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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

<p>IN THE MATTER OF:</p> <p>The City of Northglenn, Colorado,</p> <p>Respondent</p> <p>NPDES Permit No. CO0036757</p>	<p>Docket No. CWA-08-2023-0001</p> <p>ADMINISTRATIVE ORDER FOR COMPLIANCE ON CONSENT</p> <p>Proceeding under Section 309(a)(3) of the Clean Water Act, 33 U.S.C. § 1319(a)(3)</p>
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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 City of Northglenn, Colorado (Respondent). 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 Violation (Findings) in paragraphs 21 through 113, below, are made solely by the EPA.
3. In signing this Consent Order, the Respondent neither admits nor denies the Findings in this Consent Order. Without any admission of liability, the Respondent consents to the issuance of this Consent Order and agrees to abide by all of its conditions in the interest of resolving the alleged violations in this Consent Order. The Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review the 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, except that the Respondent reserves all remedies, claims for relief, and otherwise available

rights regarding judicial review of the Respondent's compliance with this Consent Order, but not of any issue of fact or law set forth in this Consent Order itself. 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

4. The Act 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. 33 U.S.C. § 1311(a).
5. 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).
6. 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).
7. The Act defines "navigable waters" as the "waters of the United States." 33 U.S.C. § 1362(7).
8. "Waters of the United States" are defined in 40 C.F.R. § 122.2.
9. 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).
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 and 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 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.
13. 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).
14. 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.
15. The Pretreatment Regulations include regulations containing pollutant discharge limits. These regulations are known as Pretreatment Standards. 40 C.F.R. § 403.3(l). Other requirements relating to pretreatment are known as Pretreatment Requirements. 40 C.F.R. § 403.3(t).
16. 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.
17. 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):
 - a) any IU subject to the Categorical Pretreatment Standards (a Categorical Industrial User, or “CIU”); and

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- b) any other IU that discharges an average of at least 25,000 gallons per day of process wastewater (excluding sanitary, non-contact cooling and boiler blowdown water) to a POTW; contributes a process waste stream 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)).
18. 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).
19. 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:
- a) 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 (40 C.F.R. § 403.8(f)(1));
 - b) 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);
 - c) to identify IUs that may be subject to the pretreatment program (40 C.F.R. § 403.8(f)(2)(i));
 - d) to identify the character and volume of pollutants contributed to the POTW by these IUs

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(40 C.F.R. § 403.8(f)(2)(ii));

- e) to notify IUs 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 (40 C.F.R. § 403.8(f)(2)(iii));
- f) to receive and analyze the self-monitoring reports and other notices that 40 C.F.R. § 403.12 requires IUs to submit (40 C.F.R. § 403.8(f)(2)(iv));
- g) 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 (40 C.F.R. § 403.8(f)(2)(v));
- h) 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) (40 C.F.R. § 403.8(f)(2)(vi));
- i) 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 (40 C.F.R. § 403.8(f)(2)(vii));
- j) to develop and implement 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 (40 C.F.R. § 403.8(f)(2)(viii));
- k) to have sufficient resources and qualified personnel to carry out its authorities and procedures (40 C.F.R. § 403.8(f)(3));
- l) 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) (40 C.F.R. § 403.8(f)(4)); and

- m) to develop and implement an enforcement response plan for investigating and responding to instances of noncompliance by IUs (40 C.F.R. § 403.8(f)(5)).
20. 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 VIOLATION

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

Respondent’s POTW

21. The 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. The Respondent owns and operates a wastewater treatment facility (WWTF) located at 5445 Weld County Road #2, Brighton, Colorado 80603.
23. The WWTF discharges treated wastewater into the Big Dry Creek, Thompson Ditch, and Bull Canal.
24. The Big Dry Creek, Thompson Ditch, and Bull Canal are navigable in fact.
25. The Big Dry Creek, Thompson Ditch, and Bull Canal are 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 WWTF and the sewers, pipes, and other conveyances leading to it are part of the Respondent’s POTW.
27. As a municipality with jurisdiction over discharges to and from its treatment works, the 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 owned and operated by the Respondent, or the Respondent itself, as the context requires.
29. The Respondent issued a control mechanism to one SIU that currently discharges to the POTW, namely B&B Blending, Inc. (B&B), a chemical manufacturer, that blends polishes, waxes, degreasers, soaps, and detergents for use in car wash, janitorial, and industrial cleaning applications, and is located at 10963 Leroy Drive, Northglenn, Colorado 80233.

The Respondent’s NPDES Permit and Approved Pretreatment Program

30. The State of Colorado Department of Public Health and Environment (CDPHE), reissued NPDES Permit Number CO0036757 to the Respondent, on November 27, 2019, effective January 1, 2020, and expiring December 31, 2024 (the Permit).
31. The Permit authorizes the Respondent to discharge from the WWTF into the Big Dry Creek, Thompson Ditch, and Bull Canal.
32. 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).
33. The State of Colorado has not, however, received the EPA’s approval for a pretreatment program. Therefore, the State of Colorado does not have an “Approved POTW Pretreatment Program” as defined in 40 C.F.R. § 403.3(d).
34. The EPA is the “Approval Authority” as defined in 40 C.F.R. § 403.3(c).
35. The EPA approved the Respondent’s pretreatment program May 8, 1986, at which time the Respondent became the “Control Authority” as defined in 40 C.F.R. § 403.3(f).

36. The EPA has approved updates to the *City of Northglenn's Ordinance at Chapter 16, Article 15, Section 16-15-6, Industrial Pretreatment Program* (Respondent's Ordinance), in 2006, 2010, and 2015. The EPA approved Respondent's Ordinance on November 10, 2015.
37. The EPA approved the Respondent's pretreatment program on May 8, 1986, and approved modifications in 1993, 2006, 2010, and 2015, which is referred to in this Consent Order as the "Respondent's Pretreatment Program."
38. The Permit requires the Respondent to develop, implement, document, and enforce an industrial pretreatment program in accordance with the pretreatment regulations found in 40 C.F.R. part 403. Permit, Part I.B.7.a.
39. The Respondent must continue to implement the pretreatment program approved by the EPA, as a condition of the Permit, including all approved modifications and shall be implemented in a manner consistent with the Permit and 40 C.F.R. part 403. Permit, Part I.B.7.a.

The EPA's 2021 Pretreatment Compliance Inspection

40. Between February 17 and 23, 2021, the EPA conducted a virtual Pretreatment Compliance Inspection (Inspection).
41. The EPA emailed preliminary findings from the Inspection to the Respondent on March 10, 2021.
42. Following the Inspection, the EPA also conducted a remote inspection of one of the Respondent's IUs, B&B on March 29, 2021, because B&B introduces, or has the potential to introduce non-domestic pollutants to the POTW (hereinafter the "B&B remote inspection").
43. The EPA emailed the inspection report, including the findings from the Inspection, to the Respondent on May 17, 2021 (Inspection Report).
44. The Respondent provided a written response to the Inspection Report on July 1, 2021.

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45. The EPA and the Respondent met on September 9, 2021 (Post-Inspection Meeting) to further discuss the Respondent's compliance efforts.
46. The EPA sent an email to the Respondent on September 15, 2021, rearticulating the outstanding corrective actions required for each finding from the Inspection.
47. One such outstanding corrective action included revisions to the Respondent's Enforcement Response Plan (ERP). During the Inspection, the EPA identified three instances when a violation at B&B occurred, but the ERP did not describe the type of escalating enforcement response for each violation, including failure to submit all data required on SMRs; failure to provide all required information to the POTW following an unanticipated bypass; and failure to provide timely notification of noncompliance to the POTW.
48. On March 17, 2022, the EPA sent a Notice of Violation and Opportunity to Confer Letter (NOVOC Letter) to the Respondent for failure to implement and enforce its pretreatment program.
49. On March 23, 2022, legal counsel for the Respondent contacted legal counsel for the EPA requesting a meeting to discuss the NOVOC Letter. Legal counsel for the parties discussed the NOVOC Letter during a video conference on March 28, 2022.
50. On April 20, 2022, representatives for the Respondent and the EPA attended a video conference during which the parties discussed the NOVOC Letter.
51. On May 5, 2022, May 11, 2022, and June 30, 2022, the Respondent emailed additional documentation of its efforts to return to compliance, including a revised draft ERP. Discussion of the relevant documentation is included in the discussion of each alleged violation below.
52. The Respondent has worked and continues to work to address the alleged violations and deficiencies.

Count I: Failure to Revise Local Limits

53. The Respondent 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.

54. The Respondent is required to continue to develop and revise its local limits as necessary based, for example, on current data and standards, and to implement these limits effectively. 40 C.F.R. §§ 403.5(c)(1) and 403.8(f)(4); Permit, Part I.B.7.c.

55. 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. 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 C.F.R. 403.18.

In accordance with 40 CFR 122.44(j)(2)(ii), the permittee shall submit to the Division and Approval Authority a technical evaluation of the need to develop or revise local limits in accordance with 40 CFR 403.5(c) and a local limits package if a technical evaluation reveals that development or revision of local limits is necessary. The evaluation shall include, but not be limited to, a consideration of any new or revised numeric and practice-based effluent limits in this permit.

Permit, Part I.B.7.c.

56. The Respondent is required to submit a technical evaluation of the need to develop or revise local limits following permit issuance or reissuance. 40 CFR § 122.44(j)(2)(ii); Permit, Part I.B.7.c.

57. The Respondent included local limits with its original program submission to the EPA in 1986.

58. The EPA approved updated local limits for the Respondent in 2010.

59. The EPA provided compliance assistance to the Respondent on March 5, 2020, and explained the process to develop a technical evaluation of the need to revise local limits.

60. As set forth in Paragraph 30 above, the Permit was reissued on November 27, 2019, and became

effective on January 1, 2020.

61. To date, the EPA has not received a technical evaluation of the need to revise local limits.
62. The Respondent's failure to revise its local limits violated and continues to violate 40 C.F.R. §§ 403.5(c) and 403.8(f)(4) and the Permit, Part I.B.7.c.

Count II: Failure to Operate Pursuant to Adequate Legal Authority

63. The Respondent is required to operate its pretreatment program pursuant to legal authority enforceable in federal, state, or local courts, which authorizes or enables Respondent 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 Permit, Part I.B.6.a.vii. Such authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements the Respondent is authorized to enact, enter into, or implement, and which are authorized by state law. *Id.*
64. The Respondent's legal authority must, at a minimum, enable the Respondent to exercise all functions enumerated in 40 C.F.R. § 403.8(f)(1)(i) through (vi). In the Inspection Report, the EPA noted that the Respondent's Ordinance needed to be updated to align with federal pretreatment regulations. Deficiencies in the Respondent's Ordinance include, but are not limited to the following:
 - a) the definition of "existing source" needs to be revised to replace the term "promulgation" with "proposal";
 - b) the definition of "POTW" needs to be revised to add "The term also means the municipality as defined in section 502(4) of the Act, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works"; and
 - c) the Respondent lacks the authority to deny contributions of new, increased or changes in

the nature of pollutants, to the POTW by IUs where such contributions do not meet applicable Pretreatment Standards and Requirements or where such contributions would cause the POTW to violate the Permit.

65. To date, the EPA has not received a revised version of the Respondent's Ordinance.
66. The Respondent's operation of its pretreatment program without complete required legal authorities, as described in Paragraph 64, above, violated and continues to violate 40 C.F.R. § 403.8(f)(1) and the Permit, Part I.B.7.a.

Count III: Failure to Include All Required Elements in SIU Permit(s)

67. To carry out the requirements of the Permit, Part I.B.7.a.vii., the "Permittee shall control, through the legal authority in the approved pretreatment program, the contribution to the POTW from each industrial user to ensure compliance with the applicable Pretreatment Standards and requirements." In the case of SIUs, this control shall be achieved "through permit, order, or similar means." *Id.*
68. In each SIU permit it issues, the Respondent 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 the Permit, Part I.B.7.a.vii(A);
 - 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 the Permit, Part I.B.7.a.vii(B);
 - c) effluent limits, including Best Management Practices, based on applicable general Pretreatment Standards in 40 C.F.R. part 403, Categorical Pretreatment Standards, local limits, and State and local law, under 40 C.F.R. § 403.8(f)(1)(iii)(B)(3) and the Permit,

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Part I.B.7.a.vii(C);

- 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 the Permit, Part I.B.7.a.vii(D);
- 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 the Permit, Part I.B.7.a.vii(E); 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 the Permit, Part I.B.7.a.vii(F).

- 69. At the time of the Inspection, the EPA reviewed the industrial discharge permit issued to B&B for the facility located at 10963 Leroy Drive, permit no. 001-2021, permit renewal effective on January 1, 2021 (B&B IU Permit).
- 70. The EPA observed deficiencies in the B&B IU Permit including the following: implementation of standard conditions through inaccurate references to the City's ordinance; requirements for allowable discharges that conflict with federal regulations; lack of requirement to report results of additional monitoring; inconsistencies between the permit rationale and the permit requirements; the upper pH effluent limit; several specific discharge prohibitions; lack of a requirement to conduct representative sampling for the reporting period; inappropriate sampling method for mercury; and lack of requirement to develop a slug discharge control plan.
- 71. The EPA also observed that the template IU permit contains most, if not all, of the same deficiencies as those described in paragraph 70 above.
- 72. In the Inspection Report, the EPA noted that B&B may be a CIU, subject to Categorical

Pretreatment Standards at 40 C.F.R. §417.166. An IU permit for a CIU must include effluent limits found in the subpart, including limits to the chemical oxygen demand (COD) to 7-day biochemical oxygen demand (BOD7) ratio and COD content. The B&B Permit did not include these effluent limits.

73. On May 11, 2022, the Respondent submitted a draft modification of the B&B IU Permit (draft B&B IU Permit). The EPA identified deficiencies in the draft B&B IU Permit including the following: no effluent limit on the COD content (kg/kkg of anhydrous product) was included; the slug discharges identified in the draft B&B IU Permit did not align with the definition in 40 C.F.R. § 403.8(f)(2)(vi); and no upset provisions, as defined in 40 C.F.R. § 403.16 were included.
74. On June 30, 2022, the Respondent submitted a revised draft B&B IU Permit (revised draft B&B IU Permit).
75. The EPA identified deficiencies in the revised draft B&B IU Permit, including the following: the specific requirement to calculate anhydrous product uses an incorrect method; and no requirement to conduct representative sampling for the reporting period was included.
76. The Respondent's failure to address deficiencies in the B&B IU Permit to ensure compliance with the applicable Pretreatment Program requirements, violated and continues to violate 40 C.F.R. § 403.8(f)(1)(iii)(B) and the Permit, Part I.B.7.a.vii.

Count IV: Failure to Identify and Characterize IU Contributions

77. The Respondent is required to develop and implement a procedure to identify and locate all possible IUs that might be subject to the Respondent's Pretreatment Program. As relevant here, at a minimum, these procedures shall enable the POTW to:

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- a) identify and locate all possible IUs which might be subject to the POTW Pretreatment Program and make an inventory of IUs available to the EPA Regional Administrator upon request; and
- b) identify the character and volume of pollutants contributed to the POTW by the IUs identified under section 403.8(f)(2)(i), which must be made available to the EPA Regional Administrator upon request.

40 C.F.R. § 403.8(f)(2)(i) and (ii) and the Permit, Part I.B.7.a.i.

- 78. The Respondent is also required to update this information at least yearly or at the frequency necessary to ensure all IUs are properly permitted or controlled. Permit, Part I.B.7.a.ii.
- 79. During the Inspection, the Respondent could not produce a list of IUs, and had not been able to access its database of IUs since at least 2018, following staff turnover.
- 80. On May 5, 2022, the Respondent produced a newly developed inventory of approximately 900 businesses in its service area.
- 81. The Respondent developed a procedure for identifying the character and volume of pollutants discharged, however, at the time of the Inspection, the Respondent had not implemented the process.
- 82. To date, the Respondent has not implemented a procedure to characterize IU contribution of pollutants in its service area.
- 83. Respondent's failure to identify the character and volume of pollutants contributed by IUs subject to the Respondent's pretreatment program has violated and continues to violate 40 C.F.R. § 403.8(f)(2)(ii) and the Permit, Parts I.B.7.a.i and I.B.7.a.ii. In addition, the Respondent's failure to update this information at least once per year or at that frequency necessary to ensure all IUs are properly characterized violated and continues to violate the Permit,

Part I.B.7.a.ii.

Count V: Failure to Conduct Annual Compliance Monitoring

84. The Respondent is required to:
- a) randomly sample and analyze the effluent from IUs and conduct surveillance activities to identify, independent of information supplied by IUs, occasional and continuing noncompliance with Pretreatment Standards, and
 - b) inspect and sample the effluent from each SIU at least once per year, with exceptions not applicable here. 40 C.F.R. § 403.8(f)(2)(v) and the Permit, Part I.B.7.a.iii.
85. Under 40 C.F.R. § 403.12(o), the Respondent 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.
86. The Respondent did not have any record of sampling the effluent from B&B in 2020.
87. The Respondent did not have any record of inspecting B&B in 2018, 2019, or 2020.
88. The Respondent’s failure to inspect B&B in 2018, 2019, and 2020 and the Respondent’s failure to sample the effluent from B&B in 2020 are violations of 40 C.F.R. § 403.8(f)(2)(v) and the Permit, Part I.B.7.a.iii.

Count VI: Failure to Receive and Analyze Reports and Implement Sufficient Investigation and Sampling Procedures

89. The Respondent is required to develop and implement procedures to:
- a) receive and analyze self-monitoring reports (SMRs) and other notices submitted by IUs in accordance with the self-monitoring requirements in 40 C.F.R. § 403.12; and
 - b) investigate instances of noncompliance with Pretreatment Standards and Requirements, as

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indicated in reports and notices required under § 403.12, or indicated by analysis, inspection, and surveillance activities described in 40 C.F.R. § 403.8(f)(2)(v). 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)(iv) and 403.8(f)(2)(vii) and the Permit, Part I.B.7.a.v.

90. In 2019, as part of the Respondent's investigation of B&B's compliance, the Respondent did not adhere to approved sampling methods or requirements set forth in 40 C.F.R. §§ 403.12(g)(3) and 136.3, or the B&B IU Permit, by failing to:
- a) monitor for all parameters listed in the B&B IU Permit;
 - b) specify the preservation method used for the collected samples;
 - c) collect samples as required; and
 - d) refrigerate samples, for which refrigeration is a preservation requirement.
91. During the Inspection, the EPA reviewed reports B&B submitted to the Respondent. The EPA identified instances of noncompliance by B&B, including the following: exceedance of the industrial discharge permit limit for lower explosive limit (LEL); failure to provide all required data on its SMRs; failure to clean out its sand/oil separator; failure to collect a purgeable organics sample following an LEL excursion; incorrect sample collection method for mercury analysis; failure to provide all required information to the POTW following an unanticipated bypass; and failure to provide timely notification of noncompliance.
92. On May 5, 2022, the Respondent submitted an SMR checklist that it uses for analyzing SMRs submitted by IUs. The SMR checklist does not include sufficient information to assess noncompliance because it fails to evaluate concentrations of pollutants in the effluent, sampling and analytical methodology, sample preservation, or sample collection times.

93. On May 5, 2022, the Respondent submitted sample results from a sampling event that occurred on August 18, 2021, to the EPA. The sample results indicated B&B discharged wastewater containing copper at a concentration of 5.0899 mg/l. The copper limit in the B&B IU permit is 0.86 mg/l. The Respondent did not provide any documentation to the EPA in response to this effluent exceedance. The Respondent failed to identify the violation, conduct resampling as required by 40 C.F.R. § 403.12(g)(2) and the Permit, Part I.B.7.a.iii.
94. The Respondent's failure to develop and implement procedures to receive and analyze SMRs and develop and implement sufficient investigation and sampling procedures violated and continues to violate 40 C.F.R. §§ 403.8(f)(2)(iv) and(vii) and the Permit, Part I.B.7.a.v.

Count VII: Failure to Evaluate Whether SIUs Need a Plan to Control Slug Discharges and Ensure the Required Slug Discharge Control Plan Meets the Regulatory Requirements

95. The Respondent is required to develop and implement procedures to evaluate whether each SIU needs a plan or other action to control slug discharges. 40 C.F.R. § 403.8(f)(2)(vi) and the Permit, Part I.B.7.a.iv.
96. A slug discharge is any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge, which has a reasonable potential to cause interference or pass through (as defined in 40 C.F.R. § 403.3), or in any other way violate the POTW's regulations, local limits or permit conditions. 40 C.F.R. § 403.8(f)(2)(vi).
97. When the Respondent determines an SIU needs a plan or other action to control slug discharges, the slug discharge control plan (SDCP) shall contain, at a minimum, the following: a description of discharge practices, including non-routine batch discharges; a description of stored chemicals; procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition under 40 C.F.R. §403.5(b) with procedures for follow-up written notification within five days; and if necessary, procedures to prevent adverse impact from

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accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response.

40 C.F.R. §403.8(f)(2)(vi).

98. During the Inspection, the Respondent could not produce documentation that the Respondent evaluated B&B for an SDCP.
99. B&B discharged a slug of concentrated blue dye to the POTW on September 5, 2019, September 6, 2019, and September 17, 2019, and a slug of off-spec soap to the POTW on February 23, 2021.
100. On March 23, 2021, the Respondent submitted B&B's SDCP to the EPA.
101. B&B's SDCP did not contain the following: a description of stored chemicals; procedures for immediately notifying the POTW of slug discharges, including accurate contact information; and procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, and worker training. Additionally, the SDCP stated that B&B representatives would seek approval from the Respondent for sewer disposal for off-spec products, rather than arrange off-site disposal; however, then Respondent's Ordinance categorically prohibits slug discharges.
102. During the B&B remote inspection, on March 29, 2021, the EPA observed bulk raw chemicals and finished products were stored without secondary containment or berms near floor drains.
103. To date, the EPA has not received an adequate SDCP for B&B or documentation that the slug discharge potential in Paragraph 102 has been mitigated.
104. The Respondent's failure to evaluate whether each SIU needs a plan or other action to control slug discharges and ensure the SDCP included the required elements violated and continues to

violate 40 C.F.R. § 403.8(f)(2)(vii) and the Permit, Part I.B.7.a.iv.

Count VIII: Failure to Accurately Report Data in Annual Reports

105. The Respondent is required to provide the EPA with a report that briefly describes the Respondent's Pretreatment Program activities beginning no later than one year after the EPA's approval date of the Respondent's Pretreatment Program. These annual reports must contain the information specified in 40 C.F.R. § 403.12(i) and the Permit, Part I.B.7.h, including information that identifies any changes to the Respondent's Pretreatment Program not previously reported.
106. The Respondent did not accurately report information about its inspection and sampling frequencies, local limits, SIU flow, and the categorization of B&B in at least the 2019, 2020, and 2021 annual reports.
107. The Respondent's failure to accurately report required data to the EPA in the Respondent's Pretreatment Program annual reports violated and continues to violate 40 C.F.R. § 403.12(i) and Permit, Part I.B.7.h.

Count IX: Failure to have Sufficient Resources to Implement the Pretreatment Program

108. The Respondent 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 Permit, Part I.B.7.a.viii.
109. In the Inspection Report, the EPA noted that the Respondent did not have sufficient resources and qualified personnel to implement its pretreatment program.
110. In its 2020 annual report, the Respondent stated that, "staffing was reduced due to compliance needs for State of Colorado Cross-Connection Control Program," and it reduced staff resources from 0.5-1.0 full-time employee (FTE) to 0.3 FTE. During the Inspection in 2021, the Respondent informed the EPA that 0.1 FTE were being devoted to the Pretreatment Program.

111. Conversely, in its 2021 annual report, the Respondent reported to reallocating 0.5 FTE to the Pretreatment Program.
112. The violations alleged in Counts I through VIII, above, demonstrate the Respondent's failure to ensure sufficient resources to implement its pretreatment program in order to carry out the authorities and procedures described in 40 C.F.R. § 403.8(f)(1) and (2). The Respondent's failure to have sufficient resources violated and continues to violate 40 C.F.R. § 403.8(f)(3) and the Permit, Part I.B.7.a.viii.

CONSENT ORDER

The EPA orders, and the Respondent agrees:

113. Upon the effective date of this Consent Order (see paragraph 141, below), unless this Consent Order specifically provides a later deadline for compliance, the Respondent shall:
 - a) comply with all requirements of the NPDES Permit and 40 C.F.R. part 403; and
 - b) implement the Respondent's approved pretreatment program in accordance with the Permit and 40 C.F.R. part 403.
114. Within 180 days after the effective date of this Consent Order, the Respondent 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 Respondent 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 Respondent 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 Respondent shall provide the public an

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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). Upon EPA approval, the Respondent shall implement the approved local limits.

115. Within 180 days after the effective date of this Consent Order, the Respondent shall submit its proposed revised ordinance, addressing deficiencies identified in paragraph 64, to the EPA for public notice and approval, as required by 40 C.F.R. §§ 403.9 and 403.11. This submission shall include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising and/or funding the POTW pretreatment program if approved, as required by 40 C.F.R. § 403.9(b)(2). Upon EPA approval, the Respondent shall implement the approved ordinance.
116. Within 45 days after the effective date of this Consent Order, the Respondent shall submit to the EPA for review a revised B&B IU permit that addresses the deficiencies alleged in Count III, as set forth in paragraph 75 above. The Respondent shall reissue the revised and approved permit to B&B within 30 days of EPA's approval.
117. Within 45 days after the EPA approval of the revised B&B IU permit, the Respondent shall submit an IU permit template to the EPA for review and approval. After the Respondent submits this revised template, the Respondent shall implement the updated permit template in accordance with paragraph 128, below.
118. Upon the effective date of this Consent Order, the Respondent shall implement the IU characterization procedure referenced in paragraph 81.
119. By December 31, 2023, the Respondent 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;

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- b) the date the IU was inspected, if required following the Respondent's review of submitted IWS forms;
- c) the date the IU was sampled, if required following the Respondent'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 noncategorical SIU, requires best management practices, or is not significant to pretreatment;
- f) the date the IU was notified of all applicable requirements;
- g) the date the IU was issued an SIU permit for any IU identified as subject to Categorical Pretreatment Standards or as a noncategorical SIU; and
- h) a report of each inspection conducted pursuant to Paragraph 117.b) above.

Upon the effective date of this Consent Order, the Respondent shall keep its IU Inventory updated and maintained.

120. Within 60 days after the effective date of this Consent Order, the Respondent shall submit to the EPA, for review and comment, a procedure for receiving and analyzing reports and other notices from SIUs for compliance, including: periodic self-monitoring reports, 24-hour noncompliance notifications, 30-day resampling submittals, upset notifications and reports, bypass notifications and reports, and other required written reports or verbal notifications, that correct the deficiencies alleged in paragraph 92. After the Respondent submits this procedure to the EPA, the Respondent shall implement the procedure in accordance paragraph 128, below.
121. Within 90 days after the effective date of this Consent Order, the Respondent shall submit to the

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EPA, for review and comment a site-specific sampling plan for B&B. The site-specific sampling plan shall 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. After the Respondent submits this plan to the EPA, the Respondent shall implement the plan in accordance with paragraph 128, below.

122. Within 90 days after the effective date of this Consent Order, the Respondent shall submit to the EPA, for review and comment, a written procedure for inspections that includes an inspection checklist and requires the Respondent to collect and maintain IU inspection information. The written procedure shall address, at a minimum, inspection processes, note taking, photographic information, and inspection reports. After the Respondent submits this inspection procedure to the EPA, it shall implement the procedure in accordance with paragraph 128, below.
123. Within 180 days after the effective date of this Consent Order, along with revised local ordinance and local limits (Program Modification), the Respondent shall submit to the EPA a Final ERP that meets the minimum requirements in 40 C.F.R. § 403.8(f)(5) and the Permit, Part I.B.7.a.x, and addresses the deficiencies set forth in paragraph 47 above. Upon EPA approval, Respondent shall implement the ERP.
124. Within 90 days after the effective date of this Consent Order, the Respondent shall complete an evaluation of the slug discharge potential at B&B and submit its findings to the EPA for review.
125. Within 120 days after the effective date of this Consent Order, the Respondent shall require B&B to revise the SDCP to ensure it meets regulatory requirements in 40 C.F.R. 403.8(f)(2)(vii) and

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addresses the deficiencies identified in paragraph 101 and areas of concern identified in paragraph 102. The Respondent shall submit B&B's revised SDCP to the EPA for review.

126. No later than March 31, 2023, and annually thereafter, the Respondent shall accurately report data on their annual pretreatment report submitted to the EPA.
127. Within 120 days after the effective date of this Consent Order, the Respondent shall submit to the EPA a description, and supporting documentation, of the funding levels and full and part time manpower needed and available to implement the pretreatment program. For example, if the Respondent asserts that it has returned its staffing resource allocation to 0.5 FTE, provide documentation of the allocation, including documentation indicating how that allocation was achieved, such as: additional staffing resources were allocated to the backflow prevention program such that staffing resources needed for the backflow prevention program were returned to the pretreatment program; or additional resources were allocated to pretreatment program implementation.
128. Within 90 days after the effective date of this Consent Order, the Respondent shall submit to the EPA a description (including organization charts) of the POTW organization, which will administer the pretreatment program. If more than one agency is responsible for administration of the pretreatment program the responsible agencies should be identified, their respective responsibilities delineated, and their procedures for coordination set forth.
129. The Respondent shall submit four quarterly reports, with quarters based on the calendar year, to the EPA. The Respondent's first quarterly report due under this paragraph will cover the period of time from the effective date of the Consent Order through December 31, 2022. The reports will be due 30 days following the relevant quarter. For example, the first quarterly report, due January 31, 2023, would cover October 1, 2022, through December 31, 2022. Each report shall include:

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- a) the identities of the Pretreatment Program staff and any training related to implementation of the program that occurred during the quarter;
- b) a summary of all IU violations identified by the Respondent 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 Respondent against IUs during the quarter, or, if none were taken or are planned, a statement to that effect;
- d) updates to the IU Inventory that occurred during the quarter pursuant to Paragraph 117 (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;
- e) a list of inspections performed during the quarter and summary of inspection findings;
- f) a summary of any sample results collected by the Respondent during the quarter from B&B or, if no such samples were collected, a statement to that effect; and
- g) completed SNC determinations for the quarter.

The quarterly reporting is intended to document activities being implemented and/or progress being made in implementing the requirements of this Consent Order. Any potential deficiencies or concerns identified in the Respondent's quarterly reports will be discussed during informal, good-faith discussions between the Respondent and the EPA. The Parties shall use their best efforts to address, discuss, or resolve any deficiencies or concerns during these informal discussions. If EPA determines that additional quarterly reports are necessary to ensure compliance with this Consent Order, additional quarterly reports will be discussed during informal, good-faith discussions between the Respondent and the EPA.

130. For each procedure referenced in paragraphs, 116, 118, 119, and 120, above:

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- a) if, within 30 days after the Respondent's submission, the EPA has neither disapproved nor provided comments on it, the Respondent's submission shall be deemed finally approved, and the Respondent shall, no later than 45 days after submittal, implement that procedure as submitted;
- b) if, within 30 days after the Respondent's submission, the EPA disapproves or provides comments on the procedure, the Respondent shall, no later than 30 days after receiving the EPA's disapproval or comments, submit a revised procedure to the EPA for review. Thereafter, the Respondent shall implement the revised procedure as directed by the EPA;
or
- c) if, within 30 days after the Respondent's submission, the EPA approves the procedure, the Respondent shall, no later than 15 days after receiving the EPA's approval, implement the procedure.

- 131. At the EPA's sole discretion, the EPA may grant extensions of deadlines required by this Consent Order with written notice to Respondent, 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.
- 132. 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.
- 133. All notices and reports required by the Consent Order to be sent to the EPA, via email, to:

Kristin Ratajczak
Physical Scientist
U.S. EPA Region 8
ratajczak.kristin@epa.gov

Laurianne Jackson

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Senior Assistant Regional Counsel
U.S. EPA Region 8
jackson.laurianne@epa.gov

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. All notices and communications from the EPA to the Respondent regarding this Consent Order shall be sent, via email to the following:

Tamara Moon
Environmental Manager
City of Northglenn
tmoon@northglenn.org

Nate Hunt
Kaplan Kirsch & Rockwell LLP
1675 Broadway, Suite 2300
Denver, Colorado 80202
nhunt@kaplankirsch.com

The EPA or the Respondent may change its recipients for notifications, or other information for notifications by providing a notification in accord with this paragraph.

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

137. “Force Majeure,” for the purpose of this Consent Order, is defined as any event arising from

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causes beyond the control of the Respondent or the Respondent's consultants and contractors, that delays or prevents the performance of any obligation under this Consent Order despite the Respondent's best efforts to fulfill the obligation. The requirement that the Respondent exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event both as it is occurring and after it has occurred to prevent or minimize any resulting delay to the greatest extent possible.

138. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Order, whether or not it is caused by a Force Majeure event, the Respondent shall notify the EPA of the event. If the EPA agrees that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Consent Order that are affected by the Force Majeure event will be extended by the EPA for such time as is necessary to complete those obligations. The EPA will issue a notice, in writing, to the Respondent of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event. If the EPA does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, then the EPA will issue a notice, in writing, to the Respondent of the EPA's position that the delay or anticipated delay was not caused by a force majeure event and provide an explanation for the EPA's position.
139. 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.
140. If the EPA were to determine Respondent is no longer subject to the Pretreatment Standards and Pretreatment Requirements, the EPA shall terminate this Consent Order and all of the Respondent's obligations under this Consent Order.
141. This Consent Order does not constitute a waiver or election by the EPA to forego any civil or

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criminal action to seek penalties, fines, or other 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 \$59,973 (as adjusted for inflation by 40 C.F.R. part 19) per day for each violation of the Act. The Act also authorizes fines and imprisonment for willful or negligent violations. 33 U.S.C. § 1319(c). Compliance with the terms and conditions of this Consent Order shall not be construed to relieve the Respondent of its obligation to comply with any applicable federal, state, or local law or regulation.

142. Each undersigned individual has the authority to bind the respective party to this Consent Order. This Consent Order may be signed in part and counterpart by any party.
143. This Consent Order shall be effective immediately upon the Respondent's receipt of a fully executed copy. Upon completion with all the requirements of the Consent Order, the Respondent may request that the EPA provide a written termination letter that states the Respondent's obligations under this Consent Order have been fully satisfied and this Consent Order is terminated. Upon receipt of that request, the EPA shall respond promptly with a written termination letter.
144. This Consent Order may be signed in counterparts and its validity shall not be challenged on that basis.
145. The parties consent to service of this Consent Order by e-mail at the following valid email addresses: jackson.laurianne@epa.gov (for the EPA), and hgeyer@northglenn.org (for the Respondent).

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**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8,
Complainant.**

Date: 11/2/2022

By: _____
Colleen Rathbone, Manager
Water Enforcement Branch
Enforcement and Compliance Assurance Division

**CITY OF NORTHGLENN
Respondent**

Date: 11.1.22

By: Heather Geyer
Heather Geyer, City Manager

CERTIFICATE OF SERVICE

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

Copy by email with read receipt to:
Kate Tribbett
Acting Regional Hearing Clerk
U.S. Environmental Protection Agency (8RC)
Region 8
r8_hearing_clerk@epa.gov

Copy by email with read receipt to:
City of Northglenn
Heather Geyer
City Manager
hgeyer@northglenn.org

Tamara Moon
Environmental Manager
City of Northglenn
tmoon@northglenn.org

Nate Hunt
Kaplan Kirsch & Rockwell LLP
nhunt@kaplankirsch.com

Date

By: _____
Laurianne Jackson
Senior Assistant Regional Counsel
Region 8, U.S. EPA
1595 Wynkoop Street (08 ORC-R)
Denver, Colorado 80202
(303) 312-6950
jackson.laurianne@epa.gov