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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA

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UNITED STATES OF AMERICA and the	)	
STATE OF MONTANA,	)	
	)	Civil Action No.
<i>Plaintiffs,</i>	)	
	)	
v.	)	CONSENT DECREE
	)	
THE CITY OF GREAT FALLS, MT and	)	
MALTEUROP NORTH AMERICA, INC.,	)	
	)	
<i>Defendants.</i>	)	

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WHEREAS, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), and the State of Montana (“State”), on behalf of the Montana Department of Environmental Quality (“MDEQ”), have filed a Complaint in this matter alleging that the City of Great Falls, Montana (the “City”) and Malteurop North America, Inc. (“Malteurop”) have violated the Clean Water Act (“CWA”), 33 U.S.C. §§ 1251-1387, and regulations, administrative orders, and permits issued pursuant to the CWA;

WHEREAS the State of Montana is a Co-Plaintiff in this action;

WHEREAS the City does not admit any liability to the United States or the State of Montana arising out of the transactions or occurrences alleged in the Complaint;

WHEREAS Malteurop does not admit any liability to the United States or the State of Montana arising out of the transactions or occurrences alleged in the Complaint;

WHEREAS, the United States, the State of Montana, the City, and Malteurop (the “Parties”) have consented to the entry of this Consent Decree without trial of any issues;

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith, will avoid litigation between the Parties, and is fair, reasonable, and in the public interest.

THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication or admission of any issue of fact or law and upon consent and agreement of the Parties, it is hereby ORDERED, DECREED, AND ADJUDGED as follows:

I. DEFINITIONS

1. Except as specifically provided in this Consent Decree, definitions for the terms used in this Consent Decree shall be incorporated from the CWA and the regulations promulgated thereunder, specifically 40 C.F.R. Parts 122 and 403.

Whenever terms listed below are used in this Consent Decree the following definitions apply:

- a. “Backup Chemical Dosing System” shall have the meaning set forth in Paragraph 30 (Backup Chemical Dosing System);
- b. “BMP” or “Best Management Practice” shall mean schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Section 13.12.030 of the City’s municipal code. BMPs are Pretreatment Standards. BMPs may include, but are not limited to, treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

- c. “Complaint” shall mean the complaint filed by the United States and the State in this action;
- d. “Compliance Deadline” shall mean 180 Days after the Date of Entry;
- e. “City” shall mean the City of Great Falls, Montana;
- f. “CMOM” program shall mean the Capacity, Management, Operations, and Maintenance program operated by the City of Great Falls and as described in Section II.E (Sanitary Sewer Overflow Prevention);
- g. “Date of Entry” shall mean the date of entry of this Consent Decree by the Court after satisfaction of the public notice and comment procedures of 28 C.F.R. § 50.7 and Paragraph 79 (Public Notice) of this Consent Decree;
- h. “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;
- i. “Defendants” shall mean the City of Great Falls, Montana (the “City”), and Malteurop North America, Inc. (“Malteurop”);
- j. “EPA” shall mean the U.S. Environmental Protection Agency;

- k. “Equalization Tanks” shall mean the aerated tanks that hold Indirect Discharge from the Malting Plant prior to entering the Service Line;
- l. “ERP” shall mean the “Enforcement Response Plan,” attached hereto as Appendix A. The City’s requirements regarding the ERP are described in 40 C.F.R. § 403.8(f)(5). The ERP may be amended if the amended ERP is submitted to the EPA and the EPA approves the changes in writing;
- m. “Excessive Infiltration/Inflow” or “Excessive I/I” shall mean (1) the quantities of infiltration/inflow that the City demonstrates can be economically eliminated from its sewer system as determined in a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow or (2) the quantity of flow that results in chronic operational problems (including but not limited to surcharging, backups, bypasses, and overflows), whichever is less.
- “Excessive Infiltration/Inflow” or “Excessive I/I” shall not include (a) flow of up to 120 gallons per capita in any Day (domestic base flow and infiltration), (b) the quantities of infiltration that cannot be economically and effectively eliminated from the City’s sewer system as determined in a cost-effectiveness analysis, and (c) a total flow of



up to 275 gallons per capita in any Day (domestic base flow plus infiltration plus inflow) unless it results in chronic operational problems;

- n. “FOG” or “Fats, Oil, and Grease” shall mean non-petroleum organic polar compounds derived from animal or plant sources such as fats, non-hydrocarbons, fatty acids, soaps, waxes, and oils that contain multiple carbon chain triglyceride molecules. These substances are detectable and measurable in wastewater using analytical procedures established in 40 C.F.R. Part 136;
- o. “Force Main” shall mean the City’s sewer line that is part of the City’s POTW, is operated under pressure, comes from the City’s lift station located along Black Eagle Road adjacent to the City of Great Falls, Montana, near the Malting Plant, and terminates at Manhole 4049;
- p. “Force Majeure event” shall have the meaning set forth in Section XI (Force Majeure) of this Consent Decree;
- q. “H<sub>2</sub>S” shall mean hydrogen sulfide;
- r. “High Hazard Sewer” shall mean any portion of the City’s POTW connecting the Force Main and the WWTP;
- s. “Hydrogen Sulfide Limits” shall mean ambient levels of hydrogen

sulfide no greater than 20 ppm for more than 10 consecutive minutes (e.g. three consecutive readings if readings are taken every five minutes) or no greater than 50 ppm at any time.

- t. “I/I” shall mean the total quantity of water from Inflow and Infiltration without distinguishing the source;
- u. “Indirect Discharge” shall mean Indirect Discharge as defined in 40 C.F.R. § 403.3(i) and, for purposes of this Consent Decree, includes what is referenced as “industrial effluent” from any Industrial User. This term does not include domestic wastewater, including wastewater from restrooms and break rooms at the Malting Plant;
- v. “Industrial User” or “IU” shall mean an Industrial User as defined in 40 C.F.R. § 403.3(j);
- w. “Infiltration” shall mean water other than wastewater that enters the POTW from the ground through such means as defective pipes, pipe joints, connections or manholes. Infiltration does not include, and is distinguished from, inflow;
- x. “Inflow” shall mean water other than wastewater that enters the POTW from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and

sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration;

- y. “Interest” shall mean interest at the rate specified in 28 U.S.C. § 1961;
- z. “Interference” shall mean Interference as defined in 40 C.F.R. § 403.3(k);
- aa. “Malteurop” shall mean Malteurop North America, Inc.;
- bb. “Malteurop Permit” shall mean the SIU Permit that authorizes Indirect Discharge from Malteurop to the City’s POTW and was issued by the City to Malteurop on December 10, 2013, and any amendment or renewal of that SIU Permit before or during the term of this Consent Decree;
- cc. “Malting Plant” shall mean the malting facility that Malteurop owns and operates in the City of Great Falls, Montana;
- dd. “Manhole 4049” shall mean manhole number 4049, located at the intersection of 32<sup>nd</sup> Avenue NE and 19<sup>th</sup> Street NE near the City of Great Falls, Montana;
- ee. “MDEQ” shall mean Montana Department of Environmental Quality;
- ff. “Monitoring and Reporting Plan” shall have the meaning set forth in Paragraph 33 (Hydrogen Sulfide Monitoring and Reporting);

- gg. “Monitoring Manhole” shall mean the manhole at the end of the Service Line prior to the point that the Service Line enters the POTW;
- hh. “MPDES Permit” shall mean Permit No. MT-0021920, issued by the MDEQ to the City, authorizing the City to discharge from its WWTP to the Missouri River;
- ii. “Notice of Dispute” shall have the meaning set forth in Paragraph 106 (Informal Dispute Resolution) of this Consent Decree;
- jj. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral;
- kk. “Parties” shall mean the United States, the State of Montana, the City of Great Falls, Montana, and Malteurop North America, Inc.;
- ll. “Permit Required Confined Space Entry Procedure” shall mean the City’s procedure for confined space entry that is part of the Public Works Department’s Employee Safety Manual;
- mm. “Plaintiffs” shall mean the United States of America and the State of Montana;
- nn. “POTW” or “City’s POTW” shall mean the Publicly Owned Treatment Works, defined in 40 C.F.R. § 403.3(q), that is owned and/or operated by the City;
- oo. “PPM” or “ppm” shall mean parts per million;

- pp. “Pretreatment Regulations” shall mean the EPA’s General Pretreatment Regulations for Existing and New Sources of Pollution at 40 C.F.R. Part 403;
- qq. “Responsible Corporate Officer” shall mean an official of Malteurop who is in charge of a principal business function, or any other person who performs similar policy or decision-making functions for Malteurop and is authorized as set forth in 40 C.F.R. § 122.22;
- rr. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral;
- ss. “Service Line” shall mean the sewer line owned, operated, and maintained by Malteurop that comes from Malteurop’s lift station located on the Malting Plant property and that is operated under pressure for a portion and thereafter flows by gravity resulting in Indirect Discharge to the POTW. The Service Line shall include the Monitoring Manhole defined above;
- tt. “Shakedown Period,” as used in Paragraph 94.n, shall mean the period beginning on the last day of the Compliance Deadline and ending 45 Days thereafter. Thus, for example, if the Compliance Deadline were March 1, the Shakedown Period would begin March 1 and end April 14;

- uu. “SIU” shall mean Significant Industrial User as defined in 40 C.F.R. § 403.3(v);
- vv. “SIU Permit” shall mean a permit issued by the City to any SIU authorizing an Indirect Discharge;
- ww. “SSO” or “Sanitary Sewer Overflow” shall mean any discharge of wastewater to waters of the United States from the City’s sewer system through a point source not specified in any National Pollutant Discharge Elimination System (“NPDES”) permit, as well as any overflow, spill, or release of wastewater to public or private property from the City’s sewer system that may not have reached waters of the United States, including all building backups;
- xx. “Statement of Position” shall have the meaning set forth in Paragraph 107 (Formal Dispute Resolution) of this Consent Decree;
- yy. “Super Oxygenation System” is defined in Paragraph 28 (Description of Existing Super Oxygenation System) of this Consent Decree;
- zz. “WWTP” shall mean the POTW Treatment Plant as defined in 40 C.F.R. § 403.3(r) and which, for purposes of this Consent Decree, is part of the City’s POTW.

## II. THE CITY’S COMPLIANCE PROGRAM

2. Overall Compliance. The City shall fully comply with all applicable

provisions of the CWA, the Pretreatment Regulations, and its MPDES Permit.

A. Implementation of Pretreatment Program

3. No later than 60 Days from the Date of Entry, the City shall develop and submit to the EPA SIU-specific checklists or a general SIU checklist with SIU-specific information attached for the City's use in reviewing self-monitoring reports from all SIUs. This checklist may be in paper form, part of a computer database, or a combination of both.

4. No later than 60 days from the Date of Entry, the City shall develop and submit to the EPA SIU-specific sampling protocols that provide independent and representative results for sampling SIU Indirect Discharges, and thereafter ensure that the City and each City contractor follow these protocols through an audit within six months of submitting the protocols to the EPA and annual audits thereafter. These protocols shall assure compliance with 40 C.F.R. Part 136 and 40 C.F.R. § 403.8(f)(2)(vii) such that sample taking and analysis are performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions. These protocols shall include, at a minimum, creation and preservation of documentation of analytical methods, bottle type(s), any chemical preservatives used, temperature preservation, dates and times of sampling and analysis, equipment calibration records, exact sampling locations, names of individuals conducting the sampling, who performed the analysis, equipment

cleaning protocols, and sample results. When possible, sampling events conducted by the City or any of its contractors shall be unannounced and not require appointments.

5. No later than 10 Days from the Date of Entry, the City shall develop and submit to the EPA for approval a SIU Permit template for SIUs that includes all elements that the Pretreatment Regulations require for individual permits or other control mechanisms, which are listed in 40 C.F.R. § 403.8(f)(1)(iii)(B).

6. No later than 90 Days from the EPA's approval of the SIU Permit template, the City shall, for all SIUs except Malteurop, (i) create draft SIU Permits for reissuance that include all elements in the EPA-approved template and (ii) publish in the local newspaper notice of intent to reissue the SIU Permits.

Following a 30-Day public comment period, the City will respond to any comments as appropriate and within a reasonable time thereafter proceed with issuance of the SIU Permits. If any SIU Permits already issued to SIUs include all elements in the EPA-approved template, those SIU Permits are not required to be reissued. The City may also use the SIU Permit template for IUs that are not SIUs.

7. Unless the Malteurop Permit already meets the requirements of this Paragraph, no later than 60 Days from the EPA's approval of the SIU Permit template, the City shall create a draft SIU Permit for reissuance of the Malteurop Permit, using the EPA-approved SIU Permit template and including, at a



minimum, the requirements listed in 40 C.F.R. § 403.8(f)(1)(iii)(B) and the requirement that Malteurop install, operate and maintain a hydrogen sulfide sensor for monitoring hydrogen sulfide levels in the Monitoring Manhole as described in Paragraph 36 (Monitoring Manhole) if Malteurop installs the Service Line. The City shall publish in the local newspaper notice of intent to reissue the Malteurop Permit. Following a 30-Day public comment period, the City will respond to any comments as appropriate and within a reasonable time thereafter proceed with issuance of the Malteurop Permit.

8. Upon identifying any new SIU that will be a source of Indirect Discharge of BOD and/or sulfate to the Force Main, the City shall issue the SIU a SIU Permit using the SIU Permit template. The SIU Permit shall contain, where necessary to achieve compliance with Municipal Code section 13.12.030(B) “Specific Prohibitions,” appropriate limits for BOD and/or sulfate.

9. No later than 30 Days from the Date of Entry, the City shall review existing information for SIUs other than Malteurop to determine whether the Indirect Discharge from any SIU has been documented to result in hydrogen sulfide in the POTW in quantities that may cause acute worker health and safety problems. Within 60 Days from the Date of Entry, the City shall provide to the EPA, for approval, proposed SIU permit limits and conditions, along with supporting rationale, to address hydrogen sulfide for any SIUs identified as

meeting the criteria above. No later than 60 Days after the EPA's approval of the proposed limits and conditions, the City shall publish in the local newspaper notice of intent to issue an SIU Permit to each such discharger consistent with permit limits and conditions that have been approved by the EPA or, if the proposed limits or conditions have not been approved by the EPA, are consistent with comments provided by the EPA on the proposed limits or conditions. Following a 30-Day public comment period, the City will respond to any comments as appropriate and within a reasonable time thereafter proceed with issuance of the SIU Permit(s).

10. The City shall notify the EPA in writing within 30 Days of having reissued SIU Permits to all SIUs as required by Paragraph 6, above, and provide a list of SIUs for which SIU Permits were not required to be reissued.

11. For any IU permit limits that are not specifically enumerated in the City's municipal code, the City shall provide public notice and an opportunity to comment prior to issuing the relevant permits.

12. The City shall implement the Enforcement Response Plan ("ERP"). For any Indirect Discharge during the term of this Consent Decree, the City shall consider the following levels of hydrogen sulfide as constituting a quantity that may cause acute worker health and safety problems within the meaning of 40 C.F.R. § 403.5(b)(7): greater than 20 ppm for more than 10 consecutive minutes (e.g. three consecutive readings if readings are taken every five minutes) or greater

than 50 ppm at any time.

B. Monitor for Hydrogen Sulfide

13. The City shall monitor for hydrogen sulfide in Manhole 4049 as follows:

- a. The City shall install, within 20 days of receipt, a hydrogen sulfide monitoring system provided by Malteurop at Manhole 4049. The hydrogen sulfide monitoring system shall: (i) have a telemetry system; (ii) monitor hydrogen sulfide levels in the sewer at Manhole 4049; (iii) record hydrogen sulfide readings at a frequency of no less than once every five minutes; (iv) transmit an alarm signal, by computer download or otherwise, of hydrogen sulfide readings within five minutes to the City and the Malting Plant whenever hydrogen sulfide in the sewer reaches 100 ppm or more; and (v) transmit the hydrogen sulfide readings recorded pursuant to subsection (iii) above to Malteurop by 12:00 noon of the Day following its collection and to the City by 12:00 noon of the next business day following its collection.
- b. With the exception of any telemetry system or other component that is under Malteurop's control, all maintenance, removal, replacement, or repair of the hydrogen sulfide monitoring system or telemetry system

at Manhole 4049 shall be performed by the City.

- c. If the City expects the hydrogen sulfide monitoring system to be interrupted (e.g. for maintenance or replacement), the City shall notify Malteurop before any expected data interruption of a Day or longer. In the case of any expected data interruption and within 24 hours of the City becoming aware of any unexpected data interruption, the City shall take manual hydrogen sulfide readings in Manhole 4049 on at least four separate occasions per business day. Each occasion shall consist of at least three separate readings five minutes apart, and each occasion shall occur at least two hours apart from any other occasion. The City shall keep records of the date, time, hydrogen sulfide levels, and name(s) of individuals taking the readings. The City shall provide these records to Malteurop by 12:00 noon of the Day following its collection. The City shall notify Malteurop within 30 minutes of obtaining any hydrogen sulfide reading of 100 ppm or greater. The City shall ensure that the hydrogen sulfide monitoring system is fully operational as soon as practicable but in no event later than 10 Days after any interruption.

C. Corrosion Prevention and Monitoring

14. Lining of Manholes. Within 12 months from the Date of Entry, the

City shall line all manholes between the Malting Plant and the WWTP not already lined. Manholes will be lined with a protective coating to protect the manholes from corrosion. The liner will cover all surfaces of the manhole except the manhole cover and the manhole cover ring.

15. Monitor for Corrosion. Within six months from the Date of Entry and at least annually thereafter, the City shall monitor all manholes between the Malting Plant and the WWTP for corrosion. The monitoring shall consist of a visual inspection, which includes color photographs of each manhole and written observations of the presence or absence of corrosion.

16. Maintenance Due To Corrosion. Within 60 Days of discovering any corrosion damage between the Malting Plant and the WWTP affecting the structural integrity or functionality of the sewer, the City shall repair or replace each manhole found to have such damage, and shall repair or replace each part integral to the operation of the sewer system that also is affected by the corrosion damage. Upon discovering corrosion damage as described in Paragraph 15 (Monitor for Corrosion), the City shall take enforcement action against an IU for Indirect Discharge of pollutants by that IU that caused corrosive structural damage to the POTW in violation of 40 C.F.R. § 403.5(b)(2), in accordance with the City's ERP and applicable regulations.

D. Worker Safety Precautions

17. The City shall provide and document safety training at least as comprehensive as required by 29 C.F.R. § 1910.146(g) at least yearly for each City employee and contractor who will be authorized in the year following the training to enter any City sewer or to remove any manhole cover that is part of the High Hazard Sewer; require each City employee and contractor who enters any City sewer or removes any manhole cover that is part of the High Hazard Sewer to have received such training within the prior year; and provide certification by February 1<sup>st</sup> of each year to the EPA that each City employee and contractor who has entered any City sewer or removed any manhole cover that is part of the High Hazard Sewer during the preceding year received this training before such entry or removal. A City contractor may provide training for its employees in lieu of the City providing such training, provided that the City ensures that the safety training is at least as comprehensive as required by 29 C.F.R. § 1910.146(g) and that the City receives records of the training dates and the individuals trained within 30 Days of the training having occurred or within 30 Days of the contractor entering into a contract with the City.

18. Within 10 Days from the Date of Entry, the City shall submit to the EPA for review and approval a High Potential for Hydrogen Sulfide Standard Operating Procedure that, at a minimum, includes requirements that:

- a. ensure there are three individuals for any confined space entry into the High Hazard Sewer including the entrant who is authorized to enter the confined space, an attendant who is stationed outside the confined space, and an entry supervisor who is responsible for determining if acceptable entry conditions are present at a permit space where entry is planned, for authorizing entry and overseeing entry operations, and for terminating entry if necessary;
- b. ensure there are two individuals for any non-confined space entry work where manholes in the High Hazard Sewer will be removed;
- c. ensure individuals obtain a confined space entry permit in accordance with the City's or the contractor's confined space entry procedure;
- d. ensure notification of the Malteurop plant manager verbally of work in the High Hazard Sewer at least 24 hours in advance, unless there is an emergency, in which case the notification shall be made once manhole cover removal or entry is determined to be necessary;
- e. for confined space entry, ensure the use of safety equipment to include at a minimum a safety harness for the entrant, lifeline for the entrant, hoist for the entrant, minimum four-gas meter (oxygen, lower explosive limit, carbon monoxide, and hydrogen sulfide) that has been calibrated according to manufacturer specifications and will be worn

- by the entrant during entry, a hydrogen sulfide meter that has been calibrated according to manufacturer specifications and will be worn by the attendant, and a ventilator, to be used before and during entry;
- f. for manhole cover removal, ensure the use of safety equipment to include at a minimum a hydrogen sulfide meter that has been calibrated according to manufacturer specifications and will be worn by all individuals;
  - g. ensure the entry supervisor has a cell phone in case of an emergency;
  - h. ensure individuals follow procedures in the City's or the contractor's confined space entry procedure. For City employees, this includes filling out and keeping copies of all checklists listed in the City's procedure that shall be attached to the High Potential for Hydrogen Sulfide Standard Operating Procedure;
  - i. ensure the atmosphere is monitored for hydrogen sulfide as any individual approaches the manhole or confined space area. If the hydrogen sulfide is 10 ppm or more, do not proceed; and
  - j. ensure the atmosphere is monitored for hydrogen sulfide within the manhole or confined space (e.g. inside the manhole through the pick hole) prior to opening any manhole lids or access points. If the hydrogen sulfide is 10 ppm or more, do not proceed.



19. The City shall ensure that all City employees and contractors who perform any entry, removal, or opening described in Paragraph 17, above, implement the City's High Potential for Hydrogen Sulfide Standard Operating Procedure. The High Potential for Hydrogen Sulfide Standard Operating Procedure shall require that no City employee or contractor enter a High Hazard Sewer unless the City or contractor has issued a confined space entry permit authorizing entry. The City or contractor shall keep copies of completed confined space entry permits if entry was performed. In addition, the City shall keep all checklists listed in the City's Permit Required Confined Space Entry Procedure in the Public Works Department's Employee Safety Manual and all checklists in the High Hazard Sewer Entry Standard Operating Procedure. The City shall provide copies of all contractor and City entry permits and checklists for the previous calendar year to the EPA by February 1<sup>st</sup> of each year.

E. Sanitary Sewer Overflow Prevention

20. To prevent sanitary sewer overflows, the City shall implement (i) a program for controlling FOG and root growth; (ii) a program for controlling I/I, unless the City makes the demonstration described in Paragraph 22 (Excessive Inflow and Infiltration); and (iii) an overall CMOM program.

21. FOG and Root Growth

a. Within 60 Days from the Date of Entry, the City shall submit to the

EPA a work plan with a schedule of milestones that includes a study designed to support a program for controlling FOG and root growth.

- b. The FOG and root growth study will consist of a review of existing documentation available to the City covering the previous five years and consultation with the City's collection system crew. At a minimum, the study shall include:
  - i. An assessment of which portions of the POTW are affected by FOG and/or root growth, including portions that have had backups and overflows caused by FOG and/or root growth and therefore require more frequent cleaning and maintenance;
  - ii. An evaluation of contributing users, including residential users and IUs (e.g. food service establishments) that are a source of Indirect Discharge into those sections of the POTW affected by FOG;
  - iii. An evaluation of existing pretreatment devices and Best Management Practices at those IUs that are a source of Indirect Discharge into sections of the POTW affected by FOG;
  - iv. An evaluation of any additional BMPs or pretreatment necessary at those IUs that are a source of Indirect Discharge into sections of the POTW affected by FOG; and

- v. An evaluation of any additional BMPs or root growth management necessary in portions of the POTW affected by root growth.
- c. No later than six months from the Date of Entry, the City shall develop and submit to the EPA a FOG and root growth control program, based on the results of the FOG and root growth study, to prevent FOG and root growth from adversely impacting the City's POTW or contributing to SSOs; and, beginning no later than 30 Days after submission to the EPA and thereafter, implement the FOG and root growth program and enforce against IUs in accordance with the City's ERP and Paragraph 12, above, for violations of 40 C.F.R. §§ 403.5(b)(3) and 403.5(a)(1), and corresponding City ordinances for introduction into the POTW of solid or viscous pollutants, including FOG, in amounts that cause or contribute to obstruction to the flow in the POTW resulting in Interference or any SSO(s).
- d. At a minimum, the FOG and root growth control program shall include:
  - i. Identification of the specific departments of the City that will identify and lead investigations associated with grease blockages and root growth;

- ii. Development of a list of IUs that are a source of Indirect Discharge of FOG to the POTW;
- iii. Development of a sector control program, as defined in 13.12.090 of the City's municipal code, for the control of FOG, with the program to specify minimum pretreatment technology and Best Management Practices and to include requirements for implementing, operating, and maintaining such technology and Best Management Practices;
- iv. Both periodic and random FOG inspections of all IUs that are a source of Indirect Discharge of FOG into the POTW, including more frequent inspections of known problem areas;
- v. Development of FOG prevention measures including notification from collection system crews and other City personnel to pretreatment staff, as appropriate, of grease blockages;
- vi. Development of outreach and education materials, the content of which is to be determined by the City, for both residential users and IUs, which shall be distributed at a minimum to residents living immediately upstream of each grease SSO after such an event and to all IUs that are a source of Indirect

Discharge of FOG to the POTW; and

vii. Strategies for managing root growth and preventing blockages.

22. Excessive Inflow and Infiltration

- a. Within 60 Days from the Date of Entry, the City shall submit to the EPA a work plan with a schedule of milestones that includes a description of and the results of a study designed to assess whether I/I is contributing to SSOs and/or bypass events and that supports a program for controlling I/I. If the City demonstrates in the study both that (1) I/I is not contributing to SSOs or bypass events and (2) that it has the capacity to transport and treat I/I, then no I/I program is required. The City shall base any such demonstration on a review of existing documentation and a review of precipitation events (to be described in the study submitted) covering the last five years.
- b. In the event the City is unable to demonstrate both that I/I is not contributing to SSOs or bypass events and that the City has the capacity to transport and treat I/I, the City shall (1) if the SSOs or bypass events are occurring only at the WWTP, submit to the EPA a plan and schedule for EPA approval for eliminating SSOs and/or bypasses at the WWTP caused by I/I within 90 Days from the Date of Entry, and/or (2) if the SSOs are occurring in other areas of the

POTW, conduct an I/I study covering the basin(s) where SSOs caused by I/I have been identified (the “Basin I/I Study”).

- c. In the event the City is required to submit a plan for eliminating SSOs and bypasses at the WWTP, the City shall implement this plan pursuant to the schedule approved by the EPA.
- d. In the event the City is required to submit a Basin I/I Study, the Basin I/I Study shall, at a minimum:
  - i. Identify each basin with Excessive I/I that is causing and/or contributing to SSOs;
  - ii. Identify and quantify sources of I/I within each basin determined to have Excessive I/I rates;
  - iii. Identify known SSOs related to Excessive I/I within each basin;
  - iv. Identify storm water drains or conveyances connected to the sanitary sewer within each basin; and
  - v. Identify physical and/or structural conditions of pipes, manholes and structures of the POTW that contribute to SSOs within each basin.
- e. In the event the City is required to conduct a Basin I/I Study, no later than 180 Days from the Date of Entry, the City shall develop and submit to the EPA an I/I control program, based on the results of the

Basin I/I study, to determine sources of I/I, to identify measures to minimize I/I, and to eliminate Excessive Infiltration/Inflow into the POTW; and, beginning no later than 30 Days after the submission to the EPA and thereafter, implement the I/I control program.

Elimination of Excessive I/I shall include elimination of chronic operational problems by either reducing I/I or providing adequate treatment and transportation capacity for the I/I to eliminate chronic operational problems such as backups, bypasses, and overflows.

23. CMOM Program

- a. Within 60 Days from the Date of Entry, the City shall submit to the EPA a work plan with a schedule of milestones designed to support an overall CMOM.
- b. No later than one year after the Date of Entry, the City shall develop and submit to the EPA a CMOM program, based on the FOG and root growth and I/I (if applicable) studies referenced above, along with other information relevant to potential causes of SSOs or bypasses. The City shall, in developing the CMOM program, use the EPA *Guide for Evaluating CMOM Programs at Wastewater Collection Systems* (January 2005) found at [www.epa.gov/npdes/pubs/cmom\\_guide\\_for\\_collection\\_systems.pdf](http://www.epa.gov/npdes/pubs/cmom_guide_for_collection_systems.pdf) as

a guide. The CMOM program shall include: (i) a written, defined purpose; (ii) a written, defined goal; (iii) a certification by the City that the CMOM program includes, but is not limited to, the implementation of the FOG and root growth control program and I/I control program (if applicable) required by Paragraphs 21 and 22, above; (iv) specified performance measures; and (v) written procedures for periodic review and updates. In preparing the CMOM program, the City shall address ongoing management, operation, maintenance, and capacity evaluation and rehabilitation of the POTW collection system. The City shall also identify the physical conditions and design constraints of force mains, gravity mains, and pumping stations, including failure of individual pumps, lack of redundant pumps, and lack of alternative power sources that contribute or could contribute to SSOs. The CMOM program shall address how the City will monitor for, prevent and address SSOs caused by FOG, root growth, I/I or any other cause. The City shall ensure that qualified personnel implement the CMOM program.

- c. Within 60 Days following the submission of the CMOM program, the City shall submit a final report to the EPA setting forth the City's findings, conclusions, and recommended remedial measures to



eliminate SSOs. In addition, the City shall simultaneously submit to the EPA for the EPA's approval, partial approval, or disapproval, a proposed schedule for implementing the remedial measures outlined in the CMOM program (the "CMOM implementation schedule").

- d. If the EPA disapproves of any part of the CMOM implementation schedule, the City shall revise the CMOM implementation schedule accordingly, and re-submit to the EPA within 20 days for approval. If the re-submitted CMOM implementation schedule is not fully approvable, the EPA will adjust the schedule and the City shall implement this CMOM implementation schedule upon receipt. Further, in the case of a partially-approved CMOM implementation schedule, the City shall immediately take steps towards implementation of the approved portion of the CMOM implementation schedule.
- e. The City shall implement the CMOM program according to the CMOM implementation schedule approved by the EPA.

24. Other measures to prevent SSOs

- a. Within 60 Days from the Date of Entry, the City shall update the City's SSO Response Plan and submit it to the EPA for approval.
- b. The City has installed flow meters and alarms that are tied into the

City's Supervisory Control and Data Acquisition System at the "6<sup>th</sup> Street Lift Station Overflow structure." By January 31, 2015, the City shall (1) install flow meters and alarms that are tied into the City's Supervisory Control and Data Acquisition System at the "primary division structure" indicated in Appendix B and (2) eliminate the capability to bypass the secondary processes from the "control structure" indicated on Appendix B.

F. Reporting

25. The City shall submit quarterly reports to the EPA and the MDEQ covering the City's compliance with this Consent Decree. These reports shall include information on any data interruptions for H<sub>2</sub>S monitoring in Manhole 4049, as well as the duration and cause(s) of any such data interruptions. In the case of any other noncompliance with this Consent Decree, these reports shall identify the area(s) of non-compliance, the circumstance(s) that led to non-compliance, and a plan and schedule under which the City proposes to correct the non-compliance. The pretreatment section of each report, described below, shall be prepared by the Environmental Programs Coordinator. Reports are due by February 1<sup>st</sup>, May 1<sup>st</sup>, August 1<sup>st</sup>, and November 1<sup>st</sup> for the October-December, January-March, April-June, and July-September quarters, respectively. The pretreatment section of each quarterly report shall include, at a minimum:

- a. certification that for each SIU the City has filled out the SIU-specific checklist or general SIU checklist with SIU-specific information referenced in Paragraph 3 for any SIU self-monitoring reports required to be submitted during that quarter and that the City has maintained a copy of the SIU-specific checklist or general SIU checklist with SIU-specific information in the City's file for that SIU;
- b. for the report due in February and the report covering the quarter when the first sampling protocol audit occurs pursuant to Paragraph 4, a certification that the City has conducted either the initial or annual audit of each contractor's compliance with the sampling protocols referenced in Paragraph 4; and
- c. a summary of all violations by all IUs with Indirect Discharge to the POTW that the City has identified during that quarter and a description of the enforcement action that the City has taken or proposes to take for each such violation. If a violation occurs during a certain quarter but is not identified by the City until the subsequent quarter, this shall be reported in the subsequent quarter's report. For example, if an effluent violation occurred in December and was included in a self-monitoring report submitted to the City in January, then this violation would be included in the City's May 1<sup>st</sup> report,

unless the City for any reason knew of the violation before receiving the self-monitoring report in January.

### III. MALTEUROP'S COMPLIANCE PROGRAM

#### A. Compliance

26. Overall Compliance. Malteurop shall fully comply with all applicable provisions of the CWA, the Pretreatment Regulations, the Malteurop Permit, and Title 13 of the City's Municipal Code.

27. Summary of Compliance. Malteurop shall operate and maintain its Super Oxygenation System and Backup Chemical Dosing System whenever the City's lift station pumps are operating, as set forth below, until either: (i) the Compliance Deadline or (ii) Malteurop has ceased all Indirect Discharge to the City's Force Main, whichever is earlier. No mention of any treatment system in this Consent Decree shall be construed so as to constitute an assurance from the EPA or any other party that any treatment system or combination of treatment systems will achieve overall compliance with the CWA, the Pretreatment Regulations, the Malteurop Permit, or Title 13 of the City's Municipal Code.

28. Description of Existing Super Oxygenation System. Currently, Malteurop's Indirect Discharge enters the wet well of the City-owned lift station. The Super Oxygenation System removes a portion of the comingled wastewater from the wet well and injects dissolved oxygen into the removed portion, creating

oxygenated wastewater. The oxygenated wastewater is then mixed with the remaining comingled wastewater in the Force Main immediately after the lift station pump. The purpose of the Super Oxygenation System is to increase the amount of dissolved oxygen in the Malting Plant's comingled wastewater and thus reduce the amount of hydrogen sulfide that is formed in the City's POTW. The Super Oxygenation System shall include: (i) an oxygen injection flow meter after the oxygen storage tank in order to monitor the oxygen flow rate to the injectors; and (ii) a wastewater flow meter after the saturator in order to monitor the flow of oxygenated wastewater that is added to the Force Main.

29. Operation and Maintenance of Super Oxygenation System. The requirements of this Paragraph shall apply at all times that Paragraph 27 (Summary of Compliance) requires Malteurop to operate and maintain the Super Oxygenation System.

- a. Malteurop shall maintain the oxygen injection and wastewater flow meters in good working order and, whenever the City's lift station pumps are operating:
  - i. inject dissolved oxygen into a portion of the comingled wastewater immediately before the wastewater enters the Force Main, with the wastewater to which dissolved oxygen is being injected being drawn out at the rate of 153 to 214 gallons per

minute (gpm) from the wet well within the City-owned lift station; and

- ii. operate the Super Oxygenation System at the following conditions: the air separation system at a maximum of 60 pounds per square inch (psi) of pressure, having a pressure differential across the injection nozzles of seven to nine psi, and having the injectors inject oxygen gas at a rate of five to eight cubic feet per minute (cfm).

Malteurop may adjust any parameter or range of parameters set forth in this subparagraph, as necessary to meet the Hydrogen Sulfide Limits, provided that Malteurop gives immediate written notice to the EPA and the City of each such adjustment.

- b. Malteurop personnel shall physically check and log any parameter or range of parameters for injection rate, flow, or pressure, as specified in subparagraph a. of this Paragraph or as adjusted by Malteurop with notice to the City and the EPA as specified in this Paragraph.
- c. Malteurop shall operate and maintain an alarm system that immediately visibly alerts personnel at the following “Human Machine Interface” stations in the Malting Plant: plant floor, process manager’s office, kiln and elevator control room, and immediately

both visibly and audibly alerts personnel at the Malting Plant control room if, whenever the City's lift station pumps are operating:

- i. there is a malfunction of the interlocks between the submersible pump and the City's lift station pumps; or
- ii. if the flow rate of oxygenated effluent as measured by the flow meter is below 153 gpm or above 214 gpm or as adjusted pursuant to subparagraph a. of this Paragraph.

The alarm shall continue until Malteurop acknowledges the alarm at least once every eight hours.

30. Backup Chemical Dosing System. At all times when the Super Oxygenation System is required to be operated and maintained:

- a. Malteurop shall have a backup system in place and ready to be placed into operation if the Super Oxygenation System malfunctions or is placed off-line for maintenance. This backup system, known as the Backup Chemical Dosing System, shall consist of treatment of Indirect Discharge with a calcium nitrate solution added to the Indirect Discharge that Malteurop sends to the Force Main.
- b. Malteurop shall immediately place its Backup Chemical Dosing System into operation whenever Malteurop is a source of Indirect Discharge to the Force Main and the alarm has been or should have

been activated in accordance with Paragraph 29 (Operation and Maintenance of Super Oxygenation System). Malteurop shall continue operation of the Backup Chemical Dosing System until the Super Oxygenation System is operating in accordance with Paragraph 29 (Operation and Maintenance of Super Oxygenation System).

- c. When the Backup Chemical Dosing System is operating, Malteurop shall operate and maintain a visual and audible alarm that will activate immediately upon the malfunction of the pump which doses the calcium nitrate solution. The alarm shall continue until Malteurop acknowledges the alarm. Malteurop shall promptly determine if the Backup Chemical Dosing System is functioning. The alarm system shall be installed outside the current drum screen room and shall be interlocked with the frequency drive that runs the chemical dosing pump.

31. Service Line. Malteurop may install and thereafter operate the Service Line and cease all Indirect Discharge to the Force Main. If Malteurop installs the Service Line, it shall have the ability to drain the Service Line and return the Indirect Discharge to the Equalization Tanks.

32. Maintenance Program. Malteurop shall implement a comprehensive preventive maintenance program for its Super Oxygenation System and its Backup



Chemical Dosing System at all times that Paragraph 27 (Summary of Compliance) requires Malteurop to operate and maintain the Super Oxygenation System and Backup Chemical Dosing System. The comprehensive preventive maintenance program shall include, at a minimum, the following, provided that in each case, any such system is required to be operated and maintained or is subject to a requirement to be operated and maintained as a backup:

- a. Malteurop shall work with each supplier to develop a written list of supplier-recommended spare materials for the Super Oxygenation System that Malteurop will keep in stock at the Malting Plant. The list shall be developed within 10 Days of the Date of Entry. The spare materials shall be on-site within 30 Days of the Date of Entry unless Malteurop can demonstrate such spare materials are not attainable within this time frame;
- b. Malteurop shall have at least one individual who is capable of operating the Super Oxygenation System and the Backup Chemical Dosing System during such time as such systems are respectively required to be operated and maintained; and
- c. Malteurop shall maintain a service contract with the vendor of the Super Oxygenation System that provides, at a minimum, that a knowledgeable representative of the vendor will be at the Malting

Plant within two business days of any request from Malteurop.

B. Hydrogen Sulfide Monitoring and Reporting

33. Hydrogen Sulfide Monitoring and Reporting. Within 10 Days of the Date of Entry, Malteurop, in consultation with the City, shall submit a written Monitoring and Reporting Plan (“Plan”) to the EPA for approval for monitoring and reporting hydrogen sulfide levels in Manhole 4049. The Plan will provide design and equipment specifications for: (i) a telemetry system; (ii) monitoring hydrogen sulfide levels; (iii) recording hydrogen sulfide readings at a frequency of no less than once every five minutes; (iv) transmitting an alarm signal, by computer download or otherwise, of hydrogen sulfide readings within five minutes to the City and to the Malting Plant whenever hydrogen sulfide levels are 100 ppm or greater; and (v) making daily transmittals of all hydrogen sulfide readings required by subsection (iii), above, to Malteurop by 12:00 noon of the Day following its collection and to the City by 12:00 noon of the next business day following its collection. The Plan will address routine monitoring and maintenance of the sensor and telemetry equipment, including but not limited to performing routine calibrations on this equipment. Within 60 Days of the Date of Entry, Malteurop shall purchase and deliver to the City a complete set of supplier-recommended spare parts for the hydrogen sulfide monitoring system to be installed in Manhole 4049. Thereafter, any maintenance, removal, replacement, or

repair of the system shall be performed and paid for by the City.

34. Implementing Monitoring and Reporting Plan. Within 20 Days of receiving the EPA's approval of the Plan or 20 Days after submitting the Plan to the EPA with no approval or disapproval, whichever is earlier, Malteurop shall implement the Plan by purchasing and delivering the equipment to the City as set forth in the Plan and pursuant to Paragraph 33 (Hydrogen Sulfide Monitoring and Reporting).

35. Modifications to Monitoring and Reporting Plan. Malteurop may submit written proposals for modifying the Plan to the EPA for approval. The EPA shall review and respond within 60 Days of receiving Malteurop's proposal. Malteurop shall implement the modifications as set forth in the modified Plan within 60 Days of receiving the EPA's approval of the modified Plan.

36. Monitoring Manhole. If Malteurop installs the Service Line, Malteurop shall also install and begin operating and maintaining a hydrogen sulfide monitoring system for monitoring hydrogen sulfide levels in the Monitoring Manhole, using a hydrogen sulfide sensor that shall: (i) have a telemetry system; (ii) monitor hydrogen sulfide levels in the Monitoring Manhole whenever there is Indirect Discharge in the Service Line; (iii) record hydrogen sulfide levels whenever there is Indirect Discharge in the Service Line at a frequency of no less than once every five minutes; (iv) transmit an alarm signal, by

computer download or otherwise, of hydrogen sulfide levels within five minutes to the City and the Malting Plant whenever hydrogen sulfide levels in the Monitoring Manhole are 100 ppm or greater; and (v) make daily transmittals of all hydrogen sulfide readings required by subsection (iii), above, to Malteurop by 12:00 noon of the Day following its collection and to the City by 12:00 noon of the next business day following its collection.

37. Hydrogen Sulfide Limits. Whenever there is Indirect Discharge from Malteurop in the Force Main, Malteurop shall meet the Hydrogen Sulfide Limits at Manhole 4049. Whenever there is Indirect Discharge from Malteurop in the Service Line with no Indirect Discharge from Malteurop in the Force Main, Malteurop shall meet the Hydrogen Sulfide Limits in Manhole 4049, unless there is no coinciding (i.e. within 10 minutes of each other) exceedance of the Hydrogen Sulfide Limits in the Monitoring Manhole.

38. Notification and Investigation of Exceedances. If the hydrogen sulfide requirements described in Paragraph 37 (Hydrogen Sulfide Limits) are not met, Malteurop shall begin investigating the cause(s) of the elevated hydrogen sulfide levels within 24 hours of becoming aware of the relevant exceedance(s). However, if any hydrogen sulfide level is greater than or equal to 100 ppm (A) at Manhole 4049 whenever there is Indirect Discharge from Malteurop in the Force Main or (B) at both Manhole 4049 and the Monitoring Manhole, within 10 minutes

of each other, whenever there is Indirect Discharge from Malteurop in the Service Line with no Indirect Discharge from Malteurop in the Force Main, Malteurop shall begin investigating the cause(s) of such exceedances within 30 minutes of receiving such transmittal from the monitoring system or within 30 minutes of receiving notification from the City for manual hydrogen sulfide monitoring events. Malteurop shall be considered to be aware of the relevant exceedance(s) upon review of the transmittal from the monitoring system or the notification from the City for manual hydrogen sulfide monitoring events. Daily hydrogen sulfide readings shall be reviewed by 12:00 noon on the Day of transmittal from the monitoring system or within one hour of receipt, whichever is later. In the event of any manual hydrogen sulfide monitoring, the readings shall be reviewed by 12:00 noon on the Day after the manual hydrogen sulfide monitoring events are collected and sent from the City.

C. Corrosion Reimbursement

39. Corrosion Reimbursement to City. Within 60 Days from the Date of Entry, Malteurop shall reimburse the City in the amount of \$21,396 to settle claims relating to costs the City has incurred through the date of lodging to repair or otherwise address corrosion damage to manholes in the City's POTW. Such payment does not constitute an admission by Malteurop that it caused or otherwise contributed to such corrosion damage to the City's POTW. The City and

Malteurop will negotiate in good faith concerning any claim the City might have against Malteurop for reimbursement related to corrosion repair costs incurred by the City after the date of lodging.

D. Reporting and Recordkeeping

40. Semi-Annual Reports. Malteurop shall submit to the EPA a written report semi-annually as detailed below. Reports are due by February 1<sup>st</sup> and August 1<sup>st</sup> for the July-December and January-June time frames, respectively.

Each report shall include: (i) any data interruptions in the Monitoring Manhole, the duration of those data interruptions, and the causes of the data interruptions; and (ii) any incident in which the Hydrogen Sulfide Limits are not met. For each incident in which the Hydrogen Sulfide Limits are not met, the reports shall also include the following information:

- a. date;
- b. level(s) of hydrogen sulfide at Manhole 4049 and the coinciding hydrogen sulfide level(s) at the Monitoring Manhole, if applicable;
- c. duration;
- d. cause of excess level(s) of hydrogen sulfide;
- e. description of actions taken or planned to address the excess level(s) of hydrogen sulfide; and
- f. description of actions taken or planned to prevent recurrences that led

to the excess level(s) of hydrogen sulfide.

For any incident in which the Super Oxygenation System alarm and/or Backup Chemical Dosing System alarm has been activated, Malteurop shall include the same information as required in subparagraphs a. through f. of this Paragraph. For any other instance of noncompliance with a requirement specified in Section III (Malteurop Compliance Program) of this Consent Decree, each semi-annual report shall identify the area(s) of non-compliance, the circumstance(s) that led to non-compliance, and a plan and schedule under which Malteurop proposes to correct the non-compliance.

41. Immediate Reporting. Within 30 minutes of becoming aware of any of the following events, Malteurop shall report the event to the City with a telephone call and, within 24 hours, shall provide the City and the EPA the results of its investigation of cause(s) related to Paragraphs 41.a and 41.b as Malteurop can determine at such time and a summary of the corrective action(s) taken:

- a. if at any time before the Compliance Deadline or the date that Malteurop puts the Service Line into operation and ceases Indirect Discharges to the Force Main, whichever is earlier, (i) Malteurop's Super Oxygenation System is out of service or malfunctioning or (ii) any alarm system is activated as described in Paragraph 29 (Operation and Maintenance of Super Oxygenation System) or Paragraph 30

(Backup Chemical Dosing System); or

- b. if at any time during the term of this Consent Decree, any hydrogen sulfide level is greater than or equal to 100 ppm (i) at Manhole 4049 whenever there is Indirect Discharge from Malteurop in the Force Main or (ii) at both Manhole 4049 and the Monitoring Manhole, within 10 minutes of each other, whenever there is Indirect Discharge from Malteurop in the Service Line with no Indirect Discharge from Malteurop in the Force Main.
- c. For any other instance in which the Hydrogen Sulfide Limits are not met at (i) Manhole 4049 whenever there is Indirect Discharge from Malteurop in the Force Main or (ii) at both Manhole 4049 and the Monitoring Manhole, within 10 minutes of each other, whenever there is Indirect Discharge from Malteurop in the Service Line with no Indirect Discharge from Malteurop in the Force Main, Malteurop shall report to the City and the EPA, within five Days, the results of its investigation of cause(s) as Malteurop can determine at such time and a summary of the corrective action(s) taken.

42. Suspension or Reduction of Indirect Discharges. Whenever there is Indirect Discharge from Malteurop to the Force Main, Malteurop shall provide the City with at least two hours advance notice of any planned suspension or reduction



below 900 gallons per minute of Indirect Discharges to the Force Main (due to scheduled maintenance on its Super Oxygenation System or Backup Chemical Dosing System, stopping production, or for any other reason), provided the City shall be given seven Days advance notice of any planned shutdown of the entire Malteurop plant and 30 minutes notice following any equipment breakdown or emergency situation that results in no flow of Indirect Discharge to the Force Main.

43. Recordkeeping. Malteurop shall keep written or electronic records of:
  - a. daily checks of the Super Oxygenation System (during periods of operation);
  - b. daily checks of the Backup Chemical Dosing System (during periods of operation); and
  - c. all hydrogen sulfide levels in the Monitoring Manhole and Manhole 4049.

Malteurop shall maintain these records for the term of this Consent Decree and make them available to the City and the EPA within five business days of receiving a request to review the written records.

44. Other Reporting. The reporting requirements of this Consent Decree do not relieve Malteurop of any applicable reporting obligations required by the CWA, its implementing regulations, any permit, or any other local, state, or federal

law.

E. Enforcement

45. Enforcement. Any information provided pursuant to this Consent Decree may be used by either Plaintiff in a proceeding to enforce the provisions of this Consent Decree.

IV. CIVIL PENALTY

46. Amount of civil penalty payable by the City to the United States. The City shall pay to the United States a total civil penalty of \$60,000 as follows:

- a. Within 30 Days from the Date of Entry, the City shall pay to the United States \$20,000, in the manner specified in Section IX (Payment);
- b. Within one year from the Date of Entry, the City shall pay to the United States \$20,000 plus Interest from the Date of Entry, in the manner specified in Section IX (Payment); and
- c. Within two years from the Date of Entry, the City shall pay to the United States \$20,000 plus Interest from the Date of Entry, in the manner specified in Section IX (Payment).

47. Amount of civil penalty payable by the City to the State of Montana.

The City shall pay to the State of Montana a total civil penalty of \$60,000 as follows:

- a. Within 30 Days from the Date of Entry, the City shall pay to the State of Montana \$20,000, in the manner specified in Section IX (Payment);
  - b. Within one year from the Date of Entry, the City shall pay to the State of Montana \$20,000 plus Interest from the Date of Entry, in the manner specified in Section IX (Payment); and
  - c. Within two years from the Date of Entry, the City shall pay to the State of Montana \$20,000 plus Interest from the Date of Entry, in the manner specified in Section IX (Payment).
48. Amount of civil penalty payable by Malteurop to the United States.

Within 30 Days from the Date of Entry, Malteurop shall pay to the United States, in the manner specified in Section IX (Payment), a civil penalty of \$525,000.

49. No Deduction. Defendants shall not deduct any penalties paid pursuant to this Section in calculating their federal income tax.

50. Interest. If all or any part of the penalty amounts specified in Section IV (Civil Penalty) is not paid when due, Defendants shall pay Interest on any unpaid balance owed by each Defendant and be subject to stipulated penalties as specified in Section VIII (Stipulated Penalties).

## V. SUPPLEMENTAL ENVIRONMENTAL PROJECT

51. The City shall implement a Supplemental Environmental Project (“SEP”), which has the objective of securing significant environmental or public

health protection and improvements. Under the SEP, the City shall install, operate, and maintain a hydrodynamic separator or similar device(s) to treat stormwater within the City's storm sewer system from an area south of the water treatment plant. A hydrodynamic separator is a flow-through treatment device that separates and retains pollutants from stormwater. Removed pollutants may include, but are not limited to, solids, oil and grease, and trash. Maintenance activities shall include removal and proper disposal of pollutants at a frequency sufficient to maintain the designed operating efficiency of the hydrodynamic separator.

52. SEP Work Plan. Within 45 Days from the Date of Entry, the City shall submit a SEP Work Plan to the EPA for review and approval. The SEP Work Plan shall include a proposed schedule for completion of the SEP. In any event, installation of the hydrodynamic separator or similar device(s) shall be completed no later than June 30, 2015. The City shall satisfactorily complete the SEP in accordance with the schedule and requirements in the approved SEP Work Plan.

53. The City is responsible for satisfactory completion of the SEP in accordance with the requirements of this Consent Decree. The City may use contractors or consultants in planning and implementing the SEP.

54. With regard to the SEP, the City certifies the truth and accuracy of each of the following:

- a. That all cost information provided to the EPA in connection

with EPA's approval of the SEP is complete and accurate and that the City in good faith estimates that the cost to implement the SEP is \$125,000;

- b. That, as of the date of executing this Consent Decree, the City is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- c. That the SEP is not a project that the City was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Decree;
- d. That the City has not received and will not receive credit for the SEP in any other enforcement action; and
- e. That the City will not receive any reimbursement for any portion of the SEP from any other person.

55. SEP Completion Report. Within 30 Days after completion of the SEP, the City shall submit a SEP Completion Report to the United States in accordance with Paragraph 77 (Notification) of this Consent Decree. The SEP Completion Report shall contain the following information:

- a. A detailed description of the SEP as implemented;

- b. A description of any problems encountered in completing the SEP and solutions thereto;
- c. An itemized list of all eligible SEP costs expended;
- d. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Decree; and
- e. A description of the environmental and public health benefits resulting from implementation of the SEP.

56. The EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph, in order to evaluate the City's SEP Completion Report.

57. After receiving the SEP Completion Report, the United States will notify the City whether or not the City has satisfactorily completed the SEP. The City will be deemed to have satisfactorily completed the SEP when (1) the City certifies, with supporting documentation, that at least \$125,000 has been disbursed to pay for the SEP and (2) the EPA has approved the completed SEP. If the City has not completed the SEP in accordance with this Consent Decree, stipulated penalties may be assessed under Section VIII of this Consent Decree.

58. Disputes concerning the satisfactory performance of the SEP and the amount of eligible SEP costs may be resolved under Section X (Dispute Resolution) of this Consent Decree. No other disputes arising under this Section

shall be subject to Dispute Resolution.

59. Each submission required under this Section shall be signed by a City official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 74 (Certification of Reports and Submissions).

60. Any public statement, oral or written, in print, film, or other media, made by the City making reference to the SEP under this Consent Decree shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action, United States and the State of Montana v. City of Great Falls, taken on behalf of the U.S Environmental Protection Agency and the State of Montana under the Clean Water Act.”

61. The City certifies that –

- a. It is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 51; and
- b. It has inquired of the SEP recipient and/or SEP implementer whether either is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the recipient and/or implementer that neither is a party to such a transaction.

62. For federal income tax purposes, the City agrees that it will neither

capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

## VI. GENERAL PROVISIONS

63. Jurisdiction and Venue. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to 33 U.S.C. § 1319(b) and 28 U.S.C. §§ 1331, 1345, and 1355. For purposes of this Consent Decree, Defendants agree that the Complaint states claims upon which relief may be granted pursuant to 33 U.S.C. § 1319. Venue is proper under 33 U.S.C. § 1319(b) and 28 U.S.C. §§ 1391 and 1395. For purposes of this Consent Decree, Defendants consent to and will not contest the jurisdiction of this Court over this matter. The Court shall retain jurisdiction to enforce the terms and conditions of this Consent Decree, to resolve disputes arising hereunder, and for such other actions as may be necessary or appropriate for construction or execution of this Consent Decree.

64. Parties Bound. The obligations of this Consent Decree apply to and are binding upon Plaintiffs and upon Defendants, and any predecessors, successors, assignees, or other entities or persons otherwise bound by law or contract.

65. Transfer of Ownership/Operation by the City. No transfer of ownership or operation of any portion of the POTW, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve the City of its



obligation to ensure that the terms of this Consent Decree are implemented. The City's transfer of ownership or operation of any portion of the POTW to any other person must be conditioned on the transferee's written agreement to undertake the obligations required by this Consent Decree, and such agreement shall be enforceable by the United States and the State of Montana as third-party beneficiaries. At least 30 Days prior to such transfer, the City shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 8, to the U.S. Department of Justice, and to MDEQ in accordance with Paragraph 77 (Notification). Any attempt to transfer ownership or operation of all or a portion of the POTW without complying with this Paragraph constitutes a violation of this Consent Decree.

66. Transfer of Ownership/Operation by Malteurop. No transfer of ownership or operation of the Malting Plant shall relieve Malteurop of its obligation to ensure that the terms of this Consent Decree applicable to Malteurop are implemented, unless the transferee agrees in writing to undertake the obligations required by this Consent Decree and to be substituted for Malteurop as a Party under the Consent Decree and thus be bound by the terms thereof. At least 30 Days prior to such transfer, Malteurop shall provide a copy of this Consent Decree to the proposed transferee. No later than five Days after the transfer of

ownership or operation of the Malting Plant, Malteurop shall provide written notice of the transfer, together with a copy of the written agreement by which the transferee undertakes the obligations of Malteurop required by this Consent Decree, to EPA Region 8 and the U.S. Department of Justice in accordance with Paragraph 77 (Notification). Any attempt to transfer ownership or operation of the Malting Plant without complying with this Paragraph constitutes a violation of this Consent Decree.

67. Notification of Consent Decree. Defendants shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties include compliance with any provision of this Consent Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendants shall condition performance of all work required by this Consent Decree on compliance with all terms and conditions of this Consent Decree.

68. Responsibility for Acts of Contractors or Agents. In any action to enforce this Consent Decree, Defendants shall not assert as a defense the failure of their officers, directors, employees, agents, contractors, consultants, trustees, servants, successors and assigns to take actions necessary to comply with this Consent Decree, except, in each case, pursuant to the Force Majeure provisions in Section XI.

69. Right of Entry. The United States and the State of Montana and their

representatives, including attorneys, contractors, consultants, and other authorized agents shall have the authority to enter, at reasonable times, and upon presentation of credentials, the POTW and/or the Malting Plant in order to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States or the State of Montana in accordance with the terms of this Consent Decree;
- c. obtain evidence, including photographs, samples, or other data, provided, in each case, Malteurop may assert a claim of confidential business information pursuant to Paragraph 73 or attorney-client privilege;
- d. assess Defendants' compliance with this Consent Decree; and/or
- e. review and copy any records required to be kept by Defendants pursuant to this Consent Decree.

70. To the extent that Plaintiffs seek to review records maintained at a location other than the POTW and/or Malting Plant, Plaintiffs shall contact the respective Defendants, who will make such records available within five business days by providing copies of such records to Plaintiffs. If the City and/or Malteurop withholds any information or documents pursuant to this paragraph based upon privilege or waiver, it shall identify such documents with the following

information: (i) names of author and recipient; (ii) date such evidence or document was created; (iii) basis of privilege or waiver; and (iv) brief summary of document.

71. No Limitation on Other Rights of Entry. Nothing in Paragraph 69 (Right of Entry) or any other provision of this Consent Decree shall be construed to limit any statutory right of entry or access or other information gathering authority pursuant to any federal, state or local law.

72. Preservation of Records. In addition to complying with any other applicable local, state or federal records preservation requirements, until five years after termination of this Consent Decree, Defendants shall preserve, and instruct their contractors, agents and assigns to preserve at least one legible copy of all documents in its possession, custody, or control that relate to the performance of Defendants' obligations under this Consent Decree.

73. Claims of Confidentiality. Defendant(s) may assert business confidentiality claims covering all or part of any documents or information submitted by them or requested by the EPA or MDEQ under this Consent Decree to the extent permitted by and in accordance with 40 C.F.R. Part 2, or state or tribal laws as applicable. If the EPA determines that any such information is confidential, it will protect this information as required by 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to the United States, or if the EPA has notified

Defendant(s) that the documents or information are not confidential under the standards of 40 C.F.R. Part 2, the public may be given access to such documents or information without further notice to Defendant(s).

74. Certification of Reports and Submissions. All submissions made by Defendants to Plaintiffs pursuant to this Consent Decree shall be signed and affirmed by a Responsible Corporate Officer of Malteurop or by an individual meeting the definition in 40 C.F.R. § 122.22(a)(3) of a principal executive officer or ranking elected official of the City using the following certification statement:

I 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 who manage the system, or those persons directly 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 and imprisonment for knowing violations.

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

75. Authority to Sign Consent Decree. Each undersigned representative of the Defendants certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document. This Consent Decree may be signed in

counterparts.

76. Designation of Agent for Service. Defendants shall identify on the attached signature page the name and address of the agent(s) who is authorized to accept service of process by mail on Defendants' behalf with respect to all matters arising under or relating to this Consent Decree. Defendants agree to accept service in that manner and to waive the formal service requirements of Federal Rule of Civil Procedure 4 and any applicable local rules of this Court, including but not limited to, service of summons.

77. Notification. Whenever written notification or communication is required by the terms of this Consent Decree, such notification or communication shall be addressed to the following individuals at the address specified below (or to such other addresses as may be designated by written notice to the parties):

As to the United States Department of Justice:  
Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Post Office Box 7611 - Ben Franklin Station  
Washington, D.C. 20044  
Reference Case No. 90-5-1-1-08955 (City of Great Falls)  
Reference Case No. 90-5-1-1-08955/1 (Malteurop)

As to the EPA:  
Chief, NPDES Enforcement Unit  
Office of Enforcement, Compliance and Environmental Justice  
U.S. EPA, Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

Attn: Gwen Campbell (8ENF-W-NP)  
(303) 312-6463

As to MDEQ:

Kirsten Hughes Bowers  
Legal Unit  
Montana Department of Environmental Quality  
1520 East Sixth Avenue  
P.O. Box 200901  
Helena, Montana 59620-0901  
Phone: (406) 444-4222

As to Defendant City of Great Falls, MT

Alan Joscelyn  
Gough Shanahan Johnson & Waterman LLP  
33 S. Last Chance Gulch  
Helena, MT 59601  
Phone: (406) 442-8560  
alj@gsjw.com

with a copy to:

Sara Sexe  
City Attorney  
P.O. Box 5021  
Great Falls, MT 59403  
(406) 771-1180

As to Defendant Malteurop

Eleni Kouimelis  
Winston & Strawn LLP  
35 West Wacker Drive  
Chicago, IL 60601-9703  
(312) 558-5600

with a copy to:

Kurt Seagrist  
President  
Malteurop North America, Inc.  
3830 Grant Street  
Milwaukee, WI 53215  
(414) 649-0235

Notifications to or communications with the Defendants or the Plaintiffs shall be deemed submitted on the date they are postmarked and sent by certified mail, return receipt requested.

78. Costs of Suit. Each party to this action shall bear its own costs and attorneys' fees incurred prior to entry of this Consent Decree.

79. Public Notice. The parties acknowledge and agree that the final approval and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides that notice of the proposed consent decree be given to the public and that the public shall have at least 30 Days in which to make any comments. The United States may withhold or withdraw its consent to this Consent Decree based on such comments.

80. Agreement to Entry of Consent Decree. Defendants consent to entry of this Consent Decree and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Consent Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Consent Decree.



81. Termination of Consent Decree

- a. No sooner than 42 months from the Date of Entry, either or both Defendants may request the United States' consent to terminate this Consent Decree. In seeking such consent, each Defendant seeking termination shall demonstrate that:
  - i. it has paid all monies, civil penalties, interest, and stipulated penalties due by it under this Consent Decree;
  - ii. there are no unresolved matters subject to dispute resolution pursuant to Section X (Dispute Resolution) involving the Defendant requesting termination;
  - iii. there is no enforcement action pending under this Consent Decree against the Defendant requesting termination; and
  - iv. in the case of the City, the City is in compliance, as of the time it submits its request for termination, with the requirements set forth in Section II (The City's Compliance Program) and has implemented the SEP in accordance with Section V (Supplemental Environmental Project); or, in the case of Malteurop, Malteurop is in compliance, as of the time it submits its request for termination, with the requirements set forth in Section III (Malteurop's Compliance Program).

- b. The United States, after consulting with the State in the case of the City, shall notify the Defendant(s) requesting termination in writing within 30 Days of receipt of the request to terminate the Consent Decree either that the United States objects to the request to terminate or that it does not object to the request to terminate the Consent Decree. If the United States objects to such request, Defendant(s) may invoke the provisions of Section X (Dispute Resolution) and the Consent Decree shall remain in effect pending resolution of the dispute by the parties, or, ultimately, the Court.
- c. The Court may terminate this Consent Decree as to the Defendant requesting termination 60 Days after such Defendant has filed with the Court a motion to terminate the Consent Decree and served a copy of that motion upon the United States, so long as one of the following occurs: (i) Defendant's motion to terminate the Consent Decree is accompanied by a true and correct copy of the United States' notice that it does not object to the termination; (ii) Defendant prevails in the dispute resolution process invoked pursuant to subparagraph 81.b.; or (iii) Defendant seeks the Court's review of the decision rendered in the dispute resolution process denying termination and the Court grants Defendant's request to terminate the Consent Decree.

82. Entire Agreement. This Consent Decree is the final, complete, and exclusive agreement among the Parties. The Parties acknowledge that there are no inducements, promises, representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

83. Modification. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Consent Decree, it shall be effective only upon approval by the Court.

84. Any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section X (Dispute Resolution), provided, however, that instead of the burden of proof provided by Paragraph 108 (Petitions to the Court), the party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

## VII. EFFECT OF CONSENT DECREE

85. This Consent Decree resolves the civil claims of the United States and the State of Montana for the violations alleged in the Complaint filed in this action through the date of lodging.

86. Plaintiffs' Reservation of Rights. The United States and the State of Montana reserve all legal and equitable remedies available to enforce the

provisions of this Consent Decree, except as expressly stated in Paragraph 85.

This Consent Decree shall not be construed to limit the rights of the United States or the State of Montana to obtain penalties or injunctive relief under the CWA or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly stated in Paragraph 85 and subject to Paragraph 102 (Other Remedies). The United States and the State of Montana further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment.

87. Defendants' Reservation of Rights. Defendants reserve all of their rights and defenses in any action that may be taken by Plaintiffs.

88. No Defense to Any Action. Defendants are responsible for achieving and maintaining compliance with all applicable federal, state, and local laws, regulations, orders, contracts, and permits. Defendants' compliance with this Consent Decree shall be no defense to any action commenced pursuant to said laws, regulations, orders, contracts, or permits unless such action is based upon or related to the allegations made in the Complaint. Neither Plaintiff, by its consent to the entry of this Consent Decree, warrants or avers in any manner that Defendants' compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA, or with any other applicable provisions of federal, state, or local laws, regulations, orders, contracts, or permits.

89. Not a Permit Modification. This Consent Decree in no way affects Defendants' responsibilities to comply with all applicable federal, state, or local laws, regulations or permits. This Consent Decree is not, and shall not be construed as, a permit or a modification of a permit. Nothing in this Consent Decree shall diminish the EPA's or MDEQ's authority to request information from Defendant pursuant to applicable laws or regulations.

90. No Effect on Third Parties. This Consent Decree does not limit or affect the rights of the Plaintiffs or Defendants against any third parties not party to this Consent Decree, nor does it limit the rights of third parties not party to this Consent Decree, against Defendants except as otherwise provided by law. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

91. Previous Orders. Upon the Date of Entry, the following administrative orders issued to the City are closed: CWA-08-2006-02 and CWA-08-2006-22. However, the requirement to sample for H<sub>2</sub>S pursuant to these orders shall continue until the City has installed and begun operation of the H<sub>2</sub>S monitoring system required by subsection II.B (Monitor for Hydrogen Sulfide). Upon the Date of Entry, the following administrative order issued to International Malting Company (later amended to include ADM Malting LLC) is closed: CWA-08-2007-0018.

92. Appendices. The following Appendices are incorporated into this Consent Decree: Appendix A is the City's Enforcement Response Plan; Appendix B is a diagram showing the locations of the Primary Division Structure/6<sup>th</sup> Street Lift Station Overflow as described in subsection II.E (Sanitary Sewer Overflow Prevention), for installing flow meters and alarms.

### VIII. STIPULATED PENALTIES

#### **As to the City of Great Falls, MT**

93. Stipulated Penalty Amounts (the City). The City shall be liable for stipulated penalties to the United States for violations of the Consent Decree as specified below, unless excused under Section XI (Force Majeure). A violation includes failing to perform any obligation identified below according to all applicable requirements of this Consent Decree and within the specified deadlines established by or approved under this Consent Decree.

- a. The following stipulated penalties shall accrue for each violation of the requirements of subsection II.A (Implementation of Pretreatment Program):

<u>Occurrence</u>	<u>Stipulated Penalty</u>
First occurrence	\$500 per violation
Second occurrence	\$750 per violation
Third occurrence	\$1000 per violation

Fourth or more occurrence \$1250 per violation

- b. The following stipulated penalties shall accrue for each violation of the requirements of subsection II.B (Monitor for Hydrogen Sulfide):

<u>Occurrence</u>	<u>Stipulated Penalty</u>
First occurrence	\$500 per violation
Second occurrence	\$1000 per violation
Third occurrence	\$1500 per violation
Fourth or more occurrence	\$2000 per violation

- c. The following stipulated penalties shall accrue for each violation of the requirements of Paragraph 15 (Monitor for Corrosion):

<u>Occurrence</u>	<u>Stipulated Penalty</u>
First occurrence	\$250 per violation
Second occurrence	\$500 per violation
Third occurrence	\$750 per violation
Fourth or more occurrence	\$1000 per violation

- d. The following stipulated penalties shall accrue for each violation of the requirements of subsection II.D (Worker Safety Precautions):

<u>Occurrence</u>	<u>Stipulated Penalty</u>
First occurrence	\$500 per violation
Second occurrence	\$1000 per violation

Third occurrence	\$1500 per violation
Fourth or more occurrence	\$2000 per violation

- e. The following stipulated penalties shall accrue for each violation of the requirements of subsection II.E (Sanitary Sewer Overflow Prevention):

<u>Occurrence</u>	<u>Stipulated Penalty</u>
First occurrence	\$500 per violation
Second occurrence	\$750 per violation
Third occurrence	\$1000 per violation
Fourth or more occurrence	\$1250 per violation

- f. The following stipulated penalties shall accrue for each violation of the requirements of Paragraph 25:

<u>Days</u>	<u>Stipulated Penalty</u>
1 to 20 Days Late or Materially Incomplete	\$500
21 to 30 Days Late	\$750
31 to 60 Days Late	\$1000
Greater than 60 Days Late	\$1250

- g. If the City fails to pay the civil penalty required to be paid under Section IV (Civil Penalty) of this Consent Decree when due, the City shall pay a stipulated penalty of \$1,000 per Day for each Day that the



payment is late.

- h. If the City fails to implement the SEP, or halts or abandons work on the SEP, the City shall pay a stipulated penalty in the amount of 80% of the difference between \$125,000 (the amount the City is obligated to spend on the SEP) and the amount the City actually spends on the SEP. Thus, for example, if the City only spends \$100,000 on the SEP, it shall pay a stipulated penalty of \$20,000 ( $.80 \times (\$125,000 - \$100,000) = \$20,000$ ). The penalty under this subparagraph shall accrue as of the date specified for completing the SEP or the date performance ceases, whichever is earlier.

**As to Malteurop**

94. Stipulated Penalty Amounts (Malteurop). Malteurop shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section XI (Force Majeure). A violation includes failing to perform any obligation identified below according to all applicable requirements of this Consent Decree and within the specified deadlines established by or approved under this Consent Decree.

- a. The following stipulated penalties shall accrue for operating the Super Oxygenation System in a manner not in accordance with the parameters set forth in Paragraph 29.a(i) and (ii) (Operation and

Maintenance of Super Oxygenation System) or as adjusted with notification to the EPA and the City: \$1,000 per day.

- b. The following stipulated penalties shall accrue for failing to perform or document any checks on the Super Oxygenation System in accordance with the requirements of Paragraph 29.b:

<u>Occurrence</u>	<u>Stipulated Penalty</u>
First through third occurrences	\$100 per violation
Fourth through sixth occurrences	\$200 per violation
Seventh or more occurrence	\$400 per violation

- c. The following stipulated penalties shall accrue for failing to operate in accordance with the alarm requirements of Paragraphs 29.c (Operation and Maintenance of Super Oxygenation System) or 30.c (Backup Chemical Dosing System):

<u>Occurrence</u>	<u>Stipulated Penalty</u>
First occurrence	\$100 per violation
Second occurrence	\$200 per violation
Third occurrence	\$400 per violation
Fourth or more occurrence	\$800 per violation

- d. The following stipulated penalties shall accrue for failing to place the Backup Chemical Dosing System in operation pursuant to Paragraph

30.b (Backup Chemical Dosing System): \$1,000 per day.

- e. The following stipulated penalties shall accrue for each violation of the requirements of Paragraph 32.a (Maintenance Program): \$400 per violation.
- f. The following stipulated penalties shall accrue for each violation of the requirements of Paragraph 32.b (Maintenance Program):

<u>Occurrence</u>	<u>Stipulated Penalty</u>
First and second occurrences	\$100 per violation
Third and fourth occurrences	\$200 per violation
Fifth or more occurrence	\$400 per violation

- g. The following stipulated penalties shall accrue for each violation of the requirements of Paragraph 32.c (Maintenance Program): \$400 per violation.
- h. The following stipulated penalties shall accrue for late submittal of the Plan required by Paragraph 33 (Hydrogen Sulfide Monitoring and Reporting):

<u>Days</u>	<u>Stipulated Penalty</u>
1 to 20 Days Late	\$500
21 to 30 Days Late	\$1,000
31 to 60 Days Late	\$1,500

Greater than 60 Days Late \$2,500

If Malteurop submits an incomplete Plan by the required deadline, the stipulated penalty will be half the amount that would apply for missing the deadline for submission of the Plan. For example, if an incomplete Plan is submitted by the required deadline and all missing items are submitted 20 Days late, the stipulated penalty would be \$250.

- i. The following stipulated penalties shall accrue for each violation of the requirements of Paragraph 34 as set forth below (Implementing Monitoring and Reporting Plan):

For each day the equipment is delivered after the 20-Day deadline:

<u>Days</u>	<u>Stipulated Penalty</u>
1 to 20 Days Late	\$500
21 to 30 Days Late	\$1,000
31 to 60 Days Late	\$1,500
Greater than 60 Days Late	\$2,500

For each instance where Malteurop's obligations as specified in the Plan are not met: \$400 per violation.

- j. The following stipulated penalties shall accrue for failure to implement any modifications as set forth in any modified Plan within

60 Days of receiving the EPA's approval of such modified Plan pursuant to the requirements of Paragraph 35 (Modifications to Monitoring and Reporting Plan): \$400 per violation.

- k. The following stipulated penalties shall accrue for each violation of the requirements of Paragraph 36 (Monitoring Manhole): \$400 per Day.
- l. Except as provided in subparagraphs m. and n. of this Paragraph, the following stipulated penalties shall accrue for violation of the Hydrogen Sulfide Limits specified in Paragraph 37 (Hydrogen Sulfide Limits):

<u>Hydrogen Sulfide Reading</u>	<u>Stipulated Penalty</u>
> 20 ppm for > 10 consecutive minutes	\$500 per day of violation
> 50 ppm at any time	\$750 per day of violation
≥ 100 ppm at any time	\$1,000 per day of violation (with notice to City)
≥ 100 ppm at any time	\$2,500 per day of violation (without notice to City)

If more than one limit in Paragraph 37 (Hydrogen Sulfide Limits) is violated in a single Day, only the stipulated penalty for the highest hydrogen sulfide limit will be assessed. Where a violation of the

Hydrogen Sulfide Limits is also the subject of enforcement by the City, Malteurop shall be allowed a credit for the full amount of any penalties or fines paid to the City against any stipulated penalties imposed for the same violation.

- m. Prior to the Compliance Deadline, Malteurop shall not be liable for stipulated penalties for any violation of Paragraph 37 (Hydrogen Sulfide Limits) if within 10 Days of the exceedance(s), Malteurop demonstrates that it has at all relevant times: (1) either (a) operated the Super Oxygenation System in accordance with the parameters specified in Paragraph 29 (Operation and Maintenance of Super Oxygenation System) or (b) activated and operated the alarm and Backup Chemical Dosing System in accordance with Paragraphs 29 (Operation and Maintenance of Super Oxygenation System); 30 (Backup Chemical Dosing System); and (2) complied with the requirements of Paragraph 38 (Notification and Investigation of Exceedances). Operating according to any changed parameter for which Malteurop has not provided the required notice to the EPA or the City pursuant to Paragraphs 29 (Operation and Maintenance of Super Oxygenation System) and 30 (Backup Chemical Dosing System) shall not be considered as operating within the parameters of

Paragraphs 29 (Operation and Maintenance of Super Oxygenation System) and 30 (Backup Chemical Dosing System).

- n. In the event Malteurop constructs the Service Line, Malteurop shall not be liable for stipulated penalties for any violation of Paragraph 37 (Hydrogen Sulfide Limits) during the Shakedown Period so long as there is no Indirect Discharge in the Force Main.
- o. The following stipulated penalties shall accrue for failure to investigate within the time periods set forth in Paragraph 38 (Notification and Investigation of Exceedances):

<u>Occurrence</u>	<u>Stipulated Penalty</u>
First and second occurrences	\$100 per violation
Third and fourth occurrences	\$200 per violation
Fifth and sixth occurrences	\$400 per violation
Seventh or more occurrence	\$800 per violation

- p. The following stipulated penalties shall accrue for late submittal of the report identified in Paragraph 40 (Semi-Annual Reports):

<u>Days</u>	<u>Stipulated Penalty</u>
1 to 20 Days Late	\$500
21 to 30 Days Late	\$1,000
31 to 60 Days Late	\$1,500

Greater than 60 Days Late \$2,500

If Malteurop submits an incomplete report by the required deadline, the stipulated penalty will be half the amount that would apply for missing the deadline for submission of the report. For example, if an incomplete report is submitted by the required deadline and all missing items are submitted 20 Days late, the stipulated penalty would be \$250.

- q. The following stipulated penalties shall accrue for failure to report or provide the results of Malteurop’s investigation pursuant to the time periods set forth in Paragraph 41 (Immediate Reporting):

<u>Occurrence</u>	<u>Stipulated Penalty</u>
First and second occurrences	\$100 per violation
Third and fourth occurrences	\$200 per violation
Fifth and sixth occurrences	\$400 per violation
Seventh or more occurrence	\$800 per violation

- r. The following stipulated penalties shall accrue for failure to provide notice pursuant to the time periods set forth in Paragraph 42 (Suspension or Reduction of Indirect Discharges): \$200 per violation.
- s. The following stipulated penalties shall accrue for failure to maintain the records required in Paragraph 43 (Recordkeeping): \$250 per



violation.

- t. If Malteurop fails to pay the civil penalty required to be paid under Section IV (Civil Penalty) of this Consent Decree when due, Malteurop shall pay a stipulated penalty of \$2,000 per Day for each Day that the payment is late.

**As to Both The City and Malteurop**

95. Payment of Stipulated Penalties. Except as provided in Paragraph 100 (Disputing Stipulated Penalties), Defendants shall pay any stipulated penalty within 30 Days of Defendant(s) receipt from the EPA of a demand for payment of the penalties.

96. Waiver of Stipulated Penalties. The United States may, in the exercise of its unreviewable discretion, waive its right to any or all of the stipulated penalty amounts or its investigation and enforcement costs.

97. Accrual of Stipulated Penalties. Stipulated penalties shall begin to accrue on the Day after each Defendant's performance is due or the Day a violation occurs by the Defendant against who stipulated penalties are sought, whichever is applicable, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity, unless excused under Section XI (Force Majeure). For each violation of this Consent Decree, only one stipulated penalty shall accrue for each day of that violation. Nothing herein,

however, shall prevent the simultaneous accrual of penalties for separate violations of this Consent Decree. Penalties shall accrue regardless of whether the EPA has notified the Defendant(s) of a violation(s).

98. No Effect on Obligation to Comply. The payment of penalties shall not alter in any way the Defendants' obligation to comply with the requirements of this Consent Decree.

99. Late Payment. If a Defendant fails to pay Stipulated Penalties owed pursuant to this Consent Decree when due, that Defendant shall pay Interest on the late payment for each day of late payment.

100. Disputing Stipulated Penalties. If a Defendant disputes its obligation to pay part or all of a stipulated penalty, it shall initiate the dispute resolution procedures under Section X (Dispute Resolution). If a Defendant invokes dispute resolution, that Defendant shall pay to the United States any amount not in dispute. Stipulated penalties shall continue to accrue as provided in Paragraph 97 (Accrual of Stipulated Penalties) during any Dispute Resolution. If the dispute is resolved by agreement, Defendant shall pay accrued penalties agreed to be owing, together with Interest, to the United States within 30 Days of the effective date of that agreement. If the dispute is submitted to the Court for resolution and the Plaintiffs prevail, Defendant shall pay all accrued penalties determined by the Court to be owing, together with Interest, within 30 Days of entry of the Court's decision or

order.

101. No Deduction. Malteurop shall not deduct any stipulated penalties paid under this Section in calculating its federal income tax.

102. Other Remedies. The stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States or the State of Montana due to any violation by Defendants of this Consent Decree, the CWA, or any other applicable law. Where a violation of this Consent Decree is also a violation of the CWA, Defendants shall be allowed a credit for any stipulated penalties paid against any statutory penalties imposed for the same violation. Defendants reserve all their rights and defenses in any such action that may be taken by Plaintiffs.

#### IX. PAYMENT

103. Defendants shall make the payments to the United States required by Section IV (Civil Penalty) and Section VIII (Stipulated Penalties) by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to Defendants by the Financial Litigation Unit of the U.S. Attorney’s Office for the District of Montana. At the time of payment, Defendants shall submit written notice of payment and a copy of any transmittal documentation to (a) the United States in accordance with Paragraph 77 (Notification); (b) by email to [acctsreceivable.CINWD@epa.gov](mailto:acctsreceivable.CINWD@epa.gov); and (c) by mail

to EPA Cincinnati Finance Center, 26 Martin Luther King Drive, Cincinnati, Ohio 45268. The written notice of payment shall reference the civil action number that the Court assigns to the case and the United States Department of Justice Reference Number: 90-5-1-108955 (in the case of the City) and 90-5-1-108955/1 (in the case of Malteurop). The written notice of payment shall also state whether the payment is for the Civil Penalty or Stipulated Penalties.

104. The City shall make the payment to the State of Montana required by Section IV (Civil Penalty) by check or money order payable to the “Montana Department of Environmental Quality” and sent to: John L. Arrigo, Administrator, MDEQ Enforcement Division, P.O. Box 200901, Helena, Montana 59620-0901. All costs associated with payment to the State of Montana shall be the responsibility of the City. Along with the check or money order, the City shall include a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to this Consent Decree.

#### X. DISPUTE RESOLUTION

105. Exclusive Remedy. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by either Plaintiff to enforce obligations of either or both Defendants that

have not been disputed in accordance with this Section.

106. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Consent Decree shall first be the subject of informal negotiations between the Plaintiffs and Defendant(s). The dispute shall be considered to have arisen when Defendant(s) sends a written Notice of Dispute pursuant to Paragraph 77 (Notification). Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 60 Days from the date of the written notice, unless that period is modified by written agreement. If informal negotiations are unsuccessful, then the EPA's position shall control unless, within 30 Days after the conclusion of the informal negotiation period, Defendant(s) invokes formal dispute resolution procedures as set forth in Paragraph 107 (Formal Dispute Resolution). Any modification of this Consent Decree as a result of Informal Dispute Resolution shall be done in accordance with Paragraph 83 (Modification).

107. Formal Dispute Resolution

- a. Defendant(s) shall invoke formal dispute resolution procedures, within the time period provided in Paragraph 106 (Informal Dispute Resolution), by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not be limited to, any factual data, analysis, or

opinion supporting Defendant's or Defendants' position and any supporting documentation relied upon by Defendants.

- b. The United States shall serve its Statement of Position within 60 Days of receipt of Defendant's or Defendants' Statement of Position. The United States' Statement of Position shall include, but may not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendant(s) unless Defendant(s) files a motion for judicial review of the dispute in accordance with Paragraph 108 (Petitions to the Court).

108. Petitions to the Court. Defendant(s) may seek judicial review of the dispute by filing with the Court and serving on the Plaintiffs a motion requesting judicial resolution of the dispute. The motion shall be filed within 30 Days of receipt of the United States' Statement of Position set forth in Paragraph 107 (Formal Dispute Resolution). The motion shall contain a written statement of Defendant's or Defendants' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

- a. The United States shall respond to Defendant's or Defendants' motion

within 30 Days of receipt of the motion, unless the Parties stipulate otherwise.

- b. Defendant(s) may file a reply memorandum within 30 Days of receipt of the United States' response.
- c. The Court shall decide all disputes under this Paragraph pursuant to applicable principles of law for resolving such disputes. In their filings with the Court, the Parties shall state their respective positions as to the applicable standard of law for resolving the particular dispute.

109. Effect on Other Obligations. The invocation of formal dispute resolution procedures under Paragraph 107 (Formal Dispute Resolution) shall not extend, postpone, or affect in any way any obligation of Defendant(s) under this Consent Decree not directly in dispute. Stipulated Penalties together with Interest shall continue to accrue with respect to the disputed matter from the first day of non-compliance, but payment shall be stayed pending resolution of the dispute. If Defendant(s) does not prevail on the disputed issue, stipulated penalties plus Interest shall be assessed and paid as provided in Section VIII of this Consent Decree (Stipulated Penalties).

110. Computation of Time. The computation of any period set forth in this Section X (Dispute Resolution) shall be governed by Rule 6 of the Federal Rules

of Civil Procedure.

## XI. FORCE MAJEURE

111. Definition of Force Majeure. Defendants shall perform the actions required under this Consent Decree within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is any event beyond the control of Defendant(s), including its employees, agents, consultants and contractors, which could not be overcome by Defendant's or Defendants' due diligence and which delays or prevents the performance of an action required by this Consent Decree within the specified time period. "Due diligence" includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any such event: (i) as it is occurring; and (ii) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. A Force Majeure event does not include, inter alia, Defendant's or Defendants' increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease or other transfer or conveyance of title or ownership or possession of a site, or failure to obtain federal, state or local permits.

112. Required Notification for Force Majeure. Defendant(s) shall provide notice verbally or by electronic or facsimile transmission to the EPA and MDEQ as



soon as possible pursuant to Paragraph 77 (Notification) of this Consent Decree, but not later than three Days after the time Defendant(s) first learned of, or by the exercise of due diligence should have known of, a claimed Force Majeure event. Defendant(s) also shall provide written notice pursuant to Paragraph 77 (Notification) within seven Days of the time that Defendant(s) first knew of, or by the exercise of due diligence should have known of, the event. The notice shall state what action has been impacted by the delay, the anticipated duration of any delay, its cause(s), Defendant's or Defendants' past and proposed actions to prevent or minimize any delay, a schedule for carrying out those actions, and Defendant's or Defendants' rationale for attributing any delay to a Force Majeure event. Defendant(s) shall include with any notice all available documentation supporting the claim that the delay was attributable to a Force Majeure event. Failure to provide written notice as required by this paragraph shall preclude Defendant(s) from asserting any claim of Force Majeure as to the event in question.

113. Procedures for Extension. If the EPA agrees that a Force Majeure event has occurred, the EPA will extend the time for Defendant(s) to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a Force Majeure event shall not, by itself, extend the time to perform any other obligation unless the EPA

determines that dependent activities will be delayed by the Force Majeure event, and that the time period should be extended for performance of such activities.

114. Procedures for Non-Extension. If the EPA does not agree that a Force Majeure event has occurred, or does not agree to the extension of time sought by Defendant(s), the EPA shall notify Defendant(s) in writing of its decision and the EPA's position shall be binding, unless Defendant(s) invokes Dispute Resolution under Section X (Dispute Resolution), which Defendant(s) must do no later than 15 Days after receipt of written notice of the EPA's decision. In any such dispute, Defendant(s) bears the burden of demonstrating by a preponderance of the evidence that each claimed event is a Force Majeure event, that Defendant(s) gave the timely written notices required by this Section, that the Force Majeure event caused any delay Defendant(s) claims was attributable to that event, that Defendant(s) exercised due diligence as set forth in Paragraph 111 (Definition of Force Majeure) to prevent or minimize any delay caused by the event, that Defendant(s) complied with the requirements of this Section, and that the amount of additional time requested, if any, is necessary to compensate for the Force Majeure event.

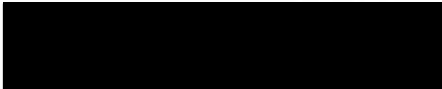
SO ORDERED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

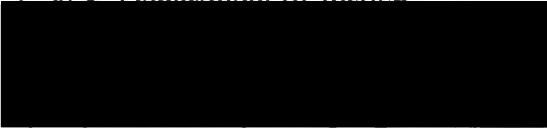
WE HEREBY CONSENT to the entry of the Consent Decree in United States, et al. v. City of Great Falls, MT, et al., subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF UNITED STATES OF AMERICA:

Date: \_\_\_\_\_


  
NATHANIEL DOUGLAS  
Deputy Section Chief  
Environmental Enforcement Section  
U.S. Department of Justice

Date: 3/4/14

  
MARK C. ELMER  
Senior Counsel  
HEIDI K. HOFFMAN  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
999 18<sup>th</sup> Street, Suite 370  
Denver, CO 80202  
Phone: (303) 844-1350  
[Mark.Elmer@usdoj.gov](mailto:Mark.Elmer@usdoj.gov)

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: March 4, 2014

  
MARK POLLINS  
Division Director  
Water Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460


Date: 2/28/14

  
LOREN DENTON  
Branch Chief  
Municipal Enforcement Branch  
Water Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

Of Counsel:  
J. CLARKE THURMON  
Attorney-Advisor  
Water Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: 03/03/2014

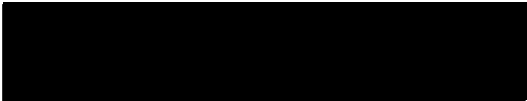
  
for ANDREW M. GAYDOSH  
Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice  
Region 8  
U.S. Environmental Protection Agency  
1595 Wynkoop Street  
Denver, CO 80202

Of Counsel:  
MARGARET J. (PEGGY) LIVINGSTON  
Senior Enforcement Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice  
Region 8  
U.S. Environmental Protection Agency  
1595 Wynkoop Street  
Denver, CO 80303


WE HEREBY CONSENT to the entry of the Consent Decree in United States, et al. v. City of Great Falls, MT, et al., subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF STATE OF MONTANA:

Date: 3/3/14

  
\_\_\_\_\_  
TRACY STONE-MANNING, Director  
Montana Department of Environmental Quality  
1520 East Sixth Avenue  
Helena, MT 59620

Date: 3/3/2014

  
\_\_\_\_\_  
KIRSTEN HUGHES BOWERS  
Special Assistant Attorney General  
Montana Department of Environmental Quality  
1520 East Sixth Avenue  
Helena, MT 59620  
Phone: (406) 444-5690  
kbowers@mt.gov

WE HEREBY CONSENT to the entry of the Consent Decree in United States, et al. v. City of Great Falls, MT, et al., subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR DEFENDANT CITY OF GREAT FALLS, MT:

Date: 2/25/2014



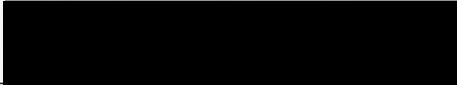
MICHAEL WINTERS  
Mayor  
City of Great Falls, MT 59403



WE HEREBY CONSENT to the entry of the Consent Decree in United States, et al. v. City of Great Falls, MT, et al., subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR DEFENDANT MALTEUROP NORTH AMERICA, INC.:

Date: 2/28/2014

  
KURT SEAGRIST  
President  
Malteurop North America, Inc.  
Milwaukee, WI 53215

**APPENDIX A TO PROPOSED CONSENT  
DECREE**

City of Great Falls

# Enforcement Response Plan for the Industrial Pretreatment Program and Sector Control Programs

3/21/2013

## I. Introduction

On July 24, 1990 the Environmental Protection Agency promulgated regulations to require all Publicly Owned Treatment Works (POTWs) to adopt an Enforcement Response Plan (ERP) as part of their approved pretreatment programs (55 Fed. Reg. 30082). The regulation as stated in 40 CFR 403.8 (f) (5) is:

The POTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how the POTW will investigate and respond to instances of Industrial User noncompliance. The plan shall, at a minimum:

1. Describe how the POTW will investigate instances of noncompliance;
2. Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of Industrial User violations and the time periods within which responses will take place;
3. Identify (by title) the official(s) responsible for each type of response;
4. Adequately reflect the POTWs primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in 40 CFR 403.8 (f) (1) and (f) (2).

This ERP outlines the procedures that will be used to identify, document, track and respond to noncompliance. This ERP also provides guidance for selecting the enforcement action most appropriate for a given violation.

This document is intended to map out a path through the various levels of enforcement actions listed in the City Ordinance under Title 13, Chapter 12 for the Industrial Pretreatment Program and Sector Control Programs. Pollutants subject to the Sector Control Programs shall generally be controlled using Best management Practices (BMPs) or by Permits as determined by the City.

This plan is intended to be used as a reference tool to address instances of noncompliance. It must be used in conjunction with the Code of Federal Regulations and the Official Codes of the City of Great Falls. This plan does not supersede legal requirements, but serves as guidance for applying existing laws and regulations.

## II. Abbreviations

<b>AO</b>	Administrative Compliance Order
<b>BMP</b>	Best Management Practices
<b>CA</b>	Control Authority
<b>EPA</b>	U.S. Environmental Protection Agency
<b>EPC</b>	Environmental Program Coordinator
<b>ERP</b>	Enforcement Response Plan
<b>IU</b>	Industrial User
<b>NOV</b>	Notice of Violation
<b>SIU</b>	Significant Industrial User
<b>POTW</b>	Publicly Owned Treatment Works

### III. Definitions

1. "Best management Practice" or "BMP" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Section 13.12.030 of City Ordinance. BMPs are Pretreatment Standards. BMPs may include, but are not limited to, treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
2. "Categorical Industries"- EPA has identified several industrial classifications that have specific requirements for discharge limits and pollutants that need to be monitored. These industries are called Categorical Industries and EPA has developed certain minimum requirements for them. These requirements, along with any additional requirements the City deems necessary will be incorporated into the industry's permit.
3. "Control Authority" means the entity directly administering and enforcing Pretreatment Standards and requirements. The Control Authority is the City of Great Falls.
4. "Domestic Sanitary Wastes" means liquid wastes: 1. From the non-commercial preparation, cooking, handling of food, or 2. Containing only human excrement and similar matter from the sanitary conveyances of dwellings, commercial buildings, industrial facilities, and institutions.
5. "Industrial" means of, or pertaining to, Industry, manufacturing, commerce, trade or business as distinguished from domestic or residential.
6. "Industrial Discharge Permit" means the document or documents issued to an Industrial User by the City in accordance with the terms of Title 13, Chapter 12 of City Ordinance that allows limits and/or prohibits the discharge of pollutants or flow to the POTW as set forth in Section 13.12.050 of City Ordinance.
7. "Industrial Wastes" or "non-domestic wastes" mean the liquid or solid wastes from industrial manufacturing processes, trade, or business activities producing non-domestic or non-residential sewage as distinct from domestic wastewater.
8. "Publicly Owned Treatment Works" or "POTW" means a treatment works as defined by section 212 of the Clean Water Act (33 U.S.C. 1292), which is owned in this instance by the City. This definition includes any sewers that convey wastewater to the POTW treatment plant, but does not include pipes, sewers or other conveyances not connected to a facility providing treatment. "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the City who are by contract or agreement with the City, users of the City's POTW.

9. "Sector Control Program" means a program to control specific pollutants from Industrial Users with similar waste generation or treatment through the implementation of Pretreatment Standards and Requirements, including Best Management Practices. These Sector Control requirements may be found at Section 13.12.090 of City Ordinance.

#### **IV. Personnel Responsibilities**

**Environmental Program Coordinator** - The Environmental Program Coordinator (EPC) and/or Industrial Pretreatment staff will be responsible for the day to day implementation and enforcement of the Industrial Pretreatment Program and Sector Control Programs.

EPC responsibilities may include but are not limited to: Issuing Industrial Discharge Permits to industries that discharge pollutants and assist in adopting policies and procedures for carrying out the provisions of CFR Part 403, and City Ordinance under Title 13. The Environmental Program Coordinator is responsible for developing Industrial User Discharge permits.

The Environmental Program Coordinator and/or Industrial Pretreatment staff will be responsible to administer the permitting and compliance of the Trucked and Hauled Septage Program. Duties may include but are not limited to: Coordinating random collection and analysis of hauled septage discharge samples and determining if septage discharge is representative of Permittee disclosure in the Hauled Waste Manifest and Permit Application Form and determine if safety standards and sanitation responsibilities of the septage hauler discharging at the septage receiving area(s) are observed.

Industrial User Discharge Permits and Septage Hauler Permits are issued with approval of the Director of Public Works.

The enforcement responses carried out by the EPC and/or Industrial Pretreatment staff are as follows:

- Warning Notices.
- Notices of Violation.
- Informal meetings.

**Director of Public Works** - The Director of Public Works has the responsibility to monitor the EPC actions and to initiate the following enforcement actions at the recommendation of the EPC:

- Show cause hearings.
- Administrative Compliance Orders.
- Consent Orders.
- Administrative Fines.
- Suspension of Service.
- Referrals to the City Attorney for Judicial Enforcement Remedies.
- Referrals to the state or EPA for additional enforcement action.

**City Attorney** – The City Attorney will provide legal consultation as requested by the Public Works Director on enforcement actions and will take the lead on all referrals for Judicial Enforcement Remedies and POTW initiated investigations.

## **V. Identifying and investigating instances of noncompliance:**

The Environmental Program Coordinator (EPC) and/or Industrial Pretreatment staff may prepare monitoring and inspection plans, identify and investigate instances of non compliance, track, monitor and record results from wastewater sampling events, conduct and maintain Industrial User Waste Surveys, evaluate and categorize Industrial User inventories, examine Discharge Monitoring Reports, QA/QC and analytical laboratory analysis results received from Significant Industrial Users, screen all data including compliance history, day to day operations to assess the compliance status of each Industrial User, keep logs of due dates for Discharge Monitoring Reports and receipt of these reports, evaluate Trucked and Hauled Waste Manifests and respond to any/all violations, conduct periodic inspections of industries, conduct or direct independent sampling of an Industrial Users effluent. The EPC and/or the Environmental Compliance Technician under the direction of the EPC, will perform inspections at least annually at all Significant Industrial Users. The inspection will consist of verifying existing information and compliance history and compliance patterns of the Significant Industrial User, determining if any changes have been made to the processes since the last inspection, reviewing Material Safety Data Sheets for any chemicals used in the processes, reviewing spill containment programs, chemical handling/storage practices and inspecting the physical processes, including any pretreatment processes.

The EPC and/or Industrial Pretreatment staff will prepare a formal report of the Significant Industrial User inspection and provide a copy to the Significant Industrial User. It will be the goal to provide this report to the SIU within 30 days following the inspection. If violations are discovered during the inspection appropriate actions will be initiated according to the Enforcement Response Guide section of this plan.

The EPC and/or Industrial Pretreatment staff will review business licenses periodically with the City Fire Marshal and/or City Building Official to assess the types of industries in Great Falls and to find out which of these industries may need to be regulated, conduct Industrial User Waste Surveys, perform all enforcement tasks consistent with the requirements of City Ordinances, Issue Industrial Wastewater Discharge Permits, determine which pollutants to monitor, at what frequency, and what location in the industrial process is appropriate. The EPC will require specific monitoring and reporting responsibilities of Permittees. These responsibilities will be determined by the EPC on a case by case basis. The EPC is responsible for insuring that all Significant Industrial Users are independently sampled at least once per year. A portable automatic wastewater sampler is available to the EPC for these duties. Any significant discrepancies discovered between results reported by the Industrial User and independent samples will be resolved through splitting of samples or other appropriate methods. If any

violations are discovered, appropriate actions will be initiated according to the Enforcement Response Guide section of this plan. The EPC will use EPA Pretreatment publications for general guidance in determining monitoring requirements.

## **VI. Description of enforcement actions**

### **1. Warning Notice**

A Warning Notice is an informal enforcement response and, as such, is not discussed in City Ordinance. Warning Notices may be verbal or written – or verbal initially, followed up with a written communication. A Warning Notice will include a description of the violation and a request for continued cooperation. The Industrial user will be notified that the violation is minor in nature and continued violations will result in more severe enforcement actions. If appropriate, the Warning Notice may require a response within five (5) working days explaining actions that the Industrial User will take to correct the violation or prevent recurrence. All Warning Notices, verbal or written will be properly documented.

Warning notices are generally used in response to a Level 1 Violation as described in the Enforcement Response Guide section of this ERP. A Warning Notice may be sent by First Class mail.

### **2. Notice of Violation (NOV)**

An NOV is an Administrative Enforcement Action described in City Ordinance Section 13.12.100 C.1. as follows (see City Ordinance for exact requirements): When the City finds an Industrial User has violated, or continues to violate, any provision of City Ordinance Title 13, an Industrial Discharge Permit, or order issued thereunder, or any other Pretreatment Standard or Requirement, the City may serve upon the Industrial User a written Notice of Violation. Within five (5) working days of the receipt of such notice, an explanation of the violation and a plan for the satisfactory correction or prevention thereof, to include specific required actions, shall be submitted by the Industrial User to the City. The Industrial User may also request a meeting with the Director to present further information and explanation. Submission of such a plan in no way relieves the Industrial User of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this section shall limit the authority of the City to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

The issuance of an NOV is generally the initial response for any violation above Level 1 as described in the Enforcement Response Guide section of this ERP, unless emergency action is required. An NOV will include:

- A statement detailing the City legal authority under which the City issued the NOV.
- A description of the Violation(s) including the date(s) that the violation occurred.



- A requirement that the Industrial User respond within five (5) working days with an explanation of the violation and a plan including specific actions to be taken by the Industrial User to correct and prevent the recurrence of future violations.
- A statement that compliance with the requirements of the letter does not excuse the violation.
- A requirement that the response must be signed by the Authorized Representative, and include the following certification statement (the NOV may reference a section of a permit issued to the Industrial User that includes this requirement):
  - "I 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 ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or the persons directly 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 a fine and imprisonment for knowing violations."

An NOV may also be used to notify the Industrial User of additional enforcement actions such as the assessment of an Administrative Fine. The NOV will be sent by Registered or Certified Mail (Return Receipt Requested) or hand delivered. The NOV may be followed up with additional enforcement actions depending on the severity of the violation and the response by the Industrial User.

### **3. Administrative Compliance Order**

An Administrative Compliance Order is an Administrative Enforcement Action described in City Ordinance Section 13.12.100 C.3. as follows (see City Ordinance for exact requirements): When the City finds that an Industrial User has violated, or continues to violate, any provision of this Title 13 Chapter 12 of City Ordinance, an Industrial Discharge Permit, or order issued thereunder, or any other Pretreatment Standard or Requirement, the City may issue an order to the Industrial User responsible for the discharge directing that the Industrial User come into compliance within a specific time. If the Industrial User does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a Pretreatment Standard or Requirement, nor does a compliance order relieve the Permittee of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the Industrial User.

An Administrative Compliance Order would generally be issued when an Industrial User's actions or failure to take action has resulted in a discharge to the POTW in violation of City

Ordinance. An Administrative Compliance Order should be considered where the violation meets the definition of Significant Noncompliance in Section 13.12.020 of City Ordinance. The decision to proceed with an Administrative Compliance Order would normally be made by the Director of Public Works.

Administrative Compliance Orders will include:

- A statement detailing the City legal authority under which the City issued the Order.
- A description of the Violation(s) including the date(s) that the violation occurred, the specific permit conditions violated and any damages attributable to the violation.
- The activity the Industrial User is being ordered to perform such as installation of treatment technology, additional monitoring, discontinuing discharge of a certain waste stream, appearance at a formal meeting, etc.
- Compliance schedule with milestone date(s) for corrective actions as required.
- A statement that compliance with the terms and conditions of the order will not be construed to relieve the user of its obligation to comply with applicable Federal, State or local law.
- A statement that violation of the order may subject the user to all penalties available under City Ordinance.
- A statement that issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the Industrial User.
- A statement that the provisions of the order shall be binding upon the user, its officers, directors, agents, employees, successors, assigns, and all persons, firms, and corporations acting under, through, or on behalf of the user.

The Administrative Compliance Order will be sent by Registered or Certified Mail (Return Receipt Requested) or hand delivered.

#### **4. Consent Order**

A Consent Order is an Administrative Enforcement Action described in City Ordinance Section 13.12.100 C.4. as follows (see City Ordinance for exact requirements): The City may enter into Consent Orders, assurances of compliance, or other similar documents establishing an agreement with any Industrial User responsible for noncompliance. Such documents shall include specific actions to be taken by the Industrial User to correct the noncompliance within a time period specified by the document. A consent order may include penalties, supplemental environmental projects, or other conditions and requirements as agreed to by the City and the Industrial User.

Consent Orders are generally used in Level 3 and 4 violations as discussed in the Enforcement Response Guide section of this ERP where the Industrial User assumes responsibility for its noncompliance and is willing to correct its cause(s) in good faith. The terms of a Consent Order would be negotiated after the Industrial User has responded to a Notice of Violation and met with the City to explain the causes of the violation and has developed a plan for compliance. In

determining the terms to include in the Consent Order, the City may take a user's extenuating circumstances (e.g. financial difficulties, technical problems, and other impediments to necessary corrective action) into consideration. The decision to proceed with a Consent Order would normally be made by the Director of Public Works in consultation with the City Attorney.

The Consent Order will include:

- A statement detailing the City legal authority under which the City issued the Order.
- The activity the Industrial User is being ordered to perform such as installation of treatment technology, additional monitoring, discontinuing discharge of a certain waste stream, appearance at a formal meeting, etc.
- Compliance schedule with milestone date(s) for corrective actions as required.
- Penalties, supplemental environmental projects, or other conditions and requirements (optional).
- Signatures of City and Industrial User representatives.

A Consent Order is an agreement between the City and the Industrial User and as such must be approved by the City Manager and/or City Commission in accordance with the policies of the City.

## **5. Administrative Fine**

An Administrative Fine is an Administrative Enforcement Action described in City Ordinance Section 13.12.100 C.6. as follows (see City Ordinance for exact requirements):

- a. When the City finds that an Industrial User has violated, or continues to violate, any provision of Title 13 Chapter 12 of City Ordinance, an Industrial Discharge Permit, or order issued thereunder, or any other Pretreatment Standard or requirement, the City may fine such Industrial User in an amount not to exceed \$1,000 per day per violation. Such fines shall be assessed on a per-violation, per day basis. In the case of monthly or other long-term average discharge limits, fines shall be assessed for each day during the period of violation.
- b. A lien against the Permittee/User's property shall be sought for unpaid charges, fines, and penalties.
- c. Industrial Users desiring to appeal such fines must file a written request for the City to reconsider the fine along with full payment of the fine amount within fifteen (15) days of being notified of the fine. Such notice of appeal shall set forth the nature of the order or determination being appealed, the date of such order or determination, the reason for the appeal, and request a hearing pursuant to procedures outlined in Section 13.12.100, (C) (5).
- d. Issuance of an administrative fine shall not be a bar against, or prerequisite for, taking any other action against the Industrial User.

Administrative Fines are recommended as an escalated enforcement response, particularly when NOV's or Administrative Compliance Orders have not prompted a return to compliance. Whether Administrative Fines are appropriate responses to noncompliance also depends

greatly on the circumstances surrounding the violation. When considering a fine, the City will consider the following factors:

- The type and severity of the violation.
- The number of violations cited.
- The duration of the noncompliance
- The impact of the violation on the Wastewater Treatment Plant and the environment.
- Whether the violation threatened human health.
- Whether the Industrial User derived any economic benefit or savings from the noncompliance.
- The compliance history of the user.
- Whether the user is making good faith efforts to restore compliance.

Administrative Fines are particularly appropriate where the Industrial User remains in noncompliance after receiving repeated NOVs or violates the terms of an Administrative Compliance Order, including missing a compliance schedule deadline. The decision to assess an Administrative Fine would normally be made by the Director of Public Works in consultation with the City Attorney.

The amount of the proposed Administrative Fine should be based on the following guidelines:

- 1) Tier 1 Violations where the violation is administrative in nature and has not caused or contributed to a violation of the Industrial User's effluent parameters.
  - a) 1<sup>st</sup> Offense - \$50 to \$150 per violation, per day.
  - b) 2<sup>nd</sup> Offense - \$100 to \$300 per violation, per day.
  - c) 3<sup>rd</sup> Offense - \$150 to \$450 per violation, per day.
  - d) 4<sup>th</sup> Offense – \$300 to \$1,000 per violation, per day.
  
- 2) Tier 2 Violations where the violation has contributed or has significant potential to contribute to a violation of the Industrial User's effluent parameter, but where that violation has not caused the Industrial User to be in Significant Non-Compliance as defined by City Ordinance Section 13.12.020.
  - a) 1<sup>st</sup> Offense - \$150 per violation, per day.
  - b) 2<sup>nd</sup> Offense - \$300 per violation, per day.
  - c) 3<sup>rd</sup> Offense - \$500 per violation, per day.
  - d) 4<sup>th</sup> Offense – \$1,000 per violation, per day.
  
- 3) Tier 3 Violations where the violation is more severe than a Tier 2 violation, including violations that have caused sewer blockages without causing a sewer overflow, or violations that have resulted in the Industrial User being in Significant Non-Compliance as defined by City Ordinance Section 13.12.020 but where that violation has not resulted in a violation of the City's MPDES permit.
  - a) \$500 - \$1,000 per violation per day.

- 4) Tier 4 Violations where the violation has caused Interference or Pass Through or has resulted in a violation of the City's MPDES permit, or has resulted in the City using its emergency authority, where the Industrial User has failed to follow a legal order of the City, has falsified records or where any similar serious violation has occurred.
- a) \$1,000 per violation per day.

Fine amounts may be adjusted from the above guidance based on the particular circumstances including but not limited to:

- Good faith of the Permittee/User
- Compliance history of the Permittee/User
- Previous success of enforcement actions against the Permittee/User
- The effect of the violation(s) on the environment and/or public health
- The effect of the violation(s) on the POTW
- Whether the Industrial User derived any economic benefit or savings from the noncompliance

A Notice of Violation will be issued to the Industrial User notifying it that a fine has been assessed, the amount of the fine and an outline of the process for determining that amount.

The NOV informing the Industrial User that a fine is being assessed will include the following:

- A statement detailing the legal authority under which the City issued the Fine.
- A description of the Violation(s) including the date(s) that the violation occurred, the specific permit conditions violated and any damages attributable to the violation(s).
- The amount of the fine and a statement outlining the methodology used to determine the amount.
- A statement informing the Industrial User that a lien against the Permittee/User's property shall be sought for unpaid charges, fines, and penalties.
- A statement outlining the appeal process in City Ordinance Section 13.12.100 C. 6. c.
- A statement that issuance of an administrative fine shall not be a bar against, or prerequisite for, taking any other action against the Industrial User.

The City may either include the fine amount on the Industrial User's utility bill or assess the fine with an Administrative Compliance Order. The NOV will be sent by Registered or Certified Mail (Return Receipt Requested) or hand delivered.

## **6. Suspension of Service**

Suspension of Service is an Administrative Enforcement Action described in City Ordinance Section 13.12.100 C.2. as follows (see City Ordinance for exact requirements): The City, through the Director of Public Works, may suspend water service and/or wastewater treatment service and/or revoke an Industrial Discharge Permit ( Section 13.12.050, K.) when such revocation is necessary, in the opinion of the Director, in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the

health or welfare of persons, to the environment, causes Pass Through or Interference or causes the City to violate any condition of its MPDES Permit.

Any person notified of a suspension of the water service and/or wastewater treatment service and/or the Industrial Discharge Permit shall immediately stop or eliminate the contribution. In the event of a failure of the Permittee to comply voluntarily with the suspension order, the City shall take such steps as deemed necessary including immediate severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to individuals or the environment. The City may reinstate the Industrial Discharge Permit, water service and/or the wastewater treatment service upon proof of the elimination of the non-complying discharge.

A suspension of service order may be issued to a user to terminate its discharge or a specific discharge stream to the collection system for any of the following reasons:

- Illegal or unauthorized discharge.
- Interference or Pass Through in the collection system or at the Wastewater Treatment Plant.
- Imminent and substantial endangerment to the life or health for personnel servicing the collection system or the general public.
- Substantial endangerment to the environment.
- Causes or may cause the City to violate any condition of its MPDES Permit.
- Results of a Show Cause Hearing.

The order may be issued immediately upon discovery of the problem or following a Show Cause Hearing. It can be issued alone or in conjunction with any other notice to stop violations of a General or Specific Prohibition (See City Ordinance 13.12.030) or violation of a local limit.

Except where the City must invoke emergency powers in response to serious ongoing or imminent violations, Suspension of Service orders will be issued with an Administrative Compliance Order.

## **7. Show Cause Hearing**

A Show Cause Hearing is an Administrative Enforcement Action described in City Ordinance Section 13.12.100 C.5. as follows (see City Ordinance for exact requirements):

- a. The City may order any Industrial User who causes or allows an unauthorized discharge to enter the POTW to show cause before an ad hoc committee appointed by the City Manager why the proposed enforcement action should not be taken. A notice shall be served on the Industrial User specifying the time and place of a hearing to be held by the ad hoc committee regarding the violation, the reasons why the proposed action is to be taken, and directing the Industrial User to show cause before the ad hoc committee why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at

least ten (10) days before the hearing. Service may be made on any agent or officer of a corporation or other Authorized Representative of the Industrial User.

- b. At any hearing held pursuant to Title 13 Chapter 12 of City Ordinance, testimony taken must be under oath and recorded. The transcript of testimony will be made available to any member of the public and any party to the hearing upon payment of charges for the preparation thereof. The hearing may be suspended or continued at the discretion of the presiding officer, provided that all evidence is received and the hearing is closed within sixty (60) days after it is commenced.
- c. After the ad hoc committee has reviewed the evidence, it shall issue an order to the Industrial User responsible for the discharge directing that, following a specified time period, the sewer service be discontinued unless adequate treatment facilities, devices or other related appurtenances shall have been installed or existing treatment facilities, devices or other related appurtenances are properly operated. Further orders and directives as are necessary and appropriate to correct the violation may be issued.

The Show Cause Hearing is generally used in the case of Level 4 violations as described in the Enforcement Response Guidance section of this ERP where permit revocation, significant Administrative Fines, termination of service as a result of escalating enforcement (where an Industrial User has failed to respond satisfactorily to other enforcement actions), or Judicial Enforcement Remedies are being considered. The decision to proceed with a Show Cause Hearing should be made by the Director of Public Works in consultation with the City Attorney.

A Notice will be served on the discharger by personal service, certified or registered mail, return receipt requested, specifying the time and place of a hearing, the proposed action and the reasons for that action. An ad hoc committee will be appointed by the City Manager to hear the Industrial User's case and make a decision on the City's behalf. The committee's decision will be in the form of an order. If agreement cannot be reached between the Industrial User and City regarding violations, the City will terminate the user's services as outlined in City Ordinance Section 13.12.100.

Unless directed otherwise by the City Attorney, any order resulting from the Show Cause Hearing will be issued in the form of an Administrative Compliance Order under City Ordinance Section 13.12.100 C.3.

## **8. Judicial Enforcement Remedies**

Judicial Enforcement Remedies are compliance or enforcement actions normally undertaken through a City petition to the District Court. City Ordinance Section 13.12.100 (D) discusses four alternatives (see City Code for exact requirements):

1. Injunctive Relief: When the City finds that an Industrial User has violated, or continues to violate, any provision of Title 13 Chapter 12 of City Ordinance, an Industrial Discharge Permit, or order issued hereunder, or any other Pretreatment Standard or requirement, the City may petition the District Court for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the Industrial Discharge Permit, order, or other requirement imposed by Title 13 Chapter 12 of City Ordinance on activities of the Industrial User. The City may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the Industrial User to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against an Industrial User.
2. Civil Penalties:
  - a. An Industrial User who has violated, or continues to violate, any provision of Title 13 Chapter 12 of City Ordinance, an Industrial Discharge Permit, or order issued hereunder, or any other Pretreatment Standard or requirement shall be liable to the City for a maximum civil penalty not to exceed \$1,000 per day per violation. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of violation.
  - b. The City may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the City.
  - c. In determining the amount of civil liability, the Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the Industrial User's violation, corrective actions by the Industrial User, the compliance history of the Industrial User, and any other factor as justice requires.
  - d. Actions for civil penalties shall be civil actions brought in the name of the City. The City must prove alleged violations by a preponderance of the evidence.
  - e. Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against an Industrial User.
3. Civil Fine Pass Through: In the event that an Industrial User discharges such pollutants which cause the City to violate any condition of its MPDES permit and the City is fined by the EPA or the State for such violation, then such Industrial User shall be fully liable for the total amount of the fine and/or supplemental environmental project that results from such action by the EPA and/or the State.
4. Criminal Prosecution: An Industrial User who purposely, knowingly or negligently violates any provision of Title 13 Chapter 12 of City Ordinance, or willfully or negligently introduces any substance into the POTW which causes personal injury or property damage, or knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed



or required to be maintained pursuant to an Industrial Discharge Permit or order issued hereunder, or any other Pretreatment Standard or requirement, shall, upon conviction, be guilty of a misdemeanor, punishable by a fine not to exceed \$1,000 per day per violation and be subject to imprisonment for not more than six (6) months, or both. In addition, these penalties may be sought for any person who maliciously, willfully, or negligently breaks, destroys, uncovers, defaces, tampers with, or otherwise destroys, or who prevents access to any structure, appurtenance or equipment, or any part of the POTW.

Judicial Enforcement Remedies will be implemented by the City Attorney in consultation with the Director of Public Works.

## **VII. Enforcement Response Guide:**

When a violation is discovered during monitoring activities the Environmental Program Coordinator (EPC) will decide which enforcement action is appropriate. The available responses are divided into four escalating levels of enforcement. The appropriate level will be chosen in accordance with the following guidelines.

For assistance in choosing the appropriate enforcement response, a flowchart has been included in the Appendix to this plan.

### Violations resulting in Significant Noncompliance:

First, the EPC should determine whether the violation meets the definition of Significant Noncompliance (SNC) found in City Ordinance Section 13.12.020. Any violation that meets this definition will be addressed through enforcement action described below as Level 3 or Level 4. The minimum level of enforcement used to address SNC is an Administrative Compliance Order except where the violation occurs during the term of a compliance schedule (see description of Level 3 violations below).

If the violation does not meet the definition of SNC, the enforcement response will normally be either Level 1 or Level 2 as described below.

### Escalation of Enforcement Responses:

After the EPC has determined whether the violation meets the definition of SNC, a choice must be made between two levels of enforcement - between Level 1 and Level 2 for non-SNC violations or between Level 3 and Level 4 for SNC violations. In making this decision, the EPC should take the following factors into consideration:

- **Magnitude of the violation:** In choosing the proper enforcement level, the EPC should consider the degree to which a standard or limit has been exceeded and whether the magnitude is a result of carelessness, negligence or disregard of the Industrial User's responsibilities.

- **Duration of the violation:** Violations (regardless of severity) which continue over prolonged periods of time, including required reporting that is significantly overdue, should subject the industrial user to escalated enforcement actions. One of the goals of the ERP is to prevent extended periods of noncompliance from recurring.
- **Effect of the violation on the receiving water:** Violations that have greater potential to cause or allow increased pollutant loading to the river should be escalated to a higher level of enforcement. For any violation where evidence of actual damage to the receiving water exists, Level 4 enforcement action should be considered.
- **Effect of the violation on the POTW:** The degree to which the violation has a direct impact on the POTW should be considered in determining the proper enforcement level. Effects on the POTW considered should include the structures, pipes, lift stations and treatment plant, including any effect on the ability to operate the facilities and the cost of operating the facilities. Also included should be the ability of the City to efficiently and effectively perform the duties of the pretreatment program.
- **Compliance history of the industrial user:** Escalating enforcement response will be used for recurring violations and failure to achieve compliance subsequent to informal or formal enforcement. A recurring violation is one where: the same type of violation occurs on consecutive reporting periods; the violation occurs seasonally; or any other pattern of noncompliance – even if each instance involves a different program requirement - is shown.
- **Good faith of the industrial user:** The Industrial User's good faith in correcting its noncompliance is a factor in determining which enforcement response to invoke. Good faith may be defined as the user's honest intention to remedy its noncompliance coupled with actions which give support to this intention. Generally, a user's demonstrated willingness to comply should predispose the EPC to select less stringent enforcement responses. Good faith does not eliminate the necessity of an enforcement action. Good faith is typically demonstrated by cooperation and completion of corrective measures in a timely manner.

Violations Falling Under More Than One Category:

Violations that fall under more than one category in the Enforcement Response Plan will be addressed through the more severe enforcement response. All alleged violations will be included in the more severe response.

Timeframes for Enforcement Responses:

The EPC will respond to all instances of violations in a timely manner. It is recognized that there may be times where responses are delayed due to lack of sufficient information to make a final judgment, competing resource requirements or similar factors, however, the EPC will meet the following guidelines once a violation is confirmed:

- All violations will be identified and documented within five (5) working days of receiving compliance information.
- Initial enforcement responses (informal or formal) will be taken within fifteen (15) days of identifying/verifying a violation.

- Follow up actions for continuing or recurring violations will be taken within sixty (60) days of the initial enforcement response.
- Violations which threaten health, property or the environmental quality are considered emergencies and will receive immediate response such as halting the discharge or terminating services.
- Violations meeting the criteria for Significant Noncompliance (SNC) will be addressed through formal enforcement action within thirty (30) days of the identification of SNC.

The EPC will be responsible for performing all enforcement tasks or recommending enforcement actions to the Director of Public Works, unless that duty is specifically assigned to another individual. All enforcement actions must be consistent with the requirements of City Ordinance. City Ordinance should be consulted prior to initiating any enforcement response.

**Level 1 violations:**

Level 1 is characterized by minor violations requiring informal response. Violations appropriate for Level 1 enforcement action are minor in nature, short in duration and do not cause pass through or interference or directly affect POTW operations. The violation will be an isolated incident, not part of a pattern of non-compliance. The Industrial User will generally have shown good faith efforts to meet discharge requirements and have a good compliance history.

Examples of a Level 1 violation are:

- Isolated violation of an effluent discharge limit by less than the Technical Review Criteria (TRC) of 1.4 for conventional pollutants and 1.2 for other pollutants. No known effect on POTW.
- Submitting required report late, where it is within 30 days or less late and shows no violations and there is no evidence of intent or deception.
- Minor sampling, monitoring, or reporting deficiencies where compliance status can be determined (computational, typographical errors or a report improperly signed or certified) and where there is no pattern of similar events.
- Failure to monitor all pollutants as required by permit where there is no evidence of intent and/or deception. These must be isolated Incidents where the cause is reasonably beyond IU control i.e. a sample mishandled by the contract laboratory or delivery service.
- Failure to implement Best Management Practices (BMPs) where there is no indication of intent.

The response to a Level 1 violation will typically be a Warning Notice.

If the user should respond in a negative manner or refuse to cooperate with the City requests/requirements, the EPC may implement Level 2 enforcement response.

**Level 2 violations:**

Level 2 is characterized by relatively minor violations that need to be formally acknowledged by the Industrial User. Violations appropriate for Level 2 enforcement will be more serious than Level 1 or may be a series of Level 1 violations. This enforcement level should be used in cases of violations more serious than Level 1 where the Industrial User has generally shown good faith efforts to meet discharge requirements, or other relatively minor violations. The violations will generally be short duration and/or isolated incidents that do not cause Pass Through or Interference but may cause a noticeable effect. Examples of a Level 2 violation are:

- Isolated violation of effluent limits by more than TRC (as defined above) causing no effect or minimal effect on the POTW.
- Failure of IU to submit application within 30 days of due date where the application is substantially complete (i.e. missing non-critical information only) or the event was beyond reasonable control of the IU.
- Data is missing from the monthly monitoring report where compliance status cannot be fully determined. Enforcement action should be taken within 5 days of the due date.
- Failure to report spills or change in processes affecting discharge where there is no effect on POTW.
- Failure to report substantial change in discharge (+/- 20%) as required in City Ordinance 13.12.080 L.
- Improper sampling where compliance status cannot be fully determined or is in question (improper collection method, improper preservation, no chain of custody, failure to sample all parameters) and the cause was not beyond IUs control.
- Inadequate record keeping where compliance status cannot be fully determined (i.e. incomplete files or missing records).
- Failure to properly operate and maintain pretreatment facility.
- Failure to install monitoring or pretreatment equipment where there is no evidence of intent or deception.
- Failure to implement Best Management Practices (BMPs) where the event is not beyond IU's control.

The response to a Level 2 violation will typically be a Notice of Violation (NOV) explaining the violation and possible penalties and requiring a response within 5 working days from the Industrial User explaining actions that the Industrial User will take to correct the violation or prevent recurrence.

After considering the Industrial User's response to the NOV the City may choose additional actions such as modifying the Industrial Discharge Permit to address the cause of the violation or provide additional monitoring.

If the Industrial User does not respond adequately to the NOV, enforcement action will escalate to Level 3.

**Level 3 violations:**

Level 3 is characterized by serious violations that do not require emergency action. These violations may be long duration or chronic in nature. Level 3 enforcement also may be a reaction to violations that remain uncorrected after attempts are made through lower levels of enforcement action. Level 3 is the minimum enforcement level when Significant Non-Compliance (SNC), as defined by City Ordinance Section 13.12.020, is discovered. Examples of Level 3 violations are:

- Any incidence of SNC as defined by City Ordinance.
- Submitting required report late, where it is 30 days or more late (e.g. baseline monitoring reports, compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules).
- Uncorrected continuous discharge violations causing minor effects to the POTW where the discharge is not causing Inference or Pass Through and the Industrial User has not corrected the discharge after a Level 2 violation was issued.
- Discharge episode of short duration that has caused Interference or Pass Through but is no longer occurring.
- Discharging that has caused damage to the POTW or caused a MPDES permit violation where the event was beyond the reasonable control of the IU.
- Inadequate or no response to NOV issued as a Level 2 violation.
- Failure to install monitoring or pretreatment equipment where there is evidence of intent or deception.
- Entry denied or consent withdrawn or copies of records denied.
- Failure of IU to submit an application within 30 days of due date or application is substantially incomplete (i.e. missing critical information) and the violation was not beyond reasonable control of IU.
- Failure to accurately report noncompliance.

The response to a Level 3 violation will typically be issuance of an NOV and an Administrative Compliance Order requiring the Industrial User to cease the activity causing the violation. Action will be in accordance with one of the following:

- The Administrative Compliance Order will set a date for a formal meeting with a committee chosen by the Director of Public Works. A plan to correct the violation must result from the meeting. The plan will be put in the form of either an Administrative Compliance Order or a Consent Order. The order will include a compliance schedule as necessary. The committee will decide whether further action such as a fine, may be appropriate.
- Where the Industrial User has taken immediate corrective measures that are appropriate to correct the violation and are approved, or would be approved, by the City and has pursued such corrective measures with due diligence, the City shall have the option of either:
  - 1) Executing a Consent Order with the Industrial User that includes a schedule for the Industrial User to implement the corrective measures and return to compliance; or

- 2) Issuing an Administrative Compliance Order with a reasonable schedule for the Industrial User to implement the corrective measures and return to compliance.

If satisfactory compliance is achieved the City may consider modifying the Industrial User's permit to address the cause of the violation or increase monitoring or reporting requirements. Sampling frequencies, reporting requirements, check sampling or inspection activities may be increased if appropriate. The Industrial User's name will be published as required in City Ordinance Section 13.12.100 B. If satisfactory compliance is not achieved, enforcement action will increase to Level 4.

Violations that occur while a compliance order or similar enforcement action is in effect:

Violations that occur during the term of a compliance schedule contained within a compliance order or similar enforcement action for parameters that are dealt with in the compliance schedule may be addressed without an Administrative Compliance Order if all of the following are true:

- The IU is in full compliance with the terms of the compliance schedule,
- The IU is acting in good faith to limit the frequency, duration and magnitude of the violations, and
- The violations do not create Interference, Pass Through or create imminent and substantial endangerment to the POTW or general health, safety and welfare of the general public.

The IU must respond by investigating the violation and confirming the cause of the violation is being remedied through the actions prescribed in the compliance schedule. Nothing in this paragraph shall prevent the City from escalating enforcement or choosing a higher level of enforcement if appropriate.

**Level 4 violations:**

Level 4 is characterized by violations that are serious or require immediate response on the City's part to prevent or stop damage to the collection or treatment systems or MPDES discharge violations by the Wastewater Treatment Plant. The EPC will consult with the Director of Public Works when a situation exists that may require Level 4 action. The Director of Public Works will decide whether to proceed with enforcement action at this level. Consultation with the City Attorney may be necessary to guide the implementation of enforcement actions under this level. Violations in this category will be chronic in nature or will be damaging to the POTW or be causing, or capable of causing, MPDES discharge violations. Examples of Level 4 violations are:

- Continued Significant Non-Compliance.
- Failure to comply with an order of the City.
- A discharge that causes Interference or Pass Through at the POTW or damages the POTW where the event was not beyond the reasonable control of the IU.
- A discharge resulting in known environmental damage.

- A continuing discharge that is causing Interference to the treatment processes or Pass Through of pollutants to the Missouri River.
- Chronic violations of Industrial Discharge Permit requirements that remain uncorrected after lower level enforcement actions.

If the violation is causing immediate danger to the POTW the City will suspend the Industrial Users service through the provisions of City Ordinance Section 13.12.100 C.2.

If the violation does not require emergency action, the IU will be issued an NOV and an Administrative Compliance Order. The City will consider additional enforcement including Administrative Fine, Modification of Permit, Permit Revocation and/or Judicial Remedies.

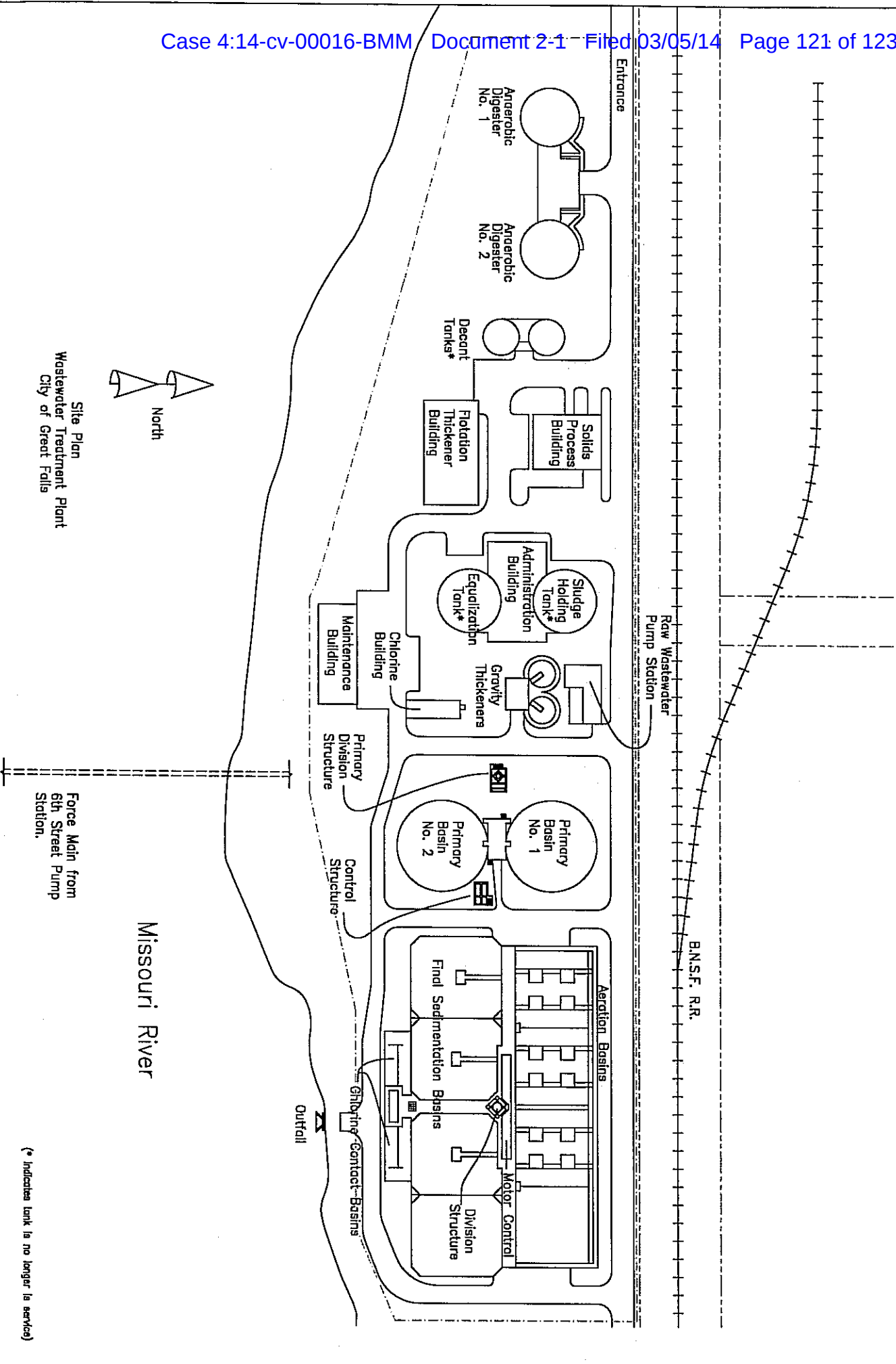
If appropriate, a Show Cause Hearing will be scheduled.

If appropriate the City will enter into a Consent Order with the IU.

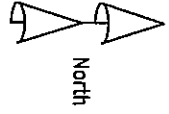
If service is terminated to a discharger the City may commence an action for appropriate legal and/or equitable relief under the terms of City Ordinance Section 13.12.100 (C) and (D).

**APPENDIX B TO PROPOSED CONSENT  
DECREE**





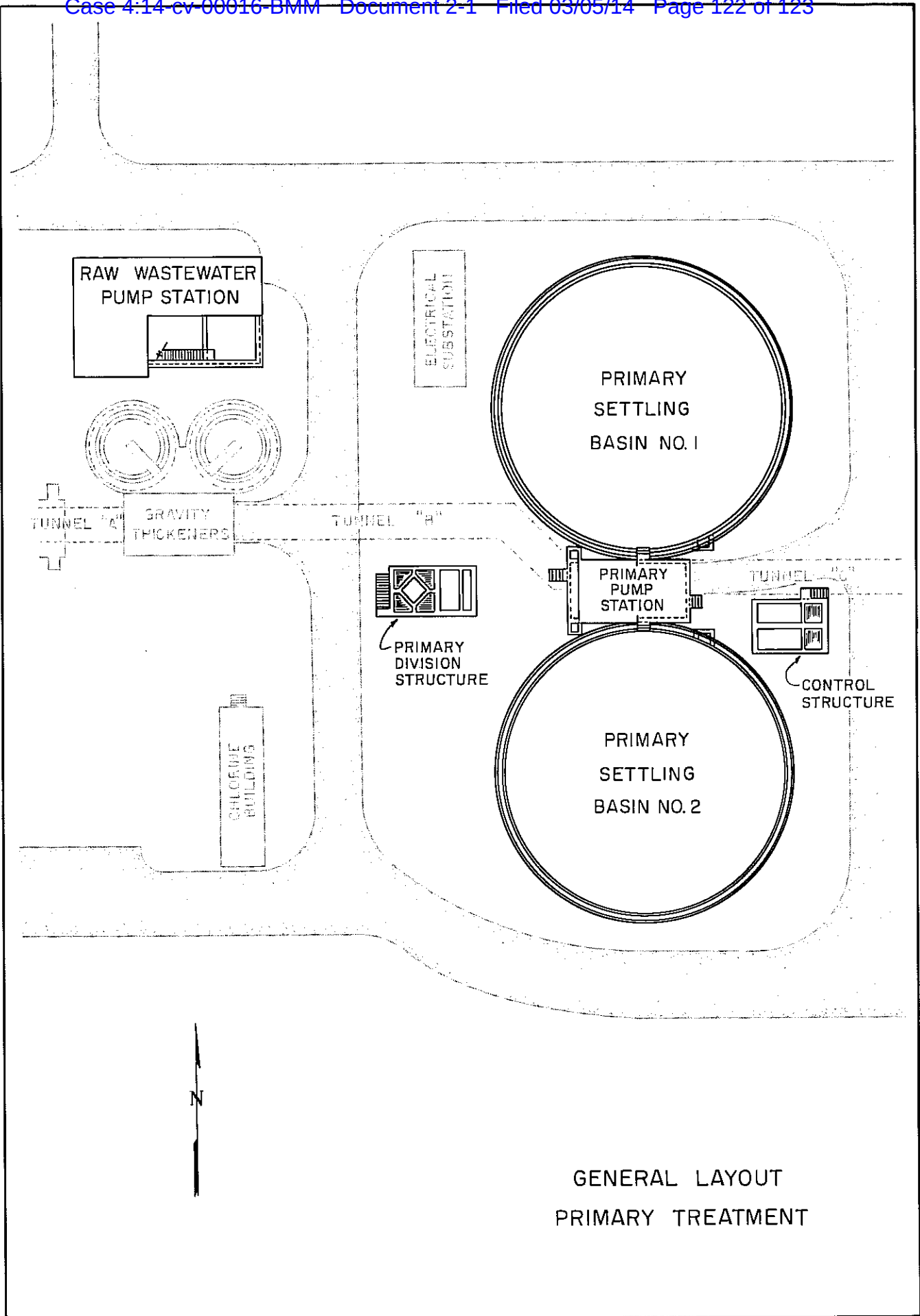
Site Plan  
Wastewater Treatment Plant  
City of Great Falls



Missouri River

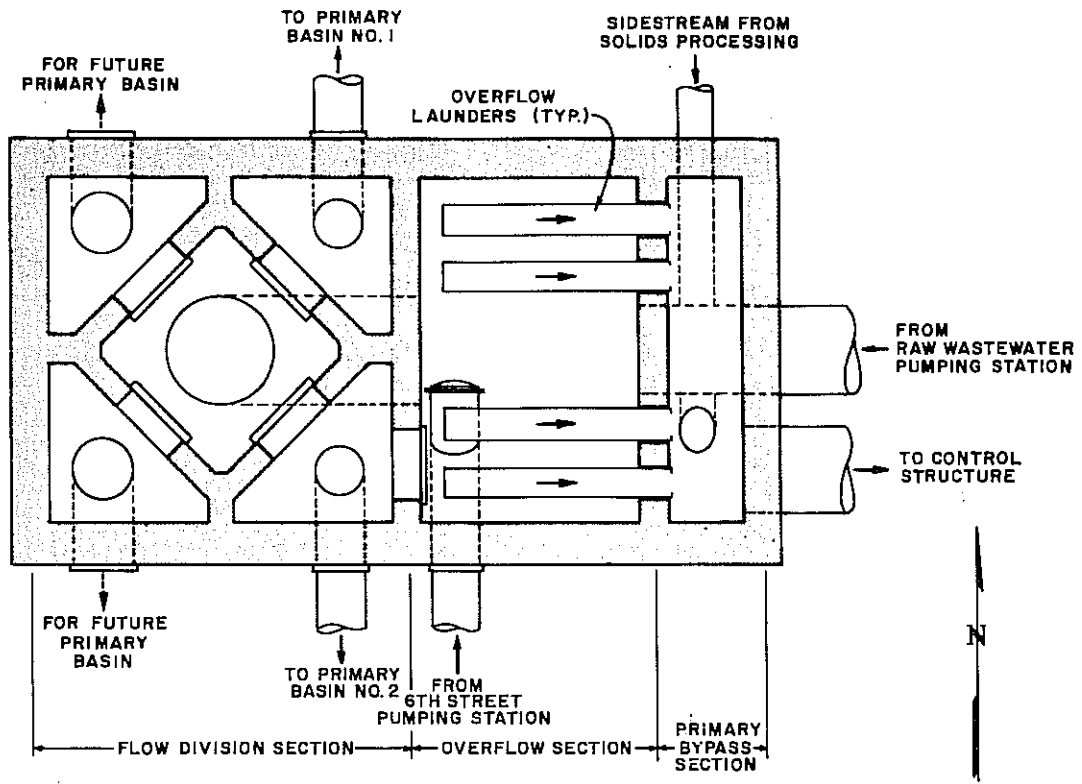
Force Main from  
6th Street Pump  
Station.

(\* Indicates tank is no longer in service)



GENERAL LAYOUT  
PRIMARY TREATMENT

FIGURE 3-1



PRIMARY DIVISION STRUCTURE