

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2015 OCT 27 AM 11:37

<p>IN THE MATTER OF:</p> <p>The City of Bozeman, Montana,</p> <p style="text-align: center;">Respondent.</p> <p>NPDES Permit No. MT0022608</p>	<p style="text-align: right;">FILED EPA REGION VIII HEARING CLERK</p> <p>Docket No. <b>CWA-08-2016-0002</b></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 City of Bozeman, Montana (Respondent) and the United States Environmental Protection Agency (EPA). The EPA has authority to issue this Consent Order pursuant to section 309(a)(3) of the Clean Water Act (Act), 33 U.S.C. § 1319(a)(3), which authorizes the EPA to issue an order requiring compliance by a person found to be in violation of certain provisions of the Act.
2. The Findings of Fact and of Violation (Findings) in paragraph numbers 20 through 182, below, are made solely by the EPA. In signing this Consent Order, the Respondent neither admits nor denies the Findings. Without any admission of liability, the Respondent consents to issuance of this Consent Order and agrees to abide by all of its conditions. The Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that 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. The Respondent further agrees not to challenge the jurisdiction of the EPA or any of the Findings in any proceeding to enforce this Consent Order or in any action under this Consent Order.

## **STATUTORY AND REGULATORY BACKGROUND**

### **The NPDES Program**

3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters, except as in compliance with other sections of the Act, including section 402, 33 U.S.C. § 1342, which allows discharges authorized by National Pollutant Discharge Elimination System (NPDES) permits.
4. The Act defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).
5. The Act defines “pollutant” to include “sewage . . . chemical wastes, biological materials . . . and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6).
6. The Act defines “navigable waters” as the “waters of the United States.” 33 U.S.C. § 1362(7).
7. “Waters of the United States” are defined in 40 C.F.R. § 122.2.
8. The Act defines “point source” to include any “discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure [or] container . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).
9. The EPA, and states with NPDES programs approved by the EPA, may issue NPDES permits that authorize discharges of pollutants into waters of the United States, subject to conditions and limitations set forth in such permits. 33 U.S.C. § 1342.
10. Among the types of dischargers that can receive NPDES permits authorizing pollutants to be discharged into waters of the United States are publicly owned treatment works, or POTWs. The term “POTW” encompasses a treatment works itself and a municipality with jurisdiction over discharges to and from such a treatment works. 40 C.F.R. § 403.3(q).

### **The EPA's Pretreatment Program**

11. Pollutants from non-domestic sources that are introduced to a POTW are subject to the EPA's pretreatment regulations at 40 C.F.R. chapter I, subchapter N, parts 400 through 471 (Pretreatment Regulations) and section 307 of the Act, 33 U.S.C. § 1317.
12. Non-domestic sources that introduce pollutants to POTWs are known as "Industrial Users" or "IUs," as defined in 40 C.F.R. § 403.3(j).
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 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, known as Pretreatment Standards. 40 C.F.R. § 403.3(l). Other requirements relating to pretreatment are known as Pretreatment Requirements. 40 C.F.R. § 403.3(t).
15. The Pretreatment Regulations distinguish between categorical and non-categorical dischargers. Categorical dischargers are IUs in specific industrial categories for which the EPA has promulgated industry-specific regulations in 40 C.F.R. parts 405-471. Dischargers not covered by any of these specific categories are known as non-categorical dischargers.
16. According to 40 C.F.R. § 403.3(v), an IU is a "Significant Industrial User" or "SIU" if, among other things,
  - it is subject to the EPA's categorical pretreatment standards under 40 C.F.R. § 403.6 and 40 C.F.R. chapter I, subchapter N;
  - it discharges an average of at least 25,000 gallons per day of wastewater other than sanitary, non-contact cooling water, or boiler blowdown water to a POTW; or
  - it is designated by an appropriate authority as an SIU on the basis of having a reasonable

potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or Requirement.

17. The Pretreatment Regulations require certain POTWs to establish approved pretreatment programs. An NPDES permit issued to a POTW must, among other things, incorporate the requirements of the POTW's pretreatment program. 40 C.F.R. §§ 122.44(j) and 403.8(c).
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 that the POTW is able, among other things:
  - to operate pursuant to enforceable legal authority that authorizes or enables the POTW to apply and to enforce the requirements of sections 307(b) and (c) and 402(b)(8) of the Act and any regulations implementing those sections,
  - to identify IUs that may be subject to the pretreatment program,
  - to identify the character and volume of pollutants contributed to the POTW by these IUs,
  - to issue permits, orders, or other control mechanisms to control Indirect Discharges by SIUs, which include specific information required by 40 C.F.R. § 403.8(f)(1)(iii),
  - 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),
  - to receive and analyze the self-monitoring reports and other notices that 40 C.F.R. § 403.12 requires IUs to submit,
  - to investigate instances of noncompliance by IUs with Pretreatment Standards and Requirements and to perform sampling and inspections with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions,
  - to sample the effluent from SIUs at least once a year,
  - 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)(vii), by any IUs,

- to develop specific limits, known as “local limits,” to ensure that IUs comply with the prohibitions in 40 C.F.R. § 403.5(a) and (b),
- to develop and implement an enforcement response plan (ERP) for investigating and responding to instances of noncompliance by IUs, and
- to have sufficient resources and qualified personnel to carry out its authorities and procedures.

19. Permits that POTWs issue to IUs or SIUs to authorize discharges of pollutants to POTWs are known as “IU permits” or “SIU permits,” respectively. These are collectively referred to by the Respondent as “Industrial Wastewater Discharge Permits.”

### **FINDINGS OF FACT AND OF VIOLATION**

The following findings apply at all times relevant to this proceeding. For simplicity, any references to requirements or violations of any permit are for dates when those permits are or were in effect, even if this Consent Order uses the present tense.

#### **The Respondent’s POTW**

20. 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).
21. The Respondent owns and operates a wastewater treatment plant (WWTP) located at 255 Moss Bridge Road in Bozeman, Montana.
22. The WWTP discharges treated wastewater into the East Gallatin River.
23. The East Gallatin River flows into the Gallatin River, which flows into the Missouri River, an interstate water. The East Gallatin River, Gallatin River, and Missouri River are navigable-in-fact waters.

24. The East Gallatin River, Gallatin River, and Missouri River are each a “water of the United States” as defined in 40 C.F.R. § 122.2 and a “navigable water” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7).
25. The WWTP and the sewers, pipes, and other conveyances leading to it are part of the Respondent’s POTW.
26. 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).
27. Unless otherwise stated, any references to “the POTW” below in this Consent Order shall mean the POTW that is owned and operated by the Respondent, or the Respondent itself, as the context requires.

#### **The Respondent’s NPDES Permits**

28. The State of Montana issued NPDES Permit Number MT0022608 (the 2006 NPDES Permit) to the Respondent, effective October 1, 2006, and expiring September 30, 2011. The 2006 NPDES Permit was automatically extended until June 1, 2012, in accordance with section 17.30.1313 of the Administrative Rules of Montana.
29. The State of Montana issued NPDES Permit Number MT0022608 (the 2012 NPDES Permit) to the Respondent, effective June 1, 2012, and expiring May 31, 2017.
30. The 2006 and 2012 NPDES Permits authorize the Respondent to discharge from the WWTP into the East Gallatin River.
31. The State of Montana is an “NPDES State,” because the EPA has approved the State of Montana’s NPDES program pursuant to section 402(b) of the Act, 42 U.S.C. § 1342(b).
32. The State of Montana has not received the EPA’s approval of its pretreatment program. Therefore, at all times relevant to this Consent Order, the EPA has been the “Approval Authority” as defined in 40 C.F.R. § 403.3(c).

33. The 2006 and 2012 NPDES Permits require the Respondent to develop, implement, document, and enforce an industrial pretreatment program in accordance with the Pretreatment Regulations, Part I.E of each NPDES Permit.
34. The EPA approved the Respondent's pretreatment program on October 18, 1985, at which time the Respondent became the "Control Authority" as defined in 40 C.F.R. § 403.3(f). The program as approved by the EPA on October 18, 1985, will be referenced in this Consent Order as the Pretreatment Program.
35. The Respondent has enacted pretreatment provisions in its municipal code (the Municipal Code), which the EPA approved as part of the Pretreatment Program.

#### **The EPA's 2011 Pretreatment Audit**

36. On September 27 through 29, 2011, the EPA conducted a Pretreatment Audit (2011 Audit) of the Pretreatment Program.

#### **The EPA's 2014 Pretreatment Compliance Inspection**

37. On September 8 and 9, 2014, the EPA conducted a Pretreatment Compliance Inspection (2014 PCI) of the Pretreatment Program. The EPA mailed a report of the 2014 PCI to the Respondent with a letter of potential violation dated December 4, 2014.
38. As part of the 2014 PCI, the EPA reviewed the Respondent's files for the following IUs: Darigold, Lattice, MSU, and USA Brass. These IUs are described below.
39. As part of the 2014 PCI, the EPA conducted online searches for potential categorical SIUs within the POTW's service area, specifically powder coating facilities conducting metal finishing that may be regulated under 40 C.F.R. part 433 and pharmaceutical facilities that may be regulated under 40 C.F.R. part 439. As a result of its online search, the EPA identified the following facilities:

- Midwest Welding and Machine, a powder coating facility,
- Revelation Powder Coating, a powder coating facility, and
- Takeda Pharmaceuticals/LigoCyte Pharmaceuticals, a pharmaceutical facility.

40. As part of the 2014 PCI, the EPA visited the Darigold and Midwest Welding and Machine sites and the former site of Revelation Powder Coating.

#### **Darigold**

41. Darigold is a dairy located at 1001 N. 7<sup>th</sup> Avenue, in Bozeman. Darigold is an SIU.

42. As part of the 2014 PCI, the EPA reviewed two SIU permits that the Respondent issued to Darigold. They were effective November 1, 2011, expiring November 30, 2013, and effective December 1, 2013, expiring November 30, 2018. They are referenced as the Darigold SIU Permits.

#### **Lattice Materials (Lattice)**

43. Lattice is a manufacturer of silicon and germanium parts for optics and other applications. Lattice is located at 516 East Tamarack Street in Bozeman. Lattice is an SIU.

44. As part of the 2014 PCI, the EPA reviewed three SIU permits that the Respondent issued to Lattice. They were effective June 1, 2009, and expiring June 1, 2011; effective July 1, 2011, and expiring July 1, 2014; and effective July 1, 2014, and expiring July 1, 2017. They are referenced as the Lattice SIU Permits.

45. The Lattice SIU Permits require Lattice to submit self-monitoring reports to the Respondent by April 30 and October 30 of each year.

46. The Lattice SIU Permits require Lattice to monitor carbon monoxide (CO) weekly.

47. As part of the 2014 PCI, the EPA reviewed semi-annual self-monitoring reports that Lattice had submitted to the Respondent. These reports included CO monitoring logs, but they contained no CO data for the 26-week period between April 15, 2013, and October 21, 2013.



48. The Lattice SIU Permits include a maximum CO discharge limit of 35 parts per million (ppm).
49. Lattice submitted semi-annual self-monitoring reports to the Respondent that included CO logs with measurements at Sumps 1-6 and a location labeled as "AMBIENT." According to information provided by the Respondent to the EPA during a January 7, 2015, telephone conversation, the sumps were various interceptors required to be monitored, and the AMBIENT measurement was in the Respondent's manhole where the discharge from Lattice enters the POTW.
50. The semi-annual self-monitoring reports that Lattice submitted to the Respondent indicated an exceedance of the CO limit on April 22, 2010 (Sump 6 – 88 ppm, AMBIENT 154 ppm) and June 27, 2011 (Sump 4 – 102 ppm, Sump 5 – 220 ppm, Sump 6 – 110 ppm, Sump 6 – 105 ppm, and AMBIENT – 105 ppm).
51. Each of the Lattice SIU Permits states, in relevant part:

In the event the permittee is unable to comply with any of the conditions of this permit, the permittee shall provide notification to the Pretreatment Coordinator [of the City of Bozeman] within 24 hours of violations and the following information in writing within five (5) days after commencement of such occurrence:

- a. Cause of the noncompliance.
- b. Anticipated time the condition of the noncompliance is expected to continue, or if such condition has been corrected, the duration of the period of the noncompliance.
- c. Steps taken by the permittee to reduce and eliminate the noncomplying discharge.

- d. Steps to be taken by the permittee to prevent recurrence  
of the condition of the noncompliance.

52. Lattice did not notify the Respondent within 24 hours of the CO violations discussed in paragraph 50, above.
53. Lattice did not submit a five-day written report for the CO violations discussed in paragraph 50, above.

#### **Midwest Welding and Machine**

54. Midwest Welding and Machine is located at 2320 North 7th Avenue in Bozeman.
55. Midwest Welding and Machine indicated on its website, [www.midwest-welding.com](http://www.midwest-welding.com) (last visited September 8, 2014), that it conducts powder coating.
56. The EPA visited Midwest Welding and Machine as part of the 2014 PCI.
57. Based on information the EPA gathered during the site visit to Midwest Welding and Machine, that facility began powder coating approximately one year prior to the 2014 PCI and conducts phosphating prior to powder coating.
58. At the time of the EPA's site visit, Midwest Welding and Machine did not appear to be discharging process wastewater to the POTW. If Midwest Welding and Machine were to discharge process wastewater from its phosphating process or any ancillary process, Midwest Welding and Machine would be a categorical SIU because, according to 40 C.F.R. § 433.10(a), phosphating is a type of coating operation regulated under the Metal Finishing Point Source Category at 40 C.F.R. part 433.

#### **Montana State University (MSU)**

59. MSU is a university located in Bozeman. MSU is an SIU.
60. As part of the 2014 PCI, the EPA reviewed an SIU Permit that the Respondent issued to MSU. It was issued effective August 1, 2014, expiring August 1, 2017. It will be referenced as the MSU SIU Permit.

### **Revelation Powder Coating**

61. As part of the 2014 PCI, the EPA attempted to visit Revelation Powder Coating, but that facility had closed on “July 3” according to a sign on its door. The EPA unsuccessfully attempted to contact Revelation Powder Coating via telephone and email. The EPA gathered information about Revelation Powder Coating’s processes from its website, [www.revpowder.com](http://www.revpowder.com) (last visited September 22, 2014; the site was subsequently “suspended”).
62. Based on information the EPA gathered from the website referenced in paragraph 61, above, Revelation Powder Coating was located at 101 East Oak Street in Bozeman, Montana.
63. According to the Montana Secretary of State’s business database, Revelation Powder Coating was incorporated as Revelation Powder Coating, Inc. on December 31, 1998.
64. The EPA has no knowledge concerning when Revelation Powder Coating began operating at 101 East Oak Street.
65. According to the website referenced in paragraph 61, above, Revelation Powder Coating’s preparation of metal pieces for powder coating included a “five tank process to remove any [contaminants] from the surface of the metal” and a rinse with deionized water. In addition, the website indicated that Revelation Powder Coating manufactured circuit boards.
66. Although a multiple tank process associated with powder coating and circuit board manufacturing processes is often associated with metal finishing, the EPA does not have sufficient knowledge of the processes at Revelation Powder Coating to determine whether it discharged regulated wastewater to the POTW or whether it was subject to regulation under the Metal Finishing Point Source Category in 40 C.F.R. part 433.

### **Takeda Pharmaceuticals**

67. Takeda Pharmaceuticals is located at 2155 Analysis Drive in Bozeman, Montana.
68. Both Takeda Pharmaceuticals and LigoCyte Pharmaceuticals were found by the EPA in online searches for this address.
69. According to an October 5, 2012, press release on Takeda Pharmaceuticals' website, [https://www.takeda.com/news/2012/20121005\\_4001.html](https://www.takeda.com/news/2012/20121005_4001.html) (last visited October 20, 2014), Takeda America Holdings, Inc. acquired LigoCyte Pharmaceuticals, Inc. and was to continue to operate the facility in Bozeman.
70. The press release cited in paragraph 69, above, indicates that Takeda Pharmaceuticals develops vaccines.
71. According to 40 C.F.R. § 439.0(a), the Pharmaceutical Manufacturing Point Source Category at 40 C.F.R. part 439 applies to "process wastewater discharges resulting from the research and manufacture of pharmaceutical products, which are generally, but not exclusively, reported under SIC 2833, SIC 2834 and SIC 2836 (1987 Standard Industrial Classification Manual)." SIC 2836 covers facilities engaged in vaccine production.
72. Due to time constraints, the EPA did not visit Takeda Pharmaceuticals during the 2014 PCI and did not confirm whether it is covered under SIC 2836.

### **USA Brass**

73. USA Brass was located at 25 Evergreen Drive in Bozeman. It manufactured brass ammunition casings.
74. On March 5, 2015, the Respondent's representatives attempted to conduct an inspection of USA Brass. The inspection found that USA Brass no longer operational within the POTW's service area.

**Count I: Failure to Identify and Locate**  
**All Possible IUs Subject to Pretreatment Program and to Characterize IUs' Waste**

75. The Respondent is required to develop and implement a procedure to identify and locate all possible IUs that might be subject to the Pretreatment Program and to make any inventory of IUs available to the EPA Regional Administrator upon request. The Respondent is also required to identify the character and volume of pollutants contributed to the POTW by the IUs that it has identified and to make this information available to the EPA Regional Administrator upon request. 40 C.F.R. § 403.8(f)(2)(i) and (ii); see also part I.E.1 of the 2006 NPDES Permit and I.E.1.b of the 2012 NPDES Permit, which incorporate this requirement.
76. The 2006 and 2012 NPDES Permits require the Respondent to update information on IUs “at a minimum of once per year or at that frequency necessary to ensure that all Industrial Users are properly permitted and/or controlled,” and to maintain and update this information as necessary. Part I.E.1.a of the 2006 NPDES Permit and part I.E.1.b.2 of the 2012 NPDES Permit.
77. The 2011 Audit found that the Respondent had no procedure to identify and locate all possible Industrial Users that might be subject to the Pretreatment Program.
78. In response to the 2011 Audit, on June 6, 2012, the Respondent provided the EPA with the Respondent’s list of businesses without IU permits that discharged to the POTW. The list did not characterize the significance of the IUs to the Pretreatment Program. The list also did not include Midwest Welding and Machine, Revelation Powder Coating, Takeda Pharmaceuticals, or any other IUs at 2320 North 7<sup>th</sup> Avenue, 101 East Oak Street, or 2155 Analysis Drive in Bozeman.
79. In a letter to the Respondent dated November 25, 2012, regarding 2011 Audit follow-up items, the EPA noted that
- (a) the Respondent had submitted no IU inventory or characterization procedure, as the EPA had requested in the 2011 Audit (see item 6.1 in the attachment to the letter) and

(b) the IU list the Respondent had submitted in June of 2012 included only the types of businesses and did not characterize the significance of pretreatment to the IUs' discharges (see item 8 in the attachment to the letter).

80. At the time of the 2014 PCI, the Respondent had not updated the list that it had provided to the EPA in June of 2012.
81. A representative of the Respondent stated during the 2014 PCI that the Respondent had used a list of business licenses provided by the Respondent's Finance Department to identify IUs that may be subject to Pretreatment Standards or Requirements and that he was unaware of the last time a list of business licenses had been provided by the Finance Department.
82. As of the date of the 2014 PCI, there was no indication that the Respondent had performed a site visit or otherwise evaluated Midwest Welding and Machine, Revelation Power Coating, Takeda Pharmaceuticals, or any other IUs at 2320 North 7<sup>th</sup> Avenue, 101 East Oak Street, or 2155 Analysis Drive in Bozeman.
83. The Respondent's failures to identify and locate all possible IUs that might be subject to the Pretreatment Program and to identify the character and volume of pollutants contributed to the POTW by IUs violate 40 C.F.R. § 403.8(f)(2)(i) and (ii), part I.E.1 of the 2006 NPDES Permit, and part I.E.1.b of the 2012 NPDES Permit.
84. The Respondent's failure to update its IU information at a minimum of once per year (or at a frequency necessary to ensure that all Industrial Users are properly permitted and/or controlled) violates part I.E.1.a of the 2006 NPDES Permit and part I.E.1.b.2 of the 2012 NPDES Permit.

**Count II: Failure to Prepare, Maintain, and Submit a List of SIUs**

85. The Respondent is required to prepare and maintain a list of SIUs, including categorical SIUs, and to include updates of this list with its annual reports to the EPA. 40 C.F.R. §§ 403.8(f)(6) and 403.12(i)(1), part I.E.4.a.1 of the 2012 NPDES Permit, and part I.E.4 of the 2006 NPDES Permit.

86. The Respondent failed to maintain and update its list of SIUs, including categorical SIUs, with the annual reports it submitted to the EPA.
87. The Respondent's failure to maintain and update its list of SIUs included with its annual reports violates 40 C.F.R. §§ 403.8(f)(6) and 403.12(i)(1), part I.E.4 of the 2006 NPDES Permit, and part I.E.4.a.1 of the 2012 NPDES Permit.

**Count III: Inadequate Legal Authority**

88. According to 40 C.F.R. § 403.8(f)(1), the Respondent's Pretreatment Program is required to include legal authority that authorizes or enables the Respondent
- (a) to apply and to enforce the requirements of sections 307(b) and (c) and 402(b)(8) of the Act, 33 U.S.C. §§ 1317(b) and (c) and 1342(b)(8) and the Pretreatment Regulations, and,
  - (b) at a minimum, to perform the functions enumerated in 40 C.F.R. § 403.8(f)(1)(i) - (vii).
89. Section 40.03.330 of the Respondent's Municipal Code provides, "In any case where compliance with any of [the Respondent's sewer service regulations] introduces unusual difficulty, such rule may be temporarily waived by the director of public works upon application of the utility or the customer."
90. Section 40.03.330 would allow the Respondent to waive compliance with Pretreatment Standards and Requirements, contrary to the requirements of 40 C.F.R. § 403.8(f)(1).
91. As part of the 2011 Audit, the EPA asked the Respondent to update its legal authorities to meet the requirements of 40 C.F.R. § 403.8(f)(1).
92. The Respondent has provided the EPA with proposed revisions to the Respondent's Municipal Code relating to pretreatment. As of 2012, the Respondent had yet to address two comments from the EPA (relating to the definition of POTW and to two sections in which cross references had been left blank). To date, the Respondent has not submitted an ordinance with the proposed updates or notified the EPA that it has enacted any such ordinance.

93. The Respondent's failure to update its legal authority is a violation of 40 C.F.R. § 403.8(f), part I.E.1.f of the 2006 NPDES Permit, and part I.E.1.b.8 of the 2012 NPDES Permit.

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

94. The Respondent is required to develop specific local limits on discharges to the POTW and to continue to develop these limits as necessary. 40 C.F.R. §§ 403.5(c) and 403.8(f)(4).
95. The 2011 Audit stated that the Respondent had submitted local limits to the EPA in 2009 and 2010 and that the EPA had provided specific comments in September of 2010 in response to those submissions. The 2011 Audit also stated that the Respondent had submitted local limits to the EPA on June 22, 2011, but that the EPA's review of the submittal found discrepancies with the chronic receiving water flows used in the calculations. In the 2011 Audit, the EPA requested the limits be corrected.
96. In a letter to the EPA dated June 6, 2012, the Respondent submitted updated local limits with in which the Respondent had corrected the chronic receiving water flow discrepancies in previous local limit calculations.
97. In a November 25, 2012, letter to the Respondent, the EPA advised the Respondent that the submitted local limits were approvable and stated that the Respondent was required to submit the local limits, either as part of the City's Municipal Code or otherwise developed using appropriate public participation procedures.
98. To date, the Respondent has not submitted its revised local limits to the EPA as directed in the EPA's November 25, 2012, letter.
99. The Respondent's failure to submit updated local limits to the EPA either as part of the City's Municipal Code or otherwise developed using appropriate public participation procedures in an approvable form violates 40 C.F.R. §§ 403.5(c) and 403.8(f)(4).



### **Count V: Failure to Enforce Local Limits**

100. The Respondent is required to develop and enforce specific limits to implement the specific prohibitions listed in 40 C.F.R. § 403.5(a)(1) and (b). 40 C.F.R. §403.5(c)(1).
101. One of the specific prohibitions referenced in paragraph 100, above, is 40 C.F.R. § 403.5(b)(2), which prohibits any discharge with a pH lower than 5.0, unless the POTW receiving that discharge is specifically designed to accommodate such a discharge. This is also included in section 40.03.930.A.3 of the Respondent's Municipal Code.
102. During the 2014 PCI, the EPA discovered that the 2013 Darigold SIU Permit included a pH limitation with a minimum of 4.0.
103. The POTW is not designed to accommodate discharges with a pH of less than 5.0.
104. Another specific prohibition referenced in paragraph 100, above, is 40 C.F.R. § 403.5(b)(3), which prohibits any discharge with solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in interference (a term that is defined in 40 C.F.R. § 403.3(k)).
105. To implement 40 C.F.R. § 403.5(b)(3), section 40.03.903.A.13 of the Respondent's Municipal Code has developed prohibits IUs from discharging "[a]ny water or waste which may contain more than 25 parts per million, by weight, of fat, oil or grease."
106. During the 2014 PCI, the EPA discovered that the 2013 Darigold SIU Permit had waived the fats, oils, and grease (FOG) limit of 25 ppm..
107. In issuing the Darigold SIU Permit, the Respondent waived its local limits for pH and discharges of fats, oils, and grease (referenced in paragraphs 101 and 104, above), pursuant to section 40.03.330 of the Respondent's Municipal Code. The EPA at no time has allowed the Respondent to waive this limit.

108. The Respondent's failure to enforce local limits necessary to implement the local limits for pH and for fats, oils, and grease (referenced in paragraphs 101 and 104, above) violates 40 C.F.R. § 403.5(c)(1), part I.E.5.b of the 2006 NPDES Permit, and part I.E.2.a.3 of the 2012 NPDES Permit.

**Count VI: Failure to Control SIUs Through Permit, Order, or Similar Means**

109. The Respondent is required to control discharges from SIUs through permit, order, or similar means. 40 C.F.R. § 403.8(f)(1)(iii), part I.E.1.f of the 2006 NPDES Permit, and part I.E.1.b.8 of the 2012 NPDES Permit.

110. The Respondent implements the requirement referenced in paragraph 109, above, through permits. Section 40.03.1130 of the Respondent's Municipal Code.

111. For the month of June of 2011, the Respondent failed to control the discharge from Lattice through a permit.

112. As of the date of the 2014 PCI, the Respondent had not identified Takeda Pharmaceuticals as an SIU or controlled its discharge through any permit.

113. The Respondent's failures to control the discharges from Lattice and Takeda Pharmaceuticals at all relevant times through permits violate 40 C.F.R. § 403.8(f)(1)(iii), part I.E.1.f of the 2006 NPDES Permit, and part I.E.1.b.8 of the 2012 NPDES Permit.

**Count VII: Failure to Operate Consistent with Respondent's Legal Authority**

114. Section 40.03.1130.E of the Respondent's Municipal Code limits SIU permits to a duration of two years.

115. As indicated in paragraphs 42, 44, and 60, above, the Darigold SIU Permits, the Lattice SIU Permits, and the MSU SIU Permit have durations of greater than two years, in violation of section 40.03.1130.E of the Respondent's Municipal Code.

116. Section 40.03.1130.G of the Respondent's Municipal Code prohibits SIU permits from being transferred.
117. The Darigold, Lattice, and MSU SIU Permits each contain a provision allowing these permits to be transferred. For each of these permits, this is inconsistent with the Respondent's Municipal Code, in violation of 40 C.F.R. § 403.8(f)(1) and (2), part I.E.1 of the 2006 NPDES Permit, and part I.E.1.b of the 2012 NPDES Permit.

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

118. In each permit it issues to an SIU, the Respondent is required to include sampling requirements, including the sampling location. 40 C.F.R. § 403.8(f)(1)(iii)(B)(4), part I.E.1.f.4 of the 2006 NPDES Permit, and part I.E.1.b.8.D of the 2012 NPDES Permit.
119. The Darigold SIU Permits did not indicate where samples were to be collected. This is a violation of 40 C.F.R. § 403.8(f)(1)(iii)(B)(4), part I.E.1.f.4 of the 2006 NPDES Permit, and part I.E.1.b.8.D of the 2012 NPDES Permit.
120. In each permit it issues to an SIU, the Respondent is required to include the required sample type. 40 C.F.R. § 403.8(f)(1)(iii)(B)(4), part I.E.1.f.4 of the 2006 NPDES Permit, and part I.E.1.b.8.D of the 2012 NPDES Permit.
121. The Lattice SIU Permits require weekly carbon monoxide monitoring, but do not specify a sample type. The Darigold SIU Permits require pH samples to be a "24 hr. Flow weighted composite" rather than a grab sample. For each of these SIU permits, the failure to include a sample type or the correct sample type is a violation of 40 C.F.R. § 403.8(f)(1)(iii)(B)(4), part I.E.1.f.4 of the 2006 NPDES Permit, and part I.E.1.b.8.D of the 2012 NPDES Permit.
122. In each permit it issues to an SIU, the Respondent is required to include recordkeeping requirements. 40 C.F.R. § 403.8(f)(1)(iii)(B)(4), part I.E.1.f.4 of the 2006 NPDES Permit, and part I.E.1.b.8.D of the 2012 NPDES Permit.

123. Each SIU is required to maintain records of all information resulting from any monitoring activities including documentation associated with Best Management Practices for at least three years. This period of retention shall be extended during the course of any unresolved litigation regarding the IU or POTW or when requested by the Director or the Regional Administrator. For all samples, these records are required to include (i) the date, exact place, method, and time of sampling and the names of the person or persons taking the samples, (ii) the dates analyses were performed, (iii) who performed the analyses, (iv) the analytical techniques/methods used, and (v) the results of such analyses. 40 C.F.R. § 403.12(o), part I.E.1 of the 2006 NPDES Permit, and part I.E.1.b of the NPDES Permit.
124. The Lattice SIU permit did not require sample records to include the exact place and method of sampling, the names of the person or persons taking the samples, the dates analyses were performed, who performed the analyses, or the analytical techniques/methods used.
125. The MSU permit did not indicate that sampling records were required to include (i) the date, exact place, method, and time of sampling and the names of the person or persons taking the samples, (ii) the dates analyses were performed, (iii) who performed the analyses, (iv) the analytical techniques/methods used, and (v) the results of such analyses.
126. The Darigold SIU Permits did not contain any recordkeeping requirements.
127. By omitting recordkeeping requirements from the Darigold SIU Permits, the Respondent has violated 40 C.F.R. § 403.8(f)(1)(iii)(B)(4), part I.E.1.f.4 of the 2006 NPDES Permit, and part I.E.1.b.8.D of the 2012 NPDES Permit.
128. In each permit it issues to an SIU, the Respondent is required to include reporting and notification requirements, including documentation on Best Management Practice (BMP) compliance. 40 C.F.R. § 403.8(f)(1)(iii)(B)(4), and part I.E.1.b.8.D of the 2012 NPDES Permit.

129. Although the Lattice SIU Permits require interceptor pumping as a BMP, the Respondent did not include a requirement to keep records concerning this BMP.
130. The Respondent's failure to include recordkeeping requirements in the Lattice SIU Permits concerning the interceptor pumping BMP is a violation of part I.E.1.b.8.D of the 2012 NPDES Permit.
131. In each permit it issues to an SIU, the Respondent is required to include a statement of applicable civil and criminal penalties for violation of Pretreatment Standards and Requirements and any applicable compliance schedule. 40 C.F.R. § 403.8(f)(1)(iii)(B)(5), part I.E.1.f.5 of the 2006 NPDES Permit, and part I.E.1.b.8.E of the 2012 NPDES Permit.
132. The Darigold, Lattice, and MSU SIU Permits did not include a statement of applicable civil and criminal penalties for any type of violation except an effluent violation. For each of these SIU Permits, the failure to include a complete statement of applicable civil and criminal penalties for violation of Pretreatment Standards and Requirements and any applicable compliance schedule is a violation of 40 C.F.R. § 403.8(f)(1)(iii)(B)(5), part I.E.1.f.5 of the 2006 NPDES Permit, and part I.E.1.b.8.E of the 2012 NPDES Permit.

**Count IX: Failure to Evaluate SIUs for the Need to Develop a Slug Plan or Other Slug Controls**

133. The Respondent is required to evaluate whether each SIU needs a plan or other action to control slug discharges. For IUs identified as SIUs prior to November 14, 2005, this evaluation must have been conducted at least once by October 14, 2006; additional SIUs must be evaluated within one year of being designated a SIU. 40 C.F.R. § 403.8(f)(2)(vi), part I.E.1.c of the 2006 NPDES Permit, and part I.E.b.5 of the 2012 NPDES Permit.

134. 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).
135. The City has not evaluated Darigold or Lattice to determine whether either of those SIUs needs a plan or other action to control slug discharges. For each SIU, this is a violation of 40 C.F.R. §403.8(f)(2)(vi), part I.E.1.c of the 2006 NPDES Permit, and part I.E.b.5 of the 2012 NPDES Permit.

**Count X: Failure to Conduct Inspections with Sufficient Care to Produce Admissible Evidence**

136. The Respondent is required to develop and implement procedures to investigate instances of noncompliance with Pretreatment Standards and Requirements, as indicated in reports and notices, 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), part I.E.1 of the 2006 NPDES Permit, and part I.E.1.b of the 2012 NPDES Permit.
137. The Respondent's records of its 2014 inspection of MSU included an electronic Word copy of a letter dated May 25, 2014, and photos in the same electronic file folder. The electronic folder for the inspection photos indicated that the photos were modified on January 1, 2012.
138. It is unclear if the MSU inspection photos were taken during 2014 or 2012.
139. The Respondent did not have a signed copy of its May 25, 2014, letter to MSU or any inspection notes associated with the Respondent's 2014 inspection of MSU.
140. The Respondent's inspection reports for Lattice were documented using pencil for "Annual S.I.U. Pretreatment Inspection" forms dated March 15, 2012; March 19, 2013; and March 15, 2014.

141. As mentioned in paragraph 121, above, in the Darigold SIU Permit, the Respondent required Darigold to analyze pH samples using composite sampling, rather than grab sampling. However, 40 C.F.R. § 403.12(g)(3) requires grab sampling for pH.
142. The Respondent's failures to collect information for Darigold, Lattice, and MSU with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions, as described in paragraphs 137 - 141, above, are each a violation of 40 C.F.R. § 403.8(f)(2)(vii), part I.E.1 of the 2006 NPDES Permit, and part I.E.1.b of the 2012 NPDES Permit.

**Count XI: Failure to Sample SIUs at Least Annually**

143. The Respondent is required to sample and inspect each SIU at least once per year. 40 C.F.R. § 403.8(f)(2)(v), part I.E.1.b of the 2006 NPDES Permit, and part I.E.1.b.3 of the 2012 NPDES Permit.
144. The Respondent's representatives stated during the 2014 PCI that they believed sampling had been conducted at Darigold to determine compliance with the pH limit, but there were no records of sampling or analysis.
145. The Respondent's representatives stated during the 2014 PCI that they believed sampling had been conducted at MSU, but there were no records of sampling or analysis.
146. The Respondent failed to sample at Lattice to determine compliance with the CO limit from 2010 through 2014 as indicated by the Respondent's representatives and annual inspection reports dated March 12, 2010; March 4, 2011; March 15, 2012; March 19, 2013; and March 25, 2014.
147. The failure to sample all SIUs was also identified in the EPA's 2011 Audit.
148. Each of the Respondent's failures to sample an SIU at least annually is a separate violation of 40 C.F.R. § 403.8(f)(2)(v), part I.E.1.b of the 2006 NPDES Permit, and part I.E.1.b.3 of the 2012 NPDES Permit.

**Count XII: Failure to Conduct Sampling and Analyses Using Required Methods and Techniques**

149. The Respondent is required to collect grab samples for pH. 40 C.F.R. § 403.12(g)(3), part I.E.1 of the 2006 NPDES Permit, and part I.E.1.b of the 2012 NPDES Permit.
150. The Respondent's representatives stated during the 2014 PCI that pH samples the Respondent had collected at Darigold had been analyzed from composite, not grab, samples in the Respondent's laboratory at the WWTP.
151. The Respondent is required to analyze samples pursuant to procedures in 40 C.F.R. part 136 where such procedures exist. 40 C.F.R. § 403.12(g)(5), part I.E.1 of the 2006 NPDES Permit, and part I.E.1.b of the 2012 NPDES Permit.
152. The maximum holding time for pH is 15 minutes, according to 40 C.F.R. § 136.3, Table II.
153. The Respondent's laboratory is approximately three miles from Darigold. It is likely that the maximum holding time of 15 minutes prior to analysis for pH was exceeded.
154. The Respondent's failures to follow correct sampling and analytic procedures for pH samples from Darigold violate 40 C.F.R. § 403.12(g)(3) and (5), part I.E.1 of the 2006 NPDES Permit, and part I.E.1.b of the 2012 NPDES Permit.

**Count XIII: Failure to Create and Maintain Records**

155. The Respondent is required to maintain records for at least three (3) years, including reports and notifications from IUs and sampling records. For all samples, the Respondent is required to create records that include (i) the date, exact place, method, and time of sampling and the names of the person or persons taking the samples, (ii) the dates analyses were performed, (iii) who performed the analyses, (iv) the analytical techniques/methods used, and (v) the results of such analyses. 40 C.F.R. § 403.12(o), part I.E.1 of the 2006 NPDES Permit, and part I.E.1.b of the 2012 NPDES Permit.



156. The Respondent has failed create or keep any records for pH samples the Respondent's representatives stated had been collected at Darigold and analyzed in the Respondent's laboratory.
157. The Respondent has failed to create or keep any records for samples the Respondent's representatives stated were likely collected at MSU.
158. During the 2014 PCI, the Respondent could not locate the physical MSU file containing paper copies of the MSU records. The Respondent provided a copy of the unsigned electronic Word version of the permit issued to MSU but could not provide a copy of the actual signed permit issued to MSU and did not have a record of the permit being issued to MSU.
159. The Respondent had no records of the semi-annual compliance report submitted by MSU.
160. The Respondent was able to provide the EPA with an electronic Word copy of cover letters notifying MSU that an inspection had occurred, but the Respondent no records of the actual letter sent or any inspection notes.
161. The Respondent's failure to maintain records was also a finding of the EPA's 2011 Audit.
162. Each instance where the Respondent failed to maintain records or create sampling records is a violation of 40 C.F.R. § 403.12(o), part I.E.1 of the 2006 NPDES Permit, and part I.E.1.b of the 2012 NPDES Permit.

**Count XIV: Failure to Enforce According to the Respondent's Enforcement Response Plan**

163. The Respondent is required to develop and implement an enforcement response plan (ERP) containing detailed procedures indicating how the Respondent will investigate and response to instances of IU noncompliance. 40 C.F.R. § 403.8(f)(5), part I.E.1.i of the 2006 NPDES Permit (mistakenly referenced as an "endorsement" response plan), and part I.E.1.b.11 of the 2012 NPDES Permit.
164. The EPA's 2011 Audit found the City had not developed an ERP.

165. The Respondent developed and submitted an ERP to EPA on September 22, 2012, which was also provided to the EPA as part of the 2014 PCI.
166. Although the Respondent's ERP indicates a complete failure to sample or monitor is considered SNC and will be addressed initially with an administrative order issued within five days of detection with a follow-up of a penalty or termination of service, the Respondent did not take action regarding Lattice's failure to monitor for CO for 26 weeks in 2013, as described in paragraph 47, above.
167. Although the Respondent's ERP indicates an isolated exceedance of a limit will be addressed (1st/2nd offense) with a telephone call and notice of violation (NOV) issued within five days with a written report required on corrective and preventative action taken to prevent a recurrence, the Respondent did not take action regarding Lattice's violation of its CO limit at multiple monitoring locations on one day in 2010 and one day in 2011, as described in paragraph 50, above.
168. Although the Respondent's ERP indicates that an isolated or infrequent failure to notify the Respondent of a discharge limit violation will be addressed initially with an NOV with a follow-up of an administrative order with 14 days of detection, and that a report more than 30 days late is considered SNC and will be addressed initially with an administrative order issued within five days of detection with a follow-up response of a penalty with termination of service, the Respondent did not take action concerning Lattice's failure to notify the Respondent within 24 hours of the CO effluent violations and failure to submit a five-day written report for the CO effluent violations, as described in paragraphs 52 and 53, above.
169. Although the Respondent's ERP indicates a discharge without a permit where the IU was unaware of the requirements will be addressed with an NOV and application or AO issued within 14 days of identifying the violation followed by requiring a permit application within 30 days and the results of

wastewater analysis within 60 days and proposal of a fine of \$300 to \$500, the Respondent has not taken action concerning Takeda's discharge without an IU permit.

170. Although the Respondent's ERP indicates a complete failure to sample, monitor, or report that is more than 30 days late is SNC and will be addressed with an AO with compliance schedule issued within 5 days of detection followed by civil litigation and/or criminal prosecution seeking penalties of up to \$1000 per day, and that termination of service can be a response to violations of this nature, the Respondent has not taken action concerning Takeda's failure to submit a baseline monitoring report required by 40 C.F.R. § 403.12(b), a 90-day compliance report required by 40 C.F.R. § 403.12(d), and periodic compliance reports required by 40 C.F.R. § 403.12(e).
171. The Respondent's failure to develop an ERP prior to September 22, 2012, and the Respondent's failures to initiate an enforcement response for the IU violations cited in paragraphs 166 - 170, above, violate 40 C.F.R. § 403.8(f)(5), part I.E.1.i of the 2006 NPDES Permit, and part I.E.1.b.11 of the 2012 NPDES Permit.

**Count XV: Failure to Develop and Implement Accurate SNC Procedure**

172. The Respondent is required to develop and implement an SNC procedure. This includes providing for at least annual public newspaper notifications of violations meeting the EPA's SNC criteria set forth in 40 C.F.R. §403.8(f)(2)(viii)(A)-(H). 40 C.F.R. § 403.8(f)(2)(viii), part I.E.1 of the 2006 NPDES Permit, and part I.E.1.b of the 2012 NPDES Permit.
173. The Respondent's ERP indicates that discharges that cause (1) interference or pass-through or endanger health or (2) imminent danger and result in the City exercising emergency authority are SNC only when the discharger is an SIU. However, according to 40 C.F.R. § 403.8(f)(2)(viii), this type of violation is SNC, regardless of whether the IU in question is an SIU.
174. Although the Respondent's ERP lists some violations as SNC, it does not indicate that chronic violations, technical review criteria violations, pass-through or interference from non-SIUs,

imminent danger from non-SIUs, or endangerment of health as defined in 40 C.F.R.

§ 403.8(f)(2)(viii)(A) and (B), respectively, are SNC.

175. The Respondent's failure to develop and implement a complete and accurate SNC procedure is a violation of 40 C.F.R. §403.8(f)(2)(viii), part I.E.1 of the 2006 NPDES Permit, and part I.E.1.b of the 2012 NPDES Permit.

**County XVI: Failure to Have Adequate Resources to Implement the Pretreatment Program**

176. The Respondent is required to have sufficient resources and qualified personnel to carry out the authorities and procedures required by 40 C.F.R. § 403.8(f) (1) and (2) for the Pretreatment Program. 40 C.F.R. § 403.8(f)(3), part I.E.1.g of the 2006 NPDES Permit, and part I.E.1.b.9 of the 2012 NPDES Permit.
177. The EPA's 2011 Audit identified a lack of full time equivalents (FTEs) and requested a staffing report.
178. The Respondent submitted a staffing report to the EPA as part of a January 17, 2012, response to the 2011 Audit, in which the Respondent indicated that it would request an additional 1.0 FTEs and that it would add at least 0.5 FTEs to meet pretreatment needs.
179. The Respondent submitted an additional response to the EPA dated September 20, 2012, in which the Respondent indicated that it intended to have 0.75 FTEs for fiscal year 2014 to meet pretreatment needs.
180. The Respondent has indicated in 2009 through 2013 annual pretreatment program reports submitted to the EPA that it has 0.25 FTEs devoted to pretreatment work.
181. During the 2014 PCI, the Respondent's representatives indicated that the actual time spent on pretreatment is much less than 0.25 FTEs.

182. The Respondent's failure to have adequate sufficient resources to implement the pretreatment program violates 40 C.F.R. § 403.8(f)(3), part I.E.1.g of the 2006 NPDES Permit, and part I.E.1.b.9 of the 2012 NPDES Permit.

### **CONSENT ORDER**

The EPA orders, and the Respondent agrees:

183. The Respondent shall (a) comply with all requirements of the 2012 NPDES Permit and 40 C.F.R. part 403 and (b) properly implement the Pretreatment Program.
184. The Respondent shall ensure the availability of adequate resources to implement the Pretreatment Program in order to meet all requirements of the 2012 NPDES Permit and 40 C.F.R. part 403.
185. Within thirty (30) days after the effective date of this Consent Order (see paragraph 207, below), the Respondent shall provide the EPA a procedure for the Respondent to identify and locate all possible IUs that might be subject to the Pretreatment Program and to identify the character and volume of pollutants contributed to the POTW by each such IU (Industrial Waste Survey Procedure). The EPA may disapprove the Industrial Waste Survey Procedure based on requirements in 40 C.F.R. part 403. Thereafter, the Respondent shall implement this procedure (or the procedure as revised to address any EPA disapproval).
186. By January 31, 2016, the Respondent shall evaluate all IUs that discharge to the POTW pursuant to the Industrial Waste Survey Procedure and provide the EPA a list of these IUs (IU Inventory). For each IU, the Respondent shall include in the IU Inventory:
- a. the name of the IU;
  - b. the location of the IU;
  - c. the type of business conducted by the IU,
  - d. the date the IU was inspected if required by the Industrial Waste Survey Procedure;
  - e. the date the IU was sampled if required by the Industrial Waste Survey Procedure;

- f. the character and volume of pollutants contributed by the IU to the POTW;
- g. the characterization/categorization of the IU with respect to applicable pretreatment requirements including whether the IU is subject to Categorical Pretreatment Standards, is a non-categorical Significant Industrial User, requires best management practices, or is not significant to pretreatment; and
- h. if any IU has been identified as subject to Categorical Pretreatment Standards or a non-categorical Significant Industrial User, provide the date the IU was issued an SIU permit.

187. Within thirty (30) days after the effective date of this Consent Order, the Respondent shall evaluate the discharges to the POTW from Takeda, if it has not already done so, and shall submit to the EPA a determination of whether Takeda discharges wastewater regulated by the Pharmaceutical Manufacturing Point Source Category, 40 C.F.R. part 439, and is, therefore, an SIU.
188. If the Respondent determines that Takeda is an SIU discharging regulated wastewater, the Respondent shall, take all appropriate enforcement per the Respondent's ERP and shall take all appropriate steps to issue an SIU permit to Takeda within thirty (30) days of completing the evaluation or, if Takeda temporarily ceases discharge to the POTW, prior to Takeda recommencing discharge to the POTW, whichever is later.
189. Within thirty (30) days after the effective date of this Consent Order, the Respondent shall submit to the EPA a procedure for receiving and analyzing reports and other notices from SIUs, including but not limited to periodic self-monitoring reports, 24-hour noncompliance notifications, 30-day resampling submittals, and other required written reports. Thereafter, the Respondent shall implement the procedure (or the procedure as revised to address any EPA disapproval).

190. Within thirty (30) days after the effective date of this Consent Order, the Respondent shall submit to the EPA a recordkeeping procedure to ensure that the Respondent keeps records relating to the Pretreatment Program for at least three (3) years. Thereafter, the Respondent shall implement the recordkeeping procedure (or the procedure as revised to address any EPA disapproval).
191. Within sixty (60) days after the effective date of this Consent Order, the Respondent shall submit to the EPA an inspection procedure to ensure that the Respondent collects and maintains inspection information with sufficient care to produce evidence admissible in enforcement proceedings and/or judicial actions. The procedure shall address, at a minimum, inspection processes, note taking, photographic information, and inspection reports. Thereafter, the Respondent shall implement the inspection procedure (or the procedure as revised to address any EPA disapproval).
192. The Respondent shall take enforcement actions against IUs in accordance with its ERP for violations not previously identified by the Respondent or enforced upon by the Respondent that were or should have been identified within three (3) years of the 2014 PCI (September 8, 2011). Within sixty (60) days after the effective date of this Consent Order, the Respondent shall submit to the EPA a list of IU violations and corresponding enforcement actions and the date each enforcement action was taken.
193. Within ninety (90) days after the effective date of this Consent Order, the Respondent shall submit to the EPA an updated ERP with a corrected SNC definition to apply all SNC criteria to all IUs and have a complete SNC procedure. Thereafter, the Respondent shall implement the ERP (or the ERP as revised to address any EPA disapproval).
194. Within ninety (90) days after the effective date of this Consent Order, the Respondent shall submit to the EPA a sampling procedure to ensure that:

- a. the Respondent collects random and independent samples of effluent from all SIUs for all permitted pollutants at least annually, except where the Respondent'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 CFR 40 C.F.R. § 403.12(o) are created and maintained, and
- d. where necessary, the procedure addresses random and independent sampling of non-SIUs.

The EPA may disapprove the Industrial Waste Survey Procedure based on requirements in 40 C.F.R. part 403. Thereafter, the Respondent shall implement the inspection and sampling procedures (or the procedures as revised to address any EPA disapproval).

195. Within ninety (90) days after the effective date of this Consent Order, the Respondent shall submit to the EPA an updated, approvable pretreatment ordinance and updated, approvable local limits. If the Respondent submits the same ordinance submitted to the EPA on June 6, 2012, the updated ordinance shall address the issues listed below:

- a. 13.28.020(JJ) - POTW Definition: Incorporate the following language into the POTW definition, "municipality as defined in Section 502(4) of the Act, which has jurisdiction over the Indirect Discharges to and the discharge from such a treatment works."
- b. Add references to the placeholders in 13.28.370 and 13.28.380.

In addition, the updated ordinance shall not allow any rules in the Respondent's Municipal Code relating to pretreatment to be waived.

196. Within thirty (30) days after the EPA's approval of the ordinance and local limits, the Respondent shall submit to the EPA an SIU permit template that is consistent with the Respondent's legal authority and that contains all information required by 40 C.F.R. § 403.8(f)(1)(B).



197. Within sixty (60) days after the EPA's approval of the ordinance and local limits, the Respondent shall reissue all SIU permits using the SIU permit template, and submit a notice to the EPA indicating the date this was completed.
198. With the Annual Pretreatment Program Report due March 28, 2016, and submitted pursuant to 40 C.F.R. § 403.12(i), the Respondent shall include a summary of the resources required to implement and maintain an ongoing Pretreatment Program that meets all relevant requirements of the 2012 NPDES Permit and 40 C.F.R. part 403. The summary shall include an indication of the number of full time equivalent (FTEs) staff and 2016 level of funding.
199. On November 30, 2015, February 28, 2016, May 31, 2016, and August 31, 2016, the Respondent shall submit to the EPA reports on the Respondent's activities to implement the Pretreatment Program during the previous calendar quarter before the report is due. For example, the November 30, 2015, report would cover July 1, 2015, through September 30, 2015. Each report shall include:
- a. a summary of the Respondent's staff time and external funds used to implement the Pretreatment Program and comply with this Consent Order,
  - b. a summary of all IU violations identified by the Respondent during the previous 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 or, if none were taken or are planned, a statement to that effect;
  - d. a list of any new SIUs identified; and
  - e. a list of any sample results collected by the Respondent during the previous quarter from any SIU or, if no such samples were collected, a statement to that effect.
200. With the February 28, 2016, quarterly report, the Respondent shall submit an itemized list of all costs incurred to implement the actions specified in paragraphs 183 through 199, above. The

itemized list of costs shall include at a minimum:

- a. the cost of any full-time equivalent (FTE) staff added to the Respondent's budget due to any reassignment of pretreatment or non-pretreatment duties that were formerly performed by pretreatment FTEs in order to comply with this Consent Order;
- b. the cost of contractor support in order to comply with this Consent Order;
- c. the annual cost to sample SIUs in 2015 and a list of any portion of sampling costs that were billed back to the SIUs; and
- d. any other itemized costs incurred to implement the actions specified in paragraphs 183 through 199, above.

201. All notices and reports required by the Consent Order to be given to the EPA shall be sent to:

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

202. 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.

203. 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.

204. This Consent Order does not constitute a waiver or modification of the terms and conditions of the NPDES Permit, which remains in full force and effect.
205. This Consent Order does not constitute a waiver or election by the EPA to forego any civil or criminal action to seek penalties, fines, or other relief as it may deem appropriate under the Act. Section 309(d) of the Act, 33 U.S.C. § 1319(d), authorizes the assessment of civil penalties of up to \$37,500 (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.
206. 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 laws or regulation.
207. This Consent Order shall be effective immediately upon the Respondent's receipt of a fully executed copy.

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

Date: Oct. 27, 2015

By: Eadue A. Seira  
for Suzanne J. Bohan  
Assistant Regional Administrator  
Office of Enforcement, Compliance, and  
Environmental Justice

CITY OF BOZEMAN, MONTANA  
Respondent

By: Chris A. Kukulski  
Chris Kukulski, City Manager  
City of Bozeman, Montana

CERTIFICATE OF SERVICE

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

Original and one copy hand delivered to:

Tina Artemis  
Regional Hearing Clerk  
U.S. Environmental Protection  
Agency (8RC)  
Region 8  
1595 Wynkoop Street  
Denver, Montana 80202

Copy by certified mail, return receipt requested (no. 7009 3410 0000 2600 9357) to:

Chris Kukulski  
City Manager  
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P.O. Box 1230  
Bozeman, Montana 59771

Date: 10/27/15

By: Joan Dethy