Agenda #____11____
Commission Meeting Date: February 4, 2014
CITY OF GREAT FALLS
COMMISSION AGENDA REPORT

Item:	Environmental Protection Agency (EPA) Joint Consent Decree RE: United States of America and the State of Montana vs. the City of Great Falls and Malteurop America, Inc.
From:	Greg Doyon, City Manager
Initiated By:	Montana DEQ and Environmental Protection Agency
Presented By:	Alan Joscelyn - Attorney Representing City of Great Falls Greg Doyon, City Manager
Action Requested:	Approval of Consent Decree

Suggested Motion:

1. Commissioner moves:

> "I move that the City Commission authorize the Mayor and Alan Joscelyn to enter into a Consent Decree between the United States of America and the State of Montana v. the City of Great Falls, Montana, and Malteurop North America, Inc."

2. Mayor calls for a second, discussion, public comment, and calls the vote.

Background: The City of Great Falls (City) and Malteurop America, Inc. (Malteurop) were cited by the Environmental Protection Agency (EPA) on June 23, 2010. EPA alleges that Malteurop caused the generation of hydrogen sulfide (H_2S) in the sewer system and the City failed to properly enforce provisions of the Clean Water Act for this industrial discharger and failed to properly administer the sanitary sewer collection system.

A detailed summary of the EPA allegations, negotiations among the parties, and the proposed consent decree was discussed by the City's legal counsel at the City Commission's work session on Wednesday, January 29, 2014.

Attorney Joscelyn is recommending the City Commission authorize execution of an appropriate Consent Decree (CD), a draft copy of which is attached (the final CD may incorporate non-substantive changes) as a means to resolve EPA's pending litigation against the City and Malteurop.

Fiscal Impact: The financial impact of the EPA penalty against the City is $120,000 in civil penalty; and $125,000 in a Supplemental Environmental Project (SEP) plus future costs of

monitoring and reporting for a 42 month period. Undesignated reserves from the Sewer Fund will be used to pay for the penalty and SEP.

Pursuant to the Consent Decree, the City will be required to develop and administer additional compliance programs relating to the operation of the sewer system. These requirements include a Capacity, Management, Operations, and Maintenance (CMOM) program which addresses Fat, Oil and Grease (FOG) issues, Inflow and Infiltration (I/I) problems, sampling protocols, and Sanitary Sewer Overflows (SSOs).

Total cost for implementation of these programs has not been determined and are under development. In some cases, additional engineering consultation will be required to meet EPA's compliance expectations.

Once a CD is ordered by the United States District Court, Malteurop will be required to pay a civil penalty to EPA and DEQ of $525,000. Further Malteurop will be required to reimburse the City $21,396 and future repair costs from H_2S corrosion.

Alternatives: If the CD is not filed, EPA/MTDEQ would file a complaint in United States District Court against the City and Malteurop. The **draft** complaint is attached as provided by the US Department of Justice.

Attachments/Exhibits:

1. Draft Complaint
2. Draft Consent Decree
3. Malteurop/EPA Timeline prepared by Public Works
4. Consent Decree Requirements Chart prepared by Public Works
5. Sewer Fund Unrestricted Cash Balance and Projections prepared by Fiscal Services
6. Sanitary Sewer Overflow, I/I Summary provided by Public Works

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
Great Falls Division

UNITED STATES OF AMERICA and THE STATE OF MONTANA, *Plaintiffs,* v. THE CITY OF GREAT FALLS, MONTANA and MALTEUROP NORTH AMERICA, INC., *Defendants.*	CV- **COMPLAINT**

The United States of America, by authority of the Attorney General, and acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), and the State of Montana, allege:

NATURE OF ACTION

1. This is a civil action for injunctive relief and civil penalties brought against the City of Great Falls, Montana ("City" or "Great Falls") and Malteurop North America, Inc. ("Malteurop") pursuant to section 309(b), (d), and (f) of the Clean Water Act (the "Act" or the "CWA"), 33 U.S.C. § 1319(b), (d), and (f), and the Montana Water Quality Act, §75-5-605, Montana Code Annotated ("MCA").

2. The United States seeks injunctive relief and civil penalties against Defendant Great Falls for violating the General Pretreatment Regulations for Existing and New Sources of Pollution at 40 C.F.R. part 403 ("Pretreatment Regulations"), two administrative orders issued by EPA, a CWA National Pollutant Discharge Elimination System ("NPDES") permit issued by the State of Montana, and section 301(a) of the Act, 33 U.S.C. § 1311(a).

3. The United States seeks injunctive relief and civil penalties against Defendant Malteurop for violating the Pretreatment Regulations, an administrative order issued by EPA, and an industrial user ("IU") permit.

These violations were committed by Malteurop and/or its predecessors in interest.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331 (Federal Question), 1345 (United States as Plaintiff), and 1355(a) (Fine, Penalty, or Forfeiture).

5. Venue lies in this district pursuant to 33 U.S.C. § 1319(b) and (f), and 28 U.S.C. §§ 1391 and 1395, because the City and its treatment works are located in this District, Malteurop does business in this District, the claims in this lawsuit arose in this District, and the acts for which the United States seeks civil penalties occurred in this District.

6. Pursuant to 33 U.S.C. § 1319(b) and (f), EPA has notified the State of Montana (the "State") of the commencement of this action.

7. Pursuant to 33 U.S.C. § 1319(f), EPA has notified the City of EPA's finding that Malteurop has introduced pollutants into the City's treatment works in violation of 33 U.S.C. § 1317(d). The City did not take an appropriate enforcement action against Malteurop within 30 days of having received that notification.

8. The State has joined this action as a plaintiff, thereby satisfying the requirements of 33 U.S.C. § 1319(e).

DEFENDANTS

The City

9. The City is a political subdivision of the State and a "municipality" as defined in 33 U.S.C. § 1362(4).

10. The City is a "person" as defined in 33 U.S.C. § 1362(5).

11. The City owns and operates a publicly owned treatment works ("POTW"), as defined in 40 C.F.R. §§ 122.2 and 403.3(q). The City's POTW includes a wastewater treatment plant ("WWTP") and sewer lines and appurtenant pumps leading to the WWTP. The City's POTW is a "treatment works" as defined in 33 U.S.C. § 1292(2). The City's POTW has a total design flow greater than five million gallons per day.

12. As a municipality that has jurisdiction over discharges to and from its treatment works, the City itself is a "POTW" as defined in 40 C.F.R. §§ 122.2 and 403.3(q).

Malteurop

13. Defendant Malteurop is a Delaware corporation doing business in the State of Montana.

14. Malteurop owns and operates a malting facility (the "Malting Plant") in Great Falls, Montana.

15. At all times relevant to this proceeding, Malteurop and/or a predecessor in interest has owned and/or operated the Malting Plant. As explained in more detail below, Malteurop's predecessor in interest is ADM Malting, LLC, a Delaware corporation, which until 2007 was known as International Malting Company ("IMC"). Unless otherwise expressly stated, all references to Malteurop include its predecessors in interest IMC and ADM Malting, LLC.

16. Malteurop is a "person" as defined in 33 U.S.C. § 1362(5).

17. Malteurop is an "industrial user" as defined in 33 U.S.C. § 1362(18) and 40 C.F.R. § 403.3(j), a "significant industrial user" as defined in 40 C.F.R. § 403.3(v), and the source of an "indirect discharge" as defined in 40 C.F.R. § 403.3(i).

STATUTORY AND REGULATORY BACKGROUND

NPDES Program

18. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters, except in compliance with other sections of the Act, including section 402, 33 U.S.C. § 1342, which allows discharges authorized by NPDES permits.

19. The Act defines "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12).

20. The Act defines "pollutant" to include "sewage . . . chemical wastes, biological materials . . . and industrial, municipal, and agricultural waste discharged into water." 33 U.S.C. § 1362(6).

21. The Act defines "navigable waters" as the "waters of the United States." 33 U.S.C. § 1362(7).

22. The Act defines "point source" to include any "discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container . . . from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).

23. EPA may issue NPDES permits that authorize discharges of pollutants into waters of the United States, subject to conditions and limitations set forth in such permits. 33 U.S.C. § 1342(a).

24. A state may establish its own NPDES program and, after receiving EPA's approval of that program, issue NPDES permits. 33 U.S.C. § 1342(b).

25. The Act defines "effluent limitation" to include any restriction EPA or a state establishes on the quantities, rates, and concentrations of

chemical, physical, biological, and other constituents that are discharged from point sources into navigable waters. 33 U.S.C. § 1362(11).

Pretreatment Program

26. The Act prohibits any owner or operator of a source from operating that source in violation of any effluent standard or prohibition or pretreatment standard promulgated under section 307 of the Act. 33 U.S.C. § 1317(d).

27. EPA promulgated the Pretreatment Regulations under the authority of various provisions of the Act, including sections 307 and 308, 33 U.S.C. §§ 1317 and 1318. 40 C.F.R. § 403.1(a).

28. Among other things, the Pretreatment Regulations prohibit any industrial user from discharging pollutants to a POTW that would cause corrosion or structural damage to the POTW or that would result in the presence of toxic gases, vapors, or fumes within the POTW in quantities that may cause acute worker health and safety problems. 40 C.F.R. § 403.5(b)(2) and (7).

29. The Pretreatment Regulations distinguish between categorical and non-categorical dischargers. Categorical dischargers are industrial users in specific industrial categories for which EPA has promulgated industry-

specific regulations in 40 C.F.R. parts 405 *et seq*. Dischargers not covered by any of these specific categories are known as "non-categorical dischargers."

30. Any POTW with a total design flow greater than five million gallons per day ("mgd") that receives pollutants from industrial users that are subject to the Pretreatment Standards is required to establish a POTW Pretreatment Program, with an exception not relevant here. 40 C.F.R. § 403.8(a).

31. A POTW that is required to establish a Pretreatment Program must develop and implement procedures to ensure compliance with the requirements of its Pretreatment Program. These procedures must include, at a minimum, procedures for the POTW (a) to identify all industrial users that might be subject to the Pretreatment Program, (b) to make an inventory of industrial users available to EPA upon request, (c) to identify and characterize the volume of pollutants that industrial users deliver to the POTW, (d) to notify industrial users of the applicable pretreatment standards and requirements, (e) to receive and analyze self-monitoring reports from industrial users, (f) to identify any noncompliance with pretreatment standards without relying on information from industrial users, by inspecting and by randomly sampling and analyzing effluent from industrial users, and

(g) to investigate instances of noncompliance with pretreatment standards and requirements. 40 C.F.R. § 403.8(f)(2).

32. A NPDES permit issued to a POTW must require that the POTW (a) identify significant industrial users subject to pretreatment standards under section 307(b) of the Act and 40 C.F.R. part 403 and (b) submit a local pretreatment program to EPA (or, in a state with an EPA-approved pretreatment program, the state) when required by 40 C.F.R. part 403, to assure compliance with pretreatment standards applicable under section 307(b) of the Act. The local program must be incorporated into the POTW's NPDES permit and must require all indirect dischargers to the POTW to comply with the reporting requirements of 40 C.F.R. part 403. 40 C.F.R. § 122.44(j).

33. A POTW must require industrial users to submit appropriate periodic reports ("Discharge Monitoring Reports" or "DMRs") to the POTW. 40 C.F.R. § 403.12(e) and (h).

34. Each industrial user must submit reports at least once every six months to its POTW describing the nature, concentration, and flow of its discharges. Categorical dischargers may, in certain cases, submit periodic reports once a year. Each report must be based on sampling and analysis in compliance with 40 C.F.R. part 136. 40 C.F.R. § 403.12(e) and (h).

35. Each significant industrial user must submit periodic reports to its POTW concerning the nature and concentrations of pollutants discharged to the POTW. 40 C.F.R. § 403.12(e) and (h). The POTW must maintain these reports for at least three years. 40 C.F.R. § 403.12(o).

36. Each categorical discharger must certify its periodic reports with the certification statement found at 40 C.F.R. § 403.6(a)(2)(ii). 40 C.F.R. § 403.12(l).

37. Among other things, 40 C.F.R. part 136 requires that samples of Biological Oxygen Demand ("BOD") and total suspended solids ("TSS") be maintained at no more than 6 degrees Centigrade during sample collection, that glass containers be used for oil and grease samples, and that pH samples be analyzed within 15 minutes of their collection.

38. A state may establish its own CWA pretreatment program by receiving approval of its program from the EPA. 33 U.S.C. § 1342(b).

NPDES / Pretreatment Enforcement

39. In states authorized to implement their own NPDES programs and/or pretreatment programs, EPA retains authority, concurrent with authorized state NPDES and/or pretreatment programs, to enforce state-issued permits. 33 U.S.C. §§ 1319 and 1342(i).

40. EPA may issue administrative orders requiring compliance with the Act whenever EPA finds that a person is in violation of a NPDES permit or any condition or limitation implementing various sections of the Act, including sections 307 and 308. 33 U.S.C. § 1319(a).

41. EPA may commence a civil action for appropriate relief whenever EPA finds that a person is in violation of a NPDES permit, or any condition or limitation implementing various sections of the Act, including sections 307 and 308. 33 U.S.C. § 1319(b).

42. Any person who violates the Act by, among other things, violating any condition or limitation implementing section 307 of the Act, any permit condition or limitation in a NPDES permit, or any requirement imposed in a pretreatment program approved under section 1342(a)(3) or 1342(b)(8) of the Act, is subject to a civil penalty not to exceed $25,000 per day for each violation. 33 U.S.C. § 1319(d). As provided in 40 C.F.R. part 19, the civil penalty amount has been increased to a maximum of $27,500 per day for each violation occurring after January 30, 1997 through March 15, 2004; $32,500 per day for each violation occurring after March 15, 2004 through January 12, 2009; and $37,500 per day for each violation occurring after January 12, 2009. 74 Fed. Reg. 626 (January 7, 2009).

GENERAL ALLEGATIONS

The City's MPDES Permit & Pretreatment Program

43. The City has a NPDES Permit (the "City's MPDES Permit"),[1] numbered MT-0021920.

44. The City's MPDES Permit was issued by the Montana Department of Environmental Quality ("MDEQ"), which has primary responsibility for administering the NPDES program in Montana pursuant to section 402 of the Act. 33 U.S.C. § 1342; 39 Fed. Reg. 26061 (July 16, 1974).

45. The City's MPDES Permit was issued effective February 1, 2000. Although it was originally due to expire on December 31, 2004, it was in effect until October 31, 2009, having been administratively extended until a replacement permit with the same number was issued effective November 1, 2009. The Permit was later modified effective December 1, 2010. For simplicity's sake, citations to the City's MPDES Permit are to the version in effect from February 1, 2000 through October 31, 2009. While the permit has since been reissued and then modified, there have been no substantive changes to the provisions of the permit at issue in this case.

[1] The City's NPDES Permit is referred to as a MPDES permit, or Montana Pollutant Discharge Elimination permit, because it was issued by the Montana Department of Environmental Quality.

46. The City's MPDES Permit allows the City to discharge pollutants to the Missouri River, subject to certain terms and conditions.

47. The Missouri River is a "navigable water" and a "water of the United States" under 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2, respectively.

48. The only point from which the City's MPDES Permit authorizes the City to discharge pollutants to the Missouri River, or to any other waterbody, is at a location designated in the City's MPDES Permit as Outfall No. 003. (City's MPDES Permit, Part I.B.)

49. The City's MPDES Permit requires effluent discharged through Outfall No. 003 to meet certain specified effluent limitations. (City's MPDES Permit, Part I.C.)

50. The City's MPDES Permit requires the City, at all times, to properly operate and maintain all facilities and treatment systems. (City's MPDES Permit, Part III.E.)

51. The City's MPDES Permit requires the City to operate a pretreatment program to control discharges by industrial users to the City's POTW. (City's MPDES Permit, Part III.I.)

52. Unlike the NPDES program, the State of Montana does not have authority for administering the pretreatment program. Therefore, EPA is the "approval authority" as defined in 40 C.F.R. § 403.3(c) under the

pretreatment program in Montana. EPA approved the City's pretreatment program in 1985, pursuant to 40 C.F.R. § 403.11 and section 402 of the Act, 33 U.S.C. § 1342.

53. The City's MPDES Permit requires the City to investigate instances of non-compliance with pretreatment standards. (City's MPDES Permit, Part III.I.1.d.)

54. The City's MPDES Permit requires the City to enforce all applicable pretreatment standards and requirements and to obtain remedies for noncompliance by industrial users. (City's MPDES Permit, Part III.I.1.e.)

55. The City's MPDES Permit requires the City to control discharges by significant industrial users through permits, orders, or similar means, with the control mechanisms to include various conditions, including a statement of duration (of no more than five years), a statement of non-transferability (without prior notification and provision of the control mechanisms to the new owner or operator), effluent limits based on applicable pretreatment standards, requirements for self-monitoring, sampling, and reporting, and a statement of penalties for violations of pretreatment standards and requirements. (City's MPDES Permit, Part III.I.1.f.)

56. The City's MPDES Permit requires the City to develop, implement, and maintain an enforcement response plan ("ERP") as required by 40 C.F.R. § 403.8(f)(5). (City's MPDES Permit, Part III.I.i.)

57. The City developed an ERP (the "City's ERP"), which is dated June 30, 2001 and has been approved by EPA.

58. For violations by industrial users, the City's ERP requires the City to choose an appropriate enforcement action, among one of four levels of increasing severity.

59. According to the City's ERP, Level 1 violations are minor violations requiring informal responses.

60. According to the City's ERP, Level 2 violations are relatively minor violations that need to be formally acknowledged by the industrial user. For a Level 2 violation, the City's ERP requires the City to issue a Letter of Violation ("LOV") explaining the violation and possible penalties and requiring a response within 30 days describing the actions that the industrial user will take to correct the violation or prevent recurrence.

61. According to the City's ERP, Level 3 violations include those that are not expected to recur and do not require emergency action. For a Level 3 violation, the City is required to issue a Notice of Violation ("NOV") to the

violator and issue an order with a compliance schedule for correcting the violation.

62. According to the City's ERP, Level 4 violations include gross violations of the General Pretreatment Regulations, as well as violations that require immediate response by the City. For violations that cause immediate danger to the City's POTW, the ERP requires the City to suspend service to the violating industrial user and to schedule a show cause hearing on why sewer service should not be terminated.

63. The City's MPDES Permit requires the City to prohibit the introduction of pollutants into the City's POTW if those pollutants will cause corrosive or structural damage to the City's POTW, but in no case to allow discharges with a pH lower than 5.0, with an exception no relevant here. (City's MPDES Permit, Part III.I.5.b.)

64. The City's MPDES Permit requires the City to prohibit the introduction of pollutants into the City's POTW if those pollutants would result in the presence of toxic gases, vapors, or fumes within the POTW in quantities that may cause acute worker health and safety problems. (City's MPDES Permit, Part III.I.5.g.)

65. The City's MPDES Permit requires the City to prohibit the introduction of solid or viscous pollutants into the City's POTW in amounts

that would cause obstruction to the flow in the POTW or otherwise interfere with the operation of the POTW. (City's MPDES Permit, Part III.I.5.c.)

66. The City's MPDES Permit requires the City to take all reasonable steps to minimize or prevent any discharge in violation of the City's MPDES Permit where that discharge has a reasonable likelihood of adversely affecting human health or the environment. (City's MPDES Permit, Part III.D.)

67. The City's MPDES Permit requires the City to retain records of all monitoring information for at least three years from the date of each sample or measurement. (City's MPDES Permit, Part II.H.)

Layout of Sewer System

68. The Malting Plant discharges pollutants to the City's POTW. From the Malting Plant, the discharge goes to a City-owned lift station known as the Ag Park lift station. The Ag Park lift station has historically received and currently receives wastewater solely from the Malting Plant. The lift station pumps the Malting Plant's wastewater into a City-owned force main. The force main is approximately 7,690 feet long and leads to a gravity sewer at Manhole 4049, which is located at the intersection of 32nd Avenue NE and 19th Street NE. The gravity sewer flows for approximately 10,000 feet to the City's WWTP.

69. Until approximately April 2012, the only wastewater in the first 5,000 feet or so of the gravity sewer was from the Malting Plant. Roughly 5,000 feet downstream, Guy Tobacco Construction Company and the Town of Black Eagle discharge domestic wastewater to the gravity sewer. Guy Tobacco also has the capacity to discharge wastewater from sump pumps in its garage. The Montana Refining Company ("MRC") discharges wastewater to the gravity sewer just before the sewer enters the WWTP. Before approximately April 2012, Malteurop, Guy Tobacco, and MRC were the only industrial users discharging to the gravity sewer.

70. In approximately April 2012, Shumaker Trucking and Excavating Company connected to the gravity sewer roughly 50 feet downstream from Manhole 4049. Shumaker discharges wastewater from a wash rack used to wash construction trucks.

71. In approximately April 2013, a dog washing business called April's Plush Puppies Grooming connected to the gravity sewer between Manholes 4031 and 4030 near 1100 Smelter Avenue, NE in Black Eagle. April's Grooming discharges domestic sewage and dog wash water.

72. Today, Malteurop, Guy Tobacco, Shumaker, April's Grooming, and MRC are the only industrial users discharging to the gravity sewer.

Malting Plant Begins Discharging / City Discovers Hydrogen Sulfide

73. In 2005, the City issued a Permit to Discharge Industrial Wastewater ("IU Permit") to International Malting Company ("IMC"), which then owned and/or operated the Malting Plant. The IU Permit allows the Malting Plant to discharge to the City's POTW.

74. In September 2005, the Malting Plant began discharging to the City's POTW, at first discharging intermittently. That same month, City employees discovered hydrogen sulfide ("H_2S") gas in concentrations of approximately 32 and 100 parts per million ("ppm") along the sewer line into which the Malting Plant and MRC discharge.

75. On September 28, 2005, the City monitored the air in most of the manholes between the Ag Park Lift Station and the City's WWTP. The City found H_2S concentrations of at least 100 ppm at 31 of 33 locations that were tested. The City's sewer monitoring data indicated that hydrogen sulfide levels were consistently above 100 ppm and were on occasion above 500 ppm.

76. Hydrogen sulfide is a toxic gas.

77. Hydrogen sulfide can cause death, especially in confined workspaces.

78. When hydrogen sulfide is above 10 ppm, measured as an 8-hour time-weighted average, persons entering sewers should be equipped with

monitoring equipment that sounds an audible alarm, according to an Occupational Health and Safety Administration ("OSHA") regulation. 29 C.F.R. § 1910.146, Appendix E, part (2).

79. According to an OSHA regulation, no employee is to be exposed to hydrogen sulfide over 20 ppm at any time during an 8-hour shift, except for up to a single 10-minute period during which the exposure can be up to 50 ppm, provided that no other measurable exposure occurs. 29 C.F.R. § 1910.1000(b)(2) and Table Z-2.

80. The National Institute for Occupational Safety and Health ("NIOSH") recommends that no employee be exposed to hydrogen sulfide at a concentration greater than 15 milligrams per cubic meter, which is approximately 10 ppm, for more than 10 minutes in any 10-hour work shift in a 40-hour work week. NIOSH Publication No. 77-158, p. 2.

81. NIOSH has established 100 ppm as the "immediately dangerous to life or health," or "IDLH," level for hydrogen sulfide. *See* http://www.cdc.gov/niosh/idlh/intridl4.html, last visited September 24, 2013.

82. The National Advisory Committee for Acute Exposure Guideline Levels ("NAC/AEGL") for Hazardous Substances has found that with 8-hour exposures to H_2S levels of 17 ppm, the general population, including susceptible individuals, could experience irreversible or other serious, long-

lasting adverse health effects, or an impaired ability to escape. It refers to this as a "disabling" level. 65 Fed. Reg. 14186, 14194 (March 15, 2000).

83. The American Conference of Governmental Industrial Hygienists ("ACGIH") has established a Threshold Limit Value ("TLV") for H_2S of 10 ppm.

EPA's First Order to City

84. On November 22, 2005, EPA issued an administrative compliance order, Docket No. CWA-08-2006-0002 (the "First City Order"), to the City under the authority of sections 308(a) and 309(a) of the Act.

85. The First City Order noted that the City had determined that MRC had violated 40 C.F.R. § 403.5(b)(7), which prohibits the discharge of any pollutant that results in the presence of toxic gases in concentrations that may cause acute worker health and safety problems. The First City Order alleged that these violations had warranted a Level 4 response under the City's ERP but that the City had issued only a Level 3 notice of violation. The First City Order alleged that this constituted a failure by the City to enforce its pretreatment program properly, in violation of the City's ERP, 40 C.F.R. § 403.8(f)(5), and Part III, sections I.1.e and I.1.i of the City's MPDES Permit.

86. The First City Order also alleged that the City had failed to include all required elements in the industrial user permit that the City had issued to MRC and that this failure violated 40 C.F.R. § 403.8(f)(1) and Part III, section I.1.f of the City's MPDES Permit.

87. The First City Order required the City, among other things, to take all action necessary to enforce its pretreatment program properly; to sample three times a week for hydrogen sulfide at the WWTP headworks and at seven specified manholes between the Malting Plant and the WWTP; to notify EPA and MRC immediately when hydrogen sulfide concentrations in the sewer exceeded 10 ppm; to provide EPA with quarterly summaries of industrial users in violation of the City's pretreatment program and the City's enforcement responses; to report to EPA by December 30, 2005 concerning the actions the City had taken and/or proposed to take to prevent recurrence of the pretreatment violations cited in the First City Order; and to amend its industrial user permits to include the standard conditions required by 40 C.F.R. § 403.8(f)(1)(iii) and the City's MPDES Permit.

88. On February 10, 2006, in response to a request from the City, EPA amended the First City Order to require sampling the WWTP headworks and only four manholes and to allow the City to provide certified sampling results monthly rather than weekly.

89. On November 22, 2005, EPA issued an administrative order to MRC under the authority of sections 308(a) and 309(a) of the Act, directing MRC to cease any discharge causing an acute danger to human health and worker health and safety. Subsequent monitoring data from MRC indicated that MRC changed its processes and reduced the hydrogen sulfide gas emitting from its wastewater prior to discharge.

Malting Plant Reaches Full Operation

90. By approximately November 2005, the Malting Plant was consistently discharging to the City's sewer. At that time, the Malting Plant was owned and operated by IMC.

91. The discharge of wastewater from the Malting Plant has resulted and continues to result in the presence of hydrogen sulfide gas in the City's sewer.

92. The process water used by the Malting Plant contains sulfates. Sulfates are within a class of minerals that include the sulfate ion SO_4^{2-}.

93. In addition to sulfates, wastewater from the Malting Plant contains organic content, as a result of the operations at the plant such as soaking and washing of barley. This organic content raises the wastewater's Biochemical Oxygen Demand ("BOD"), which is a measure of how quickly oxygen is consumed.

94. Both sulfates and BOD are "pollutants" under the Act.

95. When the Malting Plant's wastewater enters the force main from the Ag Park lift station, the combination of a lack of air headspace in the force main and the high BOD in the wastewater quickly results in anaerobic conditions. Under anaerobic conditions, sulfate-reducing bacteria break down the organic material in the wastewater and convert sulfate to hydrogen sulfide.

96. When wastewater from the Malting Plant enters the gravity section of the sewer, turbulence and aeration can cause the hydrogen sulfide to diffuse into the headspace above the wastewater. Hydrogen sulfide can also transfer directly from the sewer's slime layer to the air as the sulfate-reducing bacteria convert sulfate and organic material in the Malting Plant's wastewater.

97. The greater the BOD level in the Malting Plant's effluent, the more likely the effluent is to result in hydrogen sulfide in the City's sewer.

EPA's Second Order to City

98. On March 29, 2006, EPA issued a second administrative compliance order, Docket No. CWA-08-2006-0022 (the "Second City Order"), to the City under the authority of sections 308(a) and 309(a) of the Act.

99. The Second City Order did not rescind the First City Order.

100. The Second City Order asserted that the City's monitoring data indicated a second, upstream source of hydrogen sulfide in the City's sewer. It asserted that the City had violated the City's MPDES Permit and 40 C.F.R. part 403 by failing to investigate the source of hydrogen sulfide in the City's sewer and by failing to determine industrial users' compliance with pretreatment regulations.

101. The Second City Order directed the City, among other things, to investigate the cause of hydrogen sulfide in the City's sewer system and to implement its pretreatment program properly. It required the City to submit a plan to EPA for determining the cause of hydrogen sulfide in the sewer. The plan was to have been executed within 14 days, and it was to have included six minimum elements specified in the Second City Order. The City was directed to report the plan's results to EPA within 14 days of the plan's completion.

102. The Second City Order required the City to monitor three times per week inside three manholes. These were the three manholes that the February 2006 amendment had removed from the First City Order. Thus, taken together, the First and Second City Orders required monitoring at the seven manholes originally listed in the First City Order.

103. On August 27, 2007, EPA amended the two City Orders, requiring the City to monitor for hydrogen sulfide gas every other day inside and outside the seven manholes that the First and Second City Orders had required the City to monitor, to report results to EPA by email weekly, and to provide EPA with monthly certifications of the sample results.

104. On August 27, 2007, EPA notified the City that the City was in violation of both City Orders. The violations cited in EPA's notification included failing to take all actions necessary to enforce the City's pretreatment program properly; failing to submit a report required by the First City Order describing the actions taken to prevent pretreatment violations cited in that order from recurring; failing to notify EPA and all industrial users immediately if hydrogen sulfide concentrations in the sewer exceeded 10 ppm; and failing to submit a timely plan and report as required by the Second City Order concerning actions proposed and/or taken to determine the cause of hydrogen sulfide in the sewer line.

EPA's Order to Malting Plant

105. On September 7, 2007, EPA issued an administrative compliance order, Docket No. CWA-08-2007-0018 (the "Malting Plant Order"), to IMC. The Malting Plant Order alleged that between November 2005 and August 2007 discharges from the Malting Plant had resulted in levels of hydrogen

sulfide in the City's sewer system in excess of 100 ppm on at least 400 occasions (with levels greater than 10 ppm occurring even more frequently), and that IMC had violated 40 C.F.R. § 403.5(b)(7).

106. The Malting Plant Order directed IMC, among other things, to sample its effluent daily for BOD, TSS, and dissolved sulfide; to monitor for hydrogen sulfide gas; to report results monthly to EPA; to monitor continuously for the conductivity of pretreatment chemicals added to its effluent; to take immediate actions to reduce the concentration of hydrogen sulfide in the sewer upon receiving any notification from the City that hydrogen sulfide in the sewer exceeded 10 ppm; and to submit a plan to EPA describing actions IMC would take to ensure that hydrogen sulfide in the sewer system remained below 10 ppm.

107. On or about September 7, 2007, IMC changed its name to ADM Malting, LLC.

108. On September 21, 2007, counsel for Archer Daniels Midland Company ("ADM") replied to the Malting Plant Order, stating that IMC was wholly owned and operated by ADM and requesting that EPA withdraw or make substantive revisions to the Malting Plant Order.

109. On March 11, 2008, EPA amended the Malting Plant Order by issuing an Amended Order for Compliance, Docket No. CWA-08-2007-0018

(the "Amended Malting Plant Order"). The Amended Malting Plant Order named ADM Malting, LLC and ADM as respondents.

110. The Amended Malting Plant Order changed the BOD and TSS sampling requirement from daily to three times per week, eliminated the requirement to monitor continuously for the conductivity of pretreatment chemicals added to the effluent, eliminated the requirement to monitor for hydrogen sulfide gas at the point of discharge, and changed the requirement to monitor dissolved sulfide from daily to weekly.

111. In a March 11, 2008, letter accompanying the Amended Malting Plant Order, EPA stated that ADM and ADM Malting, LLC had not complied with various requirements of the original Malting Plant Order. EPA's letter cited the following violations of the Malting Plant Order: failing to meet the monitoring and reporting requirements; failing to provide a description of the Malting Plant's pretreatment methods, design plans, treatment costs, and treatment efficiencies; failing to take immediate action (upon receiving information from the City indicating that hydrogen sulfide concentrations in the sewer exceeded 10 ppm) to reduce the hydrogen sulfide levels in the sewer and to email the City and EPA within 24 hours with details on actions taken; failing to submit a plan to EPA for ensuring that hydrogen sulfide in

the sewer system would remain below 10 ppm; and failing to submit an itemized list of all costs incurred to implement the plan.

112. On March 24, 2008, counsel for ADM and ADM Malting, LLC notified EPA that ADM Malting, LLC would begin monitoring the flow and pH of its effluent and the dosing rate of its pretreatment chemical. At that time, it provided EPA with a description of the Malting Plant's pretreatment methods, design plans, treatment costs, and treatment efficiencies.

113. The Amended Malting Plant Order requires Malteurop to sample for BOD and TSS at least three times per week. Malteurop failed to sample at least three times for these pollutants during the weeks of April 21-27, 2008; May 5-11, 2008; May 19-25, 2008; August 25-31, 2008; October 6-12, 2008; December 22-28, 2008; December 29, 2008-January 4, 2009; January 12-18, 2009; March 2-8, 2009; March 16-22, 2009; August 31-September 6, 2009; November 23-29, 2009; December 7-13, 2009; December 21-27, 2009; May 24-30, 2010; November 22-28, 2010; December 27, 2010-January 2, 2011; August 29-September 4, 2011; November 21-27, 2011; November 19-25, 2012; July 1-7, 2013.

City's Response to Hydrogen Sulfide in its Sewer

114. The City has taken the following enforcement actions in response to high levels of hydrogen sulfide in manholes downstream from the Malting Plant:

a. On April 11, 2006, the City issued a Level 4 Notice of Violation to IMC, which was followed by a show cause hearing in which a representative of IMC stated that IMC had ordered aerators for the Malting Plant, which were scheduled to arrive during the week of May 1, 2006

b. On May 2, 2006, the City issued a compliance order to IMC, directing IMC to install aerators by May 15, 2006, and, if levels of hydrogen sulfide attributable to IMC were not consistently at or below 10 ppm within two weeks of installing the aerators, to hire an engineering firm to study the problem, prepare a list of options, and submit a plan to the City by July 1, 2006. The compliance order stated that the City would develop a compliance schedule in response to the plan.

c. On April 1, 2007, the City had published in the local newspaper a notice that IMC was in significant

noncompliance with pretreatment requirements by discharging pollutants resulting in hydrogen sulfide in the POTW.

115. As recently as August 26 2013, the City's sewer had levels of hydrogen sulfide of 57 ppm, well in excess of quantities that may cause acute worker health and safety problems.

116. Despite the continuing presence of hydrogen sulfide in the City's POTW at levels that may cause acute worker health and safety problems, the City informed EPA in 2008 that it intends to take no further action to compel the Malting Plant to control the discharges that cause or contribute to hydrogen sulfide formation in the City's POTW.

Malting Plant's IU Permit

117. The IU Permit establishes effluent limits for oil and grease, pH, BOD, and TSS.

118. The Malting Plant exceeded the effluent limit in the IU Permit for BOD (then 2,500 pounds per day) on approximately 150 days from March 2006 through February 2008.

119. The Malting Plant exceeded the effluent limit in the IU Permit for TSS (then 800 pounds per day) on approximately 130 days from March 2006 through February 2008.

120. The Malting Plant's effluent had a pH level less than the required minimum of 5.5 in the IU Permit on at least two occasions in April 2006.

121. The IU Permit establishes a limit on flow for the Malting Plant's discharge.

122. Malteurop exceeded the limit on flow in the IU Permit (then 1.2 million gallons per day) at least one day in every month from March 2006 through February 2008, with the possible exception of May 2006.

123. The IU Permit specifies monitoring and reporting requirements for oil and grease, BOD, TSS, pH, and flow.

124. Malteurop repeatedly failed to report to the City effluent data for BOD, TSS, pH, and/or oil and grease with the frequency required by the IU Permit, including at least 38 times during the period June 2006 through February 2007.

125. The IU Permit requires Malteurop to monitor and report wastewater flow for each day it samples.

126. From March 2006 through August 2007, daily flow was not reported to the City for each day of sampling.

127. As originally issued, the IU Permit required Malteurop to collect six grab samples per day, one day per week, for pH and oil and grease.

128. At least as of April 2007, Malteurop was collecting only two grab samples per day, one day per week, for pH and oil and grease.

129. The IU Permit incorporates the requirements of Title 13 of the City Code, including the general and specific prohibitions that apply to each industrial user introducing pollutants into a POTW.

130. Section 13.14.040 of the City Code, in effect until August 2010, prohibited the discharge into the City's sewer of (a) any water or wastes containing toxic or poisonous solids, liquids, or gases, in sufficient quantity, either singly or by interaction with other wastes, to constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters and (b) any water or wastes which, either singly or by interaction, may result in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute worker health and safety problems.

131. Section 13.12.030 (effective August 3, 2010) of the City Code prohibits the discharge into the City's sewer of (a) any pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute health and safety hazards for employees of the City employed at the POTW.

Part 136 Sampling Requirements

132. Section 13.12.120 of the City Code requires that all analyses shall be performed in accordance with the procedures in 40 C.F.R. part 136.

133. At least during April 2007, Malteurop's automatic composite sampler was not refrigerated and did not contain a thermometer. Therefore, Malteurop did not maintain or demonstrate preservation of composite samples at 6 degrees Celsius, as required by 40 C.F.R. § 136.3, Table II, lines 9, 14, and 55 and note 18.

134. Through at least April 2007, Malteurop was using plastic containers for collecting oil and grease samples, although glass containers are required for this purpose pursuant to 40 C.F.R. part 136, Table II, line 41.

135. At least during April 2007, Malteurop was unable to demonstrate that its pH samples were analyzed within the required 15-minute period after sample collection, as required by 40 C.F.R. part 136, Table II, line 28.

City's Response to Malting Plant's Violations of IU Permit

136. The City has not taken any enforcement action in response to Malteurop's repeated violations of the monitoring and reporting requirements of the IU Permit.

137. The City has not taken any enforcement action in response to Malteurop's repeated violations of the analytical requirements in 40 C.F.R.

part 136 or Section 13.12.120 (effective before August 3, 2010) and Sections 13.12.070 and 13.12.080 (effective after August 3, 2010) of the City Code.

138. The City did not take any enforcement action until November 2011 in response to Malteurop's repeated violations of the effluent limitations for BOD, TSS, and flow in the IU Permit.

139. The Malting Plant's 2006 and 2007 BOD violations cited above constitute Significant Noncompliance as defined in the City Code and in 40 C.F.R. § 403.8.

IU Permit Amendment

140. On March 18, 2008, the City amended the IU Permit.

141. Before the March 2008 amendment, the effluent limit in the IU Permit for BOD was 2,500 pounds per day ("lbs/day"). The amendment changed this limit to 8,500 lbs/day as a monthly average and 1,000 milligrams per liter ("mg/l") as a maximum concentration.

142. Before the March 2008 amendment, the effluent limit in the IU Permit for TSS was 800 lbs/day. The amendment changed this limit to 1,800 lbs/day as a monthly average and 340 mg/l as a maximum concentration.

143. Before the March 2008 amendment, the limit in the IU Permit on flow was 1.2 mgd. The amendment changed this limit to 2.0 mgd maximum daily flow and 1.5 mgd average monthly flow.

144. The City did not seek or obtain EPA approval for any changes to the effluent limits or requirements in the IU Permit.

145. The City did not notify EPA of any of the changes it made to the IU Permit in March 2008.

146. The relaxed BOD and TSS effluent limits in the amended IU Permit increase the chances of further elevated levels of hydrogen sulfide in the City's POTW.

Post-Amendment IU Permit Violations

147. Malteurop exceeded the BOD effluent limit (8,500 lbs/day as a monthly average) in the amended IU Permit on each day during the months of March 2008 and October 2008.

148. Malteurop exceeded the limit in the amended IU Permit for BOD concentration (i.e. 1,000 mg/l) on at least 11 days from April 2008 through March 2013.

149. Malteurop exceeded the limit on flow in the amended IU Permit (i.e. 1.5 mgd as a monthly average) on each day during the month of January 2009.

150. During the week of March 17-23, 2008, only one sample of BOD and one sample of TSS were taken, although the IU Permit requires two samples per week of each of these pollutants.

City's Response to Violations by Other Industrial Users

151. The City has not taken any enforcement action in response to the following alleged violations by industrial users that discharge to the City's POTW:

a. MRC's dissolved air flotation units were in poor operating condition in at least 2007, in violation of Section 13.12.110 of the City Code.

b. MRC exceeded effluent limits for BOD and TSS established by section 13.14.040.N of the City Code on 58 different occasions for BOD and ten occasions for TSS, from December 2005 through January 2009.

c. In at least 2007, MRC collected phenol and oil and grease samples in plastic containers, not glass, in violation of 40 C.F.R. § 403.12(b)(v) and 40 C.F.R. part 136.3, Table II.

d. In at least 2007, the thermometer in the refrigerator in which MRC was preserving compliance samples indicated that the temperature was ambient temperature, not ≤ 6 degrees Centigrade, in violation of 40 C.F.R. § 403.12(b)(v) and 40 C.F.R. part 136.3, Table II.

e. In at least 2007, MRC was not recording the times when its pH samples were collected and measured, thus failing to demonstrate the pH samples were analyzed within 15 minutes of being taken, in violation of 40 C.F.R. § 403.12(b)(v) and 40 C.F.R. part 136.3, Table II.

f. MRC violated the pH limits in its industrial user permit five times, including a violation of the monthly average pH limit on June 1, 2005, and violations of the weekly maximum pH limit during the weeks beginning June 1, 2005, June 8, 2005, August 22, 2005, and December 22, 2005.

g. MRC exceeded the oil and grease effluent limitation in its industrial user permit on May 2, 2007.

h. MRC exceeded the flow limit in its industrial user permit on October 24, 2007.

i. MRC exceeded the ammonia limit in its industrial user permit on November 20 and 27, 2006, and December 4, 11, and 18, 2006.

152. The City has failed to take enforcement actions against food establishments that have discharged grease or other viscous matter to the

POTW or against at least one other industrial user that has discharged solid materials, such as towels, clothing, rubber gloves, food wrappers, and pill bottles, to the POTW.

Other Failures to Implement Pretreatment Program

153. The City has issued permits to industrial users without including all provisions listed in 40 C.F.R. § 403.8(f)(1)(iii)(B)*(1)-(6)*.

154. The City has failed to develop and implement procedures for identifying and locating all possible industrial users that might be subject to its pretreatment program and for identifying the character and volume of pollutants contributed by industrial users, as required by 40 C.F.R. § 403.8(f)(2)(i) and (ii).

155. The City has failed to sample and analyze effluent from industrial users and to conduct surveillance of industrial users, in order to determine compliance independently of information supplied by industrial users, as required by 40 C.F.R. § 403.8(f)(2)(v).

156. The City has failed to ensure, as required by 40 C.F.R. § 403.8(f)(2)(iv), that categorical dischargers include in their DMRs the certification statement set forth in 40 C.F.R. § 403.6(a)(2)(ii) and required by 40 C.F.R. § 403.12 to be included in periodic reports from categorical dischargers.

157. The City has failed to maintain DMRs for three years, as required by 40 C.F.R. § 403.12(o).

Sanitary Sewer Overflows

158. Since January 12, 2005, there have been at least 33 sanitary sewer overflows (SSOs) from the City's POTW. At least 29 of these SSOs resulted in raw sewage backing up into residences or other buildings. At least four SSOs resulted in raw sewage flowing in city streets.

159. According to Sewer Incident Reports prepared by the City, the majority of documented SSOs were caused either by roots, grease build-up, or blockages caused by foreign objects like towels and rags.

160. The City's failure to take enforcement action against industrial users that discharge solids or viscous materials to the POTW is a factor that has contributed to SSOs.

Unpermitted Discharge of Raw Sewage

161. On September 11, 2009, the City discharged an estimated 1,500 gallons of raw sewage to the Missouri River from a City lift station near Bay Drive and 2nd Avenue SW.

162. This raw sewage was a pollutant discharged from a point source to waters of the United States.

163. The discharge of this raw sewage was not authorized by any Clean Water Act permit.

Acquisition by Malteurop

164. In or about 2008, a company known as Malteurop Holding Inc. acquired ADM Malting, LLC as a subsidiary, with the surviving entity being renamed Malteurop North America, Inc.

165. On or about December 10, 2008, the IU Permit was reissued to reflect the new ownership of the Malting Plant, with no substantive changes to its provisions. The new permittee is Malteurop North America, Inc.

166. Malteurop is a successor to IMC and ADM Malting, LLC.

FIRST CLAIM FOR RELIEF
(City's Failure to Implement Pretreatment Program)

167. The allegations of the foregoing paragraphs are incorporated herein by reference.

168. The City has failed to take appropriate enforcement actions against industrial users that have violated pretreatment standards and requirements, in violation of Part III, Sections I.1.e and I.1.i, of the City's MPDES Permit, paragraph 27 of the First City Order, and paragraph 22 of the Second City Order.

169. The City has failed to include all required elements in permits that it has issued to industrial users, in violation of Part III, section I.1.f of the City's MPDES Permit, 40 C.F.R. § 403.8(f)(1)(iii)(B)*(1-6)*, and paragraph 32 of the First City Order.

170. The City has failed to implement procedures to ensure that industrial users comply with their permits and 40 C.F.R. part 403, such as identifying industrial users subject to the pretreatment program and the character and volume of their pollutants, receiving and analyzing discharge monitoring reports, and randomly sampling and analyzing industrial users' effluent, in violation of 40 C.F.R. § 403.8(f)(2).

171. The City has failed to ensure that all DMRs from categorical dischargers have the certification statement found at 40 C.F.R. § 403.6(a)(2)(ii), in violation of 40 C.F.R. § 403.12(l).

172. The City has failed to maintain DMRs for three years, in violation of 40 C.F.R. § 403.12(o)(3).

173. The City has failed to sample and analyze effluent from industrial users and to conduct surveillance of industrial users, in order to determine compliance independently of information supplied by industrial users, in violation of 40 C.F.R. § 403.8(f)(2)(v).

174. Unless enjoined, the City's violations will continue.

175. Pursuant to 33 U.S.C. § 1319(d), 40 C.F.R. part 19, and § 75-5-631 of the MCA, the City is liable for civil penalties not to exceed the statutory maximum for each violation.

SECOND CLAIM FOR RELIEF
(City's Failure to Provide Reports and Notifications to EPA)

176. The allegations of the foregoing paragraphs are incorporated herein by reference.

177. The City has failed to notify EPA immediately when hydrogen sulfide concentrations in the sewer exceed 10 ppm, in violation of paragraph 30 of the First City Order and paragraph 23 of the Second City Order.

178. The City has failed to provide EPA quarterly summaries of the industrial users in violation of its pretreatment program and the enforcement actions taken by the City, in violation of paragraph 31 of the First City Order.

179. The City failed to submit a report to EPA by December 30, 2005, describing the actions the City proposed and/or had taken to prevent recurrence of the pretreatment violations cited in the First City Order, in violation of paragraph 29 of the First City Order.

180. The City did not submit a plan to EPA within 10 days of receiving the Second City Order concerning the actions the City proposed to take and

had taken to determine the cause of hydrogen sulfide in the sewer, in violation of paragraphs 25 and 26 of the Second City Order. The City also failed to submit a follow-up report to EPA within 14 days of completing this plan, in violation of paragraphs 25 and 26 of the Second City Order.

181. Pursuant to 33 U.S.C. § 1319(d) and 40 C.F.R. part 19, the City is liable for civil penalties not to exceed the statutory maximum for each violation.

THIRD CLAIM FOR RELIEF
(City's Unpermitted Discharge of Raw Sewage)

182. The allegations of the foregoing paragraphs are incorporated herein by reference.

183. On September 11, 2009, the City discharged pollutants from a point source into navigable waters without authorization by any permit issued under the Act, in violation of section 301(a) of the Act, 33 U.S.C. § 1311(a), § 75-5-605 of the MCA, and in violation of Parts I.B and III.E of the City's MPDES Permit.

184. Pursuant to 33 U.S.C. § 1319(d), 40 C.F.R. part 19, and § 75-5-631 of the MCA, the City is liable for civil penalties not to exceed the statutory maximum for each violation.

FOURTH CLAIM FOR RELIEF
(Other Violations of the City's MPDES Permit)

185. The City has failed to properly operate and maintain its POTW, resulting in several dozen sanitary sewer overflows, as required by Part III.E of the City's MPDES Permit.

186. The City has failed to provide MDEQ with reports of the City's sanitary sewer overflows, as required by Part II.I and/or Part II.J of the City's MPDES Permit.

187. The City has failed to take reasonable steps to minimize or prevent the unpermitted discharge of sewage to the Missouri River, as required by Part III.D of the City's MPDES Permit.

188. The City has failed to take reasonable steps to prevent sanitary sewer overflows, as required by Part III.D of the City's MPDES Permit.

189. The City has failed to retain monitoring data for three years, as required by Part II.H of the City's MPDES Permit.

190. Unless enjoined, the City's violations will continue.

191. Pursuant to 33 U.S.C. § 1319(d), 40 C.F.R. part 19, and § 75-5-631 of the MCA, the City is liable for civil penalties not to exceed the statutory maximum for each violation.

FIFTH CLAIM FOR RELIEF
(Malteurop's Causing Toxic Gas in POTW)

192. The allegations of the foregoing paragraphs are incorporated herein by reference.

193. Malteurop has discharged pollutants to the City's POTW that have resulted in the presence of toxic gases, vapors, or fumes in the City's POTW in a quantity that may cause acute worker health and safety problems, in violation of 40 C.F.R. § 403.5(b)(7), section 307(d) of the Act, 33 U.S.C. § 1317(d), the IU Permit, and the Malting Plant Order.

194. Unless enjoined, Malteurop's violations will continue.

195. Pursuant to 33 U.S.C. § 1319(d) and 40 C.F.R. part 19, Malteurop is liable for civil penalties not to exceed the statutory maximum for each violation.

SIXTH CLAIM FOR RELIEF
(Malteurop's Causing Corrosion in the POTW)

196. The allegations of the foregoing paragraphs are incorporated herein by reference.

197. Malteurop has discharged pollutants to the City's POTW that have caused corrosive structural damage to the POTW, in violation of 40 C.F.R. § 403.5(b)(2), section 307(d) of the Act, 33 U.S.C. § 1317(d), the IU Permit, and the Malting Plant.

198. Unless enjoined, Malteurop's violations will continue.

199. Pursuant to 33 U.S.C. § 1319(d) and 40 C.F.R. part 19, Malteurop is liable for civil penalties not to exceed the statutory maximum for each violation.

SEVENTH CLAIM FOR RELIEF
(Malteurop's Exceeding Numeric Effluent Permit Limits)

200. The allegations of the foregoing paragraphs are incorporated herein by reference.

201. Malteurop has violated the numeric effluent limits in its IU Permit and section 307(d) of the Act, 33 U.S.C. § 1317(d):

a. for BOD, on approximately 150 days from March 2006 through February 2008;

b. for BOD (mass limit), every day during the months of March 2008 and October 2008;

c. for BOD (concentration limit), on approximately 11 days from April 2008 through March 2013;

d. for TSS, on approximately 130 days from March 2006 through February 2008; and

e. for flow, at least one day in every month during the period from March 2006 through February 2008, with the possible exception of May 2006.

202. Unless enjoined, Malteurop's violations will continue.

203. Pursuant to 33 U.S.C. § 1319(d) and 40 C.F.R. part 19, Malteurop is liable for civil penalties not to exceed the statutory maximum for each violation.

EIGHTH CLAIM FOR RELIEF
(Malteurop's Failure to Follow Analytical Procedures)

204. The allegations of the foregoing paragraphs are incorporated herein by reference.

205. Malteurop has violated the requirements of 40 C.F.R. part 136 and section 308 of the Act, 33 U.S.C. § 1318, and the IU permit:

a. by failing to preserve BOD and TSS samples at ≤ 6 degrees Centigrade during sample collection;

b. by using plastic containers for oil and grease samples instead of glass containers; and

c. by failing to analyze pH samples within the 15-minute period after sample collection.

206. Unless enjoined, Malteurop's violations will continue.

207. Pursuant to 33 U.S.C. § 1319(d) and 40 C.F.R. part 19, Malteurop is liable for civil penalties not to exceed the statutory maximum for each violation.

NINTH CLAIM FOR RELIEF
(Malteurop's Failure to Submit Reports and Notifications to City and EPA)

208. The allegations of the foregoing paragraphs are incorporated herein by reference.

209. Malteurop has violated the monitoring and reporting requirements of the IU Permit and section 308 of the Act, 33 U.S.C. § 1318:

a. by failing to submit BOD, TSS, pH, and oil and grease effluent data to the City at least 38 times during the period between June 2006 through February 2007;

b. by failing to monitor and report flow for each day samples were taken; and

c. by taking insufficient grab samples for oil and grease and pH.

210. Malteurop has violated the reporting requirements in the Malting Plant Order by:

a. being six months late in monitoring its effluent continuously for flow and pH;

b. being six months late in monitoring its flow of pretreatment chemicals added to its effluent;

c. failing to monitor its effluent daily (from September 7, 2007 to March 11, 2008) and after March 11, 2008, three times per week for BOD and TSS, and weekly for dissolved sulfide;

d. being six months late in providing EPA with a description of the Malting Plant's pretreatment methods, design plans, treatment costs, and treatment efficiencies;

e. failing, upon notification from the City that hydrogen sulfide concentrations in the City's sewer exceeded 10 ppm, to take action immediately to bring H_2S levels down and, within 24 hours, to email EPA and the City with pertinent details, other than "proposing" to take action whenever being notified by the City of H_2S exceeding 100 ppm and having notified EPA that this occurred on May 21, 2007; and

f. failing to submit a plan to EPA with actions taken or to be taken to prevent further violations of 40 C.F.R. part 403.

211. Unless enjoined, Malteurop's violations will continue.

212. Pursuant to 33 U.S.C. § 1319(d) and 40 C.F.R. part 19, Malteurop is liable for civil penalties not to exceed the statutory maximum for each violation.

PRAYER FOR RELIEF

WHEREFORE, the United States respectfully requests that the Court enter judgment against Defendants as follows:

1. Pursuant to 33 U.S.C. § 1319(b), enjoin the Defendants from any and all ongoing or future violations of the Clean Water Act by ordering compliance with the Act, the Pretreatment Regulations, and the Pretreatment Standards, and further ordering the City to comply with the City's MPDES Permit and Malteurop to comply with the IU Permit;

2. Pursuant to 33 U.S.C. § 1319(d), 40 C.F.R. part 19, and § 75-5-631 of the MCA, assess civil penalties against the Defendants, as permitted by law;

3. Order the Defendants to take all steps necessary to redress or mitigate the impact of their violations;

4. Award Plaintiffs their costs and disbursements in this action; and

5. Grant Plaintiffs such other and further relief as the Court deems just and proper.

Plaintiffs hereby request that trial of the above and foregoing action be held in Great Falls, Montana, and that the case be calendared accordingly.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

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

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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_2S" 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 32nd Avenue NE and 19th 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 provide to the EPA, for approval, proposed SIU permit limits and conditions, and a supporting rationale, to cover any Indirect Discharge from any SIU that may be expected to generate hydrogen sulfide in the POTW. 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 1st 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 1st 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 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 "6th 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_2S 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 1st, May 1st, August 1st, and November 1st 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 1st 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 1st and August 1st 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 the area north of the WWTP. 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_2S pursuant to these orders shall continue until the City has installed and begun operation of the H_2S 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/6th 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):

Occurrence	Stipulated Penalty
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):

Occurrence	Stipulated Penalty
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):

Occurrence	Stipulated Penalty
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):

Occurrence	Stipulated Penalty
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):

Occurrence	Stipulated Penalty

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:

Days	Stipulated Penalty
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 x ($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:

Occurrence	Stipulated Penalty

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):

Occurrence	Stipulated Penalty
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):

Occurrence	Stipulated Penalty
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):

Days	Stipulated Penalty
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:

Days	Stipulated Penalty
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):

Hydrogen Sulfide Reading	Stipulated Penalty
> 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):

Occurrence	Stipulated Penalty
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):

Days	Stipulated Penalty
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):

Occurrence	Stipulated Penalty
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; 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: _____

MARK C. ELMER
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
999 18th Street, Suite 370
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MICHAEL W. COTTER
United States Attorney
District of Montana

Date: _____

GEORGE F. DARRAGH, JR.
Assistant United States Attorney
119 1st Avenue N.
Great Falls, MT 59401
Phone: (406) 761-7715

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: _____

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: _____

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:
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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: _____

_____

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:
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Office of Enforcement, Compliance and
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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: _____

_____

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

Date: _____

_____

KIRSTEN HUGHES BOWERS
Special Assistant Attorney General
Montana Department of Environmental Quality
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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: _____

MICHAEL WINTERS
Mayor
City of Great Falls, MT 59403

Date: _____

ALAN JOSCEYLN
Partner
Gough Shanahan Johnson & Waterman LLP
33 S. Last Chance Gulch
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alj@gsjw.com

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: _____

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

Date: _____

ELENI KOUIMELIS
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ekouimelis@winston.com

MALTEUROP/EPA TIMELINE

January 29, 2014

- Fall 2004/Spring 2005 - Sanitary Sewer System and Lift Station serving Malt Plant area was installed.
- Summer of 2005 - Numerous violations/issues with Montana Refining Co. discharge.
- **September 2005 - High levels of Hydrogen Sulfide (H2S) were detected in the City sewer where Black Eagle connects to the City System.**
- Late September 2005 - The Malt Plant began discharging waste from their first phase of construction.
- **September 20, 2005 - City and Veolia flush sewer main with 20,000 gallons of water.**
- September 28, 2005 - The City began manually monitoring for H2S 3 times per week in an attempt to determine the source.
- **October 2005 - After investigation, the City identified International Malting Co. (IMC) and Montana Refining Company (MRC) as possible sources. The City investigated and eliminated the community of Black Eagle as a source.**
- **October 3, 2005 - The City detected high concentrations of hydrogen sulfide multiple times immediately down gradient of Montana Refining Company. The COGF contacted EPA and asked for assistance in resolving the H2S problem.**
- **November 22, 2005 - The City was issued an EPA Administrative Order to address the H2S caused by Montana Refining Company.**
- Monitoring and investigation of the source of the H2S continued.
- **March of 2006, the EPA issued the City an Order for Compliance for H2S violations from the Malt Plant.**
- April 10, 2006 - The City issued a level 4 Notice of Violation to IMC – Level 4 is the highest level of response. The City determined IMC was the cause of the hydrogen sulfide contamination in the sewers. The notice also set a Show Cause hearing in which IMC was required to demonstrate why the City should continue providing sewer service to them.
- April 11, 2006 - The City and Veolia North America, (City's contractor for the WWTP), begins a 30-day testing process at the end of the force main coming from IMC. Testing involves analyzing dissolved oxygen, H2S and pH (3 times per week).
- **April 12, 2006 - The City and Veolia introduce Potassium Permanganate into IMCs discharge effluent to stop H2S from liberating. The chemical did not produce satisfactory results and the procedure was discontinued.**

- April 19, 2006 - A Show Cause Hearing was held at Public Works with IMC to determine whether or not sewer service should be terminated. IMC reported they were reviewing several options to correct the H2S problem. One of the options is to incorporate an aeration process prior to discharge of their waste stream.
- May 2, 2006 - The City issued a compliance Order to IMC requiring specific actions to correct the H2S problem.
- **May 26, 2006 - Aerators were installed at IMC (by IMC) with unsatisfactory results.**
- **July, 2006 - Bison Engineering is hired by IMC to address the H2S issue.**
- **August 15, 2006 - IMC, Veolia and the City start introduction of Hydrogen Peroxide in the sewer to control Hydrogen sulfide, per Bison Engineering recommendations.**
- **August 23, 2006 - IMC/Bison Engineering 'shock' the sewer main with high-strength chlorine solution.**
- **August 24, 2006 - IMC begins Bioxide dosing of their effluent.**
- **August 29, 2006 - Letter from the EPA requires the City to test for hydrogen sulfide in seven manholes four times a day.**
- On August 24, 2006 - The City sent a letter to EPA as required by EPA discussing the City's conclusion of the cause of the hydrogen sulfide in the sewer. **The City concluded the hydrogen sulfide problem is being caused by a combination of factors including high BOD wastewater from IMC, sulfides in the waste stream and long detention time in the force main which causes the wastewater to go anaerobic.** Hydrogen sulfide is then liberated as the wastewater exits the force main.
- **September 19, 2006 - The City entered into a contract with Brown and Caldwell to provide solutions to the H2S problem.**
- October 2, 2006 - Another letter from the EPA was received by the City. The letter requires ambient testing for H2S (nose level) or 4 feet from the ground. Strongly encourages the installation of monitors (data loggers), strongly recommends telemetry capability and audible alarms set to go off at 100ppm. Daily information on concentration of Bioxide introduced, including the daily mass of Bioxide and volume of flow in the force main.
- **July 20, 2007 - IMC is provided a copy of the final report from Brown and Caldwell which was commissioned by the City to review the ongoing H2S problem. The report provided seven alternative solutions.**
- September 7, 2007 - An Order for Compliance was issued by EPA to IMC for H2S violations.
- October 10, 2007 - IMC changed hands to Archer Daniels Midland Malting (ADM).
- April 2008 - The City Industrial Pretreatment Program Audit is conducted by EPA.

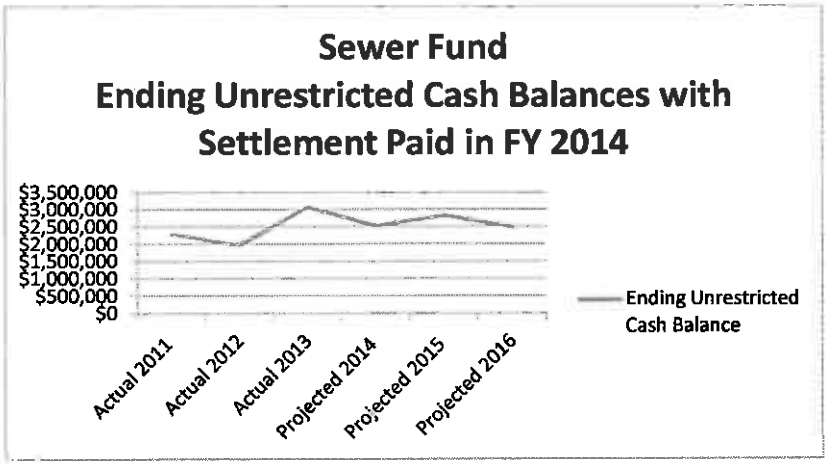
- July 30 to August 1, 2008 - The Montana Department of Environmental Quality along with the EPA conduct a Joint Sanitary Sewer Inspection of the City.
- August 1, 2008 - Malteurop acquired ADM Malting.
- **Oct, 30, 2008 - The lift station pumps serving Malteurop are set to full variable speed drives to control gallon per minute flows to prevent H2S development in the force main caused by the pumps stopping and restarting.**
- **January 16, 2009 - Super-Oxygenation system has its first run without Bioxide back-up. Initial results are cautiously promising. H2S levels went lower than what was achievable with Bioxide alone.**
- **May 2010 - Additional Manhole added from MRC discharge to allow better segregation of sampling.**
- **March 20, 2011 - Montana Refining Company discharge to the City again resulted in high levels of H2S in the City sewer system. pH was determined to be the cause of the H2S liberation in the City Sewer.**
- March 2011 - The National Enforcement Investigations Center (NEIC) working with the EPA, begins investigation of Montana Refining Company's discharge. The Investigation resulted in EPA issuing an Order for Compliance to Montana Refining Company on April 21, 2011 for H2S discharge violations.
- September 12, 2011 - USEPA conducts another Pretreatment Compliance Inspection of the City Industrial Pretreatment Program.
- December 2, 2011 - Initial proposed settlement is sent to the city by the Department of Justice (DOJ).

CONSENT DECREE REQUIREMENTS

29-Jan-14

CD section	Task Description	Start Date	End Date	Duration (days)	Comments
SIGN DECREE					
NA	City Signs Consent Decree	3/1/2014	3/1/2014	0	
NA	U.S. Signs Consent Decree	4/30/2014	4/30/2014	0	Assume 60 days after City signs.
PERMITS					
II. A. 5.	Develop and submit permit template	4/30/2014	5/10/2014	10	Completed but not formally reviewed by EPA
NA	EPA approval of template	5/10/2014	6/9/2014	30	Completed but not formally reviewed by EPA
II. A. 7.	Draft permit for Malt Plant w/template	6/9/2014	6/29/2014	20	Completed and EPA notified
II. A. 6.	Create Draft Permits for I.U.s except Malt Plant	6/9/2014	7/29/2014	50	Completed and EPA notified
II. A. 6.	Issue permits to I.U.s except Malt Plant	7/29/2014	9/2/2014	35	Completed but not formally reviewed by EPA
II. A. 10.	Notify EPA having reissued permits except Malt Plant	9/2/2014	10/2/2014	30	Completed and EPA notified
H2S MONITORING					
II. D 18	Develop and submit High H2S SOP	4/30/2014	5/10/2014	10	Completed but not formally reviewed by EPA
II. B. 13. a.	Install H2S monitoring system	4/30/2014	5/20/2014	20	Completed @MH 4049 Dec. 2013
LIMITS					
II. A. 9.	Submit Proposed SIU limits	4/30/2014	5/30/2014	30	
II. A. 3.	Develop and submit SIU checklists	4/30/2014	6/29/2014	60	Completed but not formally reviewed by EPA
II. A. 4.	Develop and submit SIU sampling protocols	4/30/2014	6/29/2014	60	Completed but not formally reviewed by EPA
II. A. 4.	Audit Veolia's sampling practices	10/27/2014	10/27/2014	0	Veolia Audit practices began September 2011
II. A. 9.	Publish intent to issue permits to I.U.s	4/30/2014	6/29/2014	60	Published 30 days for public review and comment
I&I					
II. E. 22 a.	Develop and submit workplan to assess I&I	4/30/2014	6/29/2014	60	I&I study assesment pending
II. E. 22 b.	If I&I problem determined at WWTP - submit plan and schedule.	6/29/2014	7/29/2014	30	I&I study/workplan pending
II. E. 22 d.	If I&I in sewer - develop and submit I&I control program.	6/29/2014	10/27/2014	120	I&I study/workplan pending
II. E. 22 e.	Implement I&I control program if necessary.	11/26/2014	11/26/2014	0	I&I study/workplan pending
CMOM					
II. E. 23 a.	Submit workplan for CMOM	4/30/2014	6/29/2014	60	CMOM workplan/program pending
II. E. 23 b.	Develop and submit CMOM program	10/27/2014	4/30/2015	185	CMOM workplan/program pending
SSO					
II. E. 23 c.	Submit final report on SSO elimination.	6/29/2015	6/29/2015	0	SSO final report pending I&I study and CMOM study
II. E. 23 c.	Submit schedule for implementing SSO remedial measures.	6/29/2015	6/29/2015	0	SSO Emergency Response Plan Completed
FOG/ROOTS					
II. E. 21 a.	Submit workplan to develop FOG and root control prog.	4/30/2014	6/29/2014	60	Fog/Root Plan study/development pending
II. E. 21 c.	Develop and submit a FOG and Root Growth program based on study	6/29/2014	10/27/2014	120	Fog/Root Plan study/development pending
II. E. 21 c.	Implement FOG and root growth	11/26/2014	11/26/2014	0	Fog/Root Plan study/development pending
LINE MHs					
II. C. 15	Inspect Manholes	10/27/2014	10/27/2014	0	Annually thereafter
II. C. 14	Line Manholes	4/30/2014	4/30/2015	365	Lining completion schedule is spring of 2014
MISC					
II. D. 17	Notifying EPA of safety training.	2/1/2015	2/1/2015	0	Training must be provided annually.
II. E. 24 a.	Update SSO Response Plan	4/30/2014	4/30/2014	0	Completed but not formally reviewed by EPA
II. E. 24 b.	Install flow meters at WWTP and 6th St. LS and eliminate bypass	4/30/2014	4/30/2014	0	6th Street Complete. WWTP bypass January 31,2015

	Actual 2011	Actual 2012	Actual 2013	Projected 2014	Projected 2015	Projected 2016	Projected 2017	Projected 2018	Projected 2019
Ending Unrestricted Cash Balance	$2,296,961	$1,968,910	$3,074,045	$2,521,396	$2,825,724	$2,489,405	$917,633	$917,788	$2,398,458



Sanitary Sewer Overflows (SSO's)

- The City experienced 18 SSO's between 2005 and 2008
- Great Falls had 2.3 SSO's per year per 100 miles of sewer line during that time period..
- This compares to a median performance of the 101 utilities that provided information for the survey of 2.7 SSOs per year per 100 miles of pipe (1).
- Seattle experiences 3.2 SSO's per 100 miles of sewer.

Infiltration/Inflow (I/I)

- The City could not attribute any basement backups to I/I between 2005 and 2008.
- NCI's analysis was that I&I from the entire system totaled 2013 gallons per day per inch diameter mile and said that a typically accepted value for I&I based on EPA literature is 1,500 gpd/inch diameter mile of sewer.
- Staff calculated this number using 2012 data and using the assumption that 85% of the water we deliver from the Water Plant ends up coming into the Wastewater Plant. Also using current information on the sewer piping network from Cartegraph. (Water Treatment Plant average winter day = 6.59 mgd, WWTP average day = 9.38 mgd, Malt Plant flow = 1.34 mgd, 2,680 inch/diameter/miles of pipe) (2)
    - Calculated number is 910 gpd/inch/diameter/miles of pipe (again, that's compared to 1,500 gpd/inch/diameter/miles of pipe. as an accepted standard

Reference

(1) AWWA's "Benchmarking – Performance Indicators for Water and Wastewater Utilities: 2007 Annual Survey Data and Analyses Report"
(2) 1998 City of Great Falls Facilities Plan. Neil Consultants Inc.