 139 through 162, above. However, if the District's technical evaluation of local limits is not completed within 365 days after the effective date of this Consent Order due to a reissuance of the District's Permit, as permitted under the terms of Paragraph 140, then the District shall provide the itemized list of costs required by this Paragraph no later than the date that the District submits its technical evaluation of local limits pursuant to Paragraph 140. The itemized lists of costs shall include at a minimum:

- a. the cost of any full-time equivalent staff added to the District'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.

164. For each procedure referenced in Paragraphs 142, 146, 148, 150, 152, 153, 155, 156, 157, 159 and 161 above:

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- a. If, within 30 days after the District's submission, the EPA has neither disapproved nor provided comments on it, the District shall, no later than 45 days after submittal, implement that procedure as submitted;
  - b. If, within 30 days after the District's submission, the EPA disapproves or provides comments on the procedure, the District 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 District shall implement the revised procedure as directed by the EPA; or
  - c. If, within 30 days after the District's submission, the EPA approves the procedure, the District shall, no later than 15 days after receiving the EPA's approval, implement the procedure.
165. 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 167 with written notice to the District, 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.
166. 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.
167. All notices and reports required by the Consent Order to be given to the EPA shall be sent to:

Kristin Ratajczak  
Physical Scientist  
U.S. EPA Region 8  
1595 Wynkoop Street  
8ENF-W-NW  
Denver, Colorado 80202  
ratajczak.kristin@epa.gov  
Phone: 303-312-6310

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168. 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.

169. Any failure to comply with the requirements of this Consent Order shall constitute a violation of this Consent Order and may subject the District to penalties as provided under section 309 of the Act, 33 U.S.C. § 1319.
170. This Consent Order is not a permit and does not constitute a waiver or modification of the terms and conditions of the Permit, which remains in full force and effect.
171. 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.
172. Compliance with the terms and conditions of this Consent Order shall not be construed to relieve the District of its obligation to comply with any applicable federal, state, or local law or regulation.
173. Each undersigned individual has the authority to bind the respective party to this Consent Order.

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This Consent Order may be signed in part and counterpart by any party.

174. This Consent Order shall be effective immediately upon the District’s receipt of a fully executed copy. The District waives any right to personal service of this Order and consents to receipt of service of this Order by email to [brianz@boxeldersanitation.org](mailto:brianz@boxeldersanitation.org).

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY**

**COLLEEN  
RATHBONE**

Digitally signed by COLLEEN  
RATHBONE  
Date: 2021.02.10 09:11:22 -07'00'

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

**BOXELDER SANITATION DISTRICT  
Respondent**

DocuSigned by:  
  
48F0B06066B744E...

Date: 2/9/2021

By:

Brian Zick, District Manager  
3201 E. Mulberry, Unit Q  
Fort Collins, Colorado 80522  
(970) 498-0604

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**CERTIFICATE OF SERVICE**

I certify the foregoing Administrative Order for Compliance on Consent was emailed on this day to for the Boxelder Sanitation District, at [brianz@boxeldersanitation.org](mailto:brianz@boxeldersanitation.org).

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Robyn Emeson  
Senior Assistant Regional Counsel  
Region 8, U.S. EPA  
1595 Wynkoop Street  
Denver, Colorado 80202  
(303) 312-6485  
[hanson.robyn@epa.gov](mailto:hanson.robyn@epa.gov)