Town of Johnstown

TOWN COUNCIL SPECIAL MEETING

450 S. Parish, Johnstown, CO
Thursday, June 24, 2021 at 7:00 PM

MISSION STATEMENT: Enhancing the quality of life of our residents, businesses, and visitors through community focused leadership.

AGENDA

CALL TO ORDER

Pledge of Allegiance

AGENDA APPROVAL

PUBLIC COMMENT

Members of the audience are invited to speak at the Council meeting. Public Comment is reserved for citizen comments on items not contained on the printed agenda. Citizen comments are limited to three (3) minutes per speaker. When several people wish to speak on the same position on a given item, they are requested to select a spokesperson to state that position.

NEW BUSINESS

1. Compliance Order on Consent in The Matter Of: Town of Johnstown CDSP Permit No. CO0021156 Johnstown Central WWTF and CDPS Permit No. CO0047058 Johnstown Low Point WSTP Weld County, Colorado

COUNCIL REPORTS AND COMMENTS

MAYOR'S COMMENTS

ADJOURN

AMERICANS WITH DISABILITIES ACT NOTICE

In accordance with the Americans with Disabilities Act, persons who need accommodation in order to attend or participate in this meeting should contact Town Hall at (970) 587-4664 within 48 hours prior to the meeting in order to request such assistance.

TOWN COUNCIL AGENDA COMMUNICATIONS

AGENDA DATE: June 24, 2021

SUBJECT: Compliance Order on Consent in The Matter Of: Town of Johnstown CDSP Permit No. CO0021156 Johnstown Central WWTF and CDPS Permit No. CO0047058 Johnstown Low Point WWTP Weld County, Colorado.

ACTION PROPOSED: Consider Approval of the Compliance Order on Consent in The Matter Of: Town of Johnstown CDSP Permit No. CO0021156 Johnstown Central WWTF and CDPS Permit No. CO0047058 Johnstown Low Point WWTP Weld County, Colorado

ATTACHMENTS: 1. Compliance Order on Consent in The Matter Of: Town of Johnstown CDSP Permit No. CO0021156 Johnstown Central WWTF and CDPS Permit No. CO0047058 Johnstown Low Point WWTP Weld County, Colorado

PRESENTED BY: Matt LeCerf, Town Manager

AGENDA ITEM DESCRIPTION:

Enclosed for your review and consideration is the Compliance Order on Consent in The Matter Of: Town of Johnstown CDSP Permit No. CO0021156 Johnstown Central WWTF and CDPS Permit No. CO0047058 Johnstown Low Point WWTP Weld County, Colorado. This document is a legally binding Order between the Colorado Department of Public Health and Environment and the Town of Johnstown and is a result of a pattern of noncompliance by the Town of Johnstown in maintaining proper operations at the Low Point and Central Waste Water Treatment Plant facilities. The State had been monitoring the Town's operations of the wastewater treatment plants since 2012 and the time period for which the violations are applicable and monetarily punitive are generally between 2015 – 2019. As part of this Order, the Town has agreed to a monetary penalty in the amount of $502,523.00. In lieu of this payment, the Town has negotiated an alternative to complete three supplemental environmental projects totaling the penalty amount. These projects will begin immediately and will include the following:

1. Johnstown shall replace approximately 206 inefficient streetlights with LED lights which will reduce the energy demand and subsequently reduce pollution. As an added benefit of installing the LED streetlights, the lighting system will provide better visibility to travelers resulting in increased safety. The Light Conversion Program is expected to cost $151,438.56.

2. Johnstown shall install a solar power array on the roof of the new recreation center in order to decrease the operating cost and energy demand of the recreation center. It is currently estimated the monthly demand for power is 80,000 kWh which equates to roughly 1,332 kW annually. The solar array is estimated to reduce the kilowatt hour energy demand by 153,600 kWh annually and offset annual electricity by 16%. Overall this is estimated to reduce CO2 emissions by 239,425 lbs. annually. The Recreation Center Solar Program is estimated to cost $309,084.44.

3. Johnstown shall donate $42,000.00 to the Johnstown Housing Authority ("JHA"). The funds will be used for a boiler replacement project in Weld County, Colorado. The JHA has an existing set of boiler systems that provide heat to the low to moderate income housing facility. The current units have been operation for nearly 19 years and are very inefficient from both a heating and energy demand perspective. The units will be replaced with, at a minimum, a 93% high efficiency unit that will ensure reliable heat for the facility and lower energy cost resulting in less pollution an energy demands.

Additionally, the Town has also consented to make critical and necessary improvements to our wastewater treatment facilities. Those obligations are memorialized and required in this Order, and are listed under section headings of Compliance Requirements for Central Waste Water Treatment Facility "Central Project" (Sections 51-58) and Low Point Waste Water Treatment Plant "Low Point Project" (Section 59-65). We are actively moving forward on these compliance requirements and expect completion of the projects and future elimination of violations based on proper operations of our wastewater plants.

Staff is recommended approval of this document in its current form and is available to answer any questions regarding its content or other questions related to our path forward to be compliant with CDPHE and our discharge permit requirements.

If approved by Council this evening, this document will be executed by the Mayor and then sent to CDPHE. The Order will then be published in a newspaper of general circulation for public comment by CDPHE. Provided no comments are received by August 9, 2021 this agreement shall become effective and binding.

You will note the document does include a few minor changes that we have requested to CDPHE to consider. At the time of this document, CDPHE has not replied back yet. While the changes

may not be material, but we have requested them and consequently would ask for approval based on a final review of the final form approved by either the Town Attorney or Town Manager.

LEGAL ADVICE:

The Town Attorney was actively engaged in negotiating this Order.

FINANCIAL ADVICE:

Funds for the projects described in this memo have been budgeted in FY 2021.

RECCOMMENDED ACTION: Approve the Compliance Order on Consent as presented.

SUGGESTED MOTIONS:

For Approval: I move to approve the Compliance Order on Consent in The Matter Of: Town of Johnstown CDSP Permit No. CO0021156 Johnstown Central WWTF and CDPS Permit No. CO0047058 Johnstown Low Point WWTP Weld County, Colorado subject to a final form authorization by either the Town Attorney or Town Manager.

For Denial: I move we deny the Compliance Order on Consent in The Matter Of: Town of Johnstown CDSP Permit No. CO0021156 Johnstown Central WWTF and CDPS Permit No. CO0047058 Johnstown Low Point WWTP Weld County, Colorado.

Reviewed and Approved for Presentation,

Town Manager

COLORADO

Department of Public Health & Environment

WATER QUALITY CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT **NUMBER: DC-2107XX-X**

IN THE MATTER OF:

TOWN OF JOHNSTOWN
CDPS PERMIT NO. CO0021156
JOHNSTOWN CENTRAL WWTF
CDPS PERMIT NO. CO0047058
JOHNSTOWN LOW POINT WWTP
WELD COUNTY, COLORADO

The Colorado Department of Public Health and Environment ("Department"), through the Water Quality Control Division ("Division"), issues this Compliance Order on Consent ("Consent Order"), pursuant to the Division's authority under §§25-8-602 and 605, C.R.S. of the Colorado Water Quality Control Act ("Act") §§25-8-101 to 803, C.R.S., and its implementing regulations, with the express consent of the Town of Johnstown ("Johnstown"). The Division and Johnstown may be referred to collectively as the "Parties."

STATEMENT OF PURPOSE

1. The mutual objectives of the Parties in entering into this Consent Order are:

   a. To establish compliance requirements and criteria for the continued operation of Johnstown's two domestic wastewater treatment facilities:
      i. Central Wastewater Treatment Facility ("Central WWTF"), located at 40.334703 N, -104.877893 W, near the Town of Johnstown, Weld County, Colorado ("Central Facility").
      ii. Low Point Wastewater Treatment Plant ("Low Point WWTP"), located at 40.384444° N, -104.960833° W, near the Town of Johnstown, Weld County, Colorado ("Low Point Facility").

   b. To resolve, without litigation, the civil penalties associated with alleged violations cited herein and in Notice of Violation / Cease and Desist Order, Number: DO-200123-1 ("Central NOV/CDO"), that the Division issued to Johnstown on January 23, 2020, and in Notice of Violation / Cease and Desist Order, Number: DO-200123-2 ("Low Point NOV/CDO"), that the Division issued to Johnstown on January 23, 2020.

DIVISION'S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS

CENTRAL FACILITY:

2. Based upon the Division's investigation into and review of the compliance issues identified herein, and in accordance with §§25-8-602 and 605, C.R.S., the Division has made the following determinations regarding Johnstown, the Central Facility and Johnstown's compliance with the Act and its implementing permit.

3. At all times relevant to the violations cited herein, Johnstown was a municipality as defined by §31-1-101(6), C.R.S.

4. Johnstown is a "person" as defined by §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).

5. Johnstown owns and/or operates the Central Facility.

6. The Central Facility consists of aerated lagoon treatment followed by a moving bed biofilm reactor ("MBBR") basin, lagoon settling, dissolved air flotation ("DAF") basins for solids separation, chlorination, and dechlorination. The hydraulic capacity is 0.99 MGD and the organic capacity is 2,213 lbs. BOD5/day, which were specified in Site Approval No. ES.11.43444, dated June 30, 2012.

7. The Central Facility is the subject of the Colorado Discharge Permit System, Permit Number CO0021156 ("Central Permit"). The current Central Permit became effective on June 1, 2012 and was due to expire on May 31, 2017, but has been administratively extended pending Central Permit reissuance.

8. The Central Permit authorizes Johnstown to discharge treated wastewater from the Central Facility through Outfall 001A, following disinfection and prior to mixing with the receiving stream, the Little Thompson River. Outfall 001A is physically located at 40.33356 N, -104.87115 W and is the only authorized effluent outfall. The Central Permit also includes requirements to monitor influent loading to the Central Facility at a representative point prior to entering any treatment, which is designated as Permitted Feature 3001.

9. Pursuant to 5 CCR 1002-61, §61.8, Johnstown must comply with all the terms and conditions of the Central Permit, and violations of such terms and conditions as specified in the Central Permit may make Johnstown subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S.

10. On September 28, 2017, a representative of the Division ("Inspector") conducted an on-site inspection of the Central Facility pursuant to the authority under §25-8-306, C.R.S., to determine Johnstown's compliance with the Water Quality Control Act and the Central Permit. During the inspection, the Inspector reviewed the Central Facility records and performed a physical inspection of the Central Facility.

Failure to comply with Permit Effluent Limitations

11. Pursuant to Part I.A.1. of the Central Permit, Johnstown's permitted discharge shall not contain effluent parameter concentrations which exceed the limitations specified in Part I.A.2. of the Central Permit.

12. Pursuant to Part I.A.2. of the Central Permit, in order to provide an indication of compliance or non-compliance with the effluent limitations of the Permit, Johnstown is required to monitor defined effluent parameters at specified frequencies and report the results on a Discharge Monitoring Report ("DMR") form.

13. Pursuant to Part I.A.2. of the Central Permit, Johnstown's effluent at Outfall 001A shall not exceed, among others not subject of this action, the effluent discharge limitations specified below:

JOHNSTOWN CENTRAL WWTF EFFLUENT LIMITATIONS			
EFFLUENT PARAMETER	**LIMITATION**		
	30-Day Average	7-Day Average	Daily Maximum
pH (su)	-	-	6.5 - 9
***E. coli* (#/100mL)**	126	252	-
Total Residual Chlorine (mg/L) Until 10/31/16	0.19	-	0.34
Total Residual Chlorine (mg/L) Beginning 11/01/16	0.047	-	0.081
Total Suspended Solids (mg/L)	30	45	-
Total Suspended Solids (% removal)	85 (min)	-	-
Potentially Dissolved Selenium (µg/L)	4.6	-	27
Total Ammonia as N (mg/L) - January Until 10/31/16	18.0	-	42
Total Ammonia as N (mg/L) - February Until 10/31/16	14.0	-	45
Total Ammonia as N (mg/L) - March Until 10/31/16	13.4	-	33
Total Ammonia as N (mg/L) - April Until 10/31/16	11.5	-	41
Total Ammonia as N (mg/L) - May Until 10/31/16	14.0	-	50
Total Ammonia as N (mg/L) - June Until 10/31/16	16.0	-	65
Total Ammonia as N (mg/L) - July Until 10/31/16	9.1	-	65
Total Ammonia as N (mg/L) - August Until 10/31/16	9.1	-	65
Total Ammonia as N (mg/L) - September Until 10/31/16	9.1	-	59
Total Ammonia as N (mg/L) - October Until 10/31/16	9.1	-	50
Total Ammonia as N (mg/L) - November Until 10/31/16	15.0	-	36
Total Ammonia as N (mg/L) - December Until 10/31/16	25.0	-	55
Total Ammonia as N (mg/L) - January Beginning 11/01/16	9.1	-	42
Total Ammonia as N (mg/L) - February Beginning 11/01/16	9.1	-	45
Total Ammonia as N (mg/L) - March Beginning 11/01/16	9.1	-	33
Total Ammonia as N (mg/L) - April Beginning 11/01/16	8.1	-	41
Total Ammonia as N (mg/L) - May Beginning 11/01/16	9.1	-	50
Total Ammonia as N (mg/L) - June	9.1	-	65

JOHNSTOWN CENTRAL WWTF EFFLUENT LIMITATIONS			
EFFLUENT PARAMETER	LIMITATION		
	30-Day Average	7-Day Average	Daily Maximum
Beginning 11/01/16			
Total Ammonia as N (mg/L) - July Beginning 11/01/16	9.1	-	65
Total Ammonia as N (mg/L) - August Beginning 11/01/16	9.1	-	65
Total Ammonia as N (mg/L) - September Beginning 11/01/16	9.1	-	59
Total Ammonia as N (mg/L) - October Beginning 11/01/16	9.1	-	50
Total Ammonia as N (mg/L) - November Beginning 11/01/16	9.1	-	36
Total Ammonia as N (mg/L) - December Beginning 11/01/16	9.1	-	55

14. Johnstown's submitted DMRs included the following effluent concentration data, which exceeded the effluent limitations of the Central Permit:

JOHNSTOWN CENTRAL WWTF EFFLUENT SELF-MONITORING DATA		
Monitoring Period	**Sample Measurement for Outfall 001A**	
pH (su)	**Minimum Limit = 6.5**	**Maximum Limit = 9.0**
April 1, 2017 - April 30, 2017	6.26	-
May 1, 2019 - May 31, 2019	6.35	-
November 1, 2019 - November 30, 2019	6.42	-
***E. coli* (#/100 mL)**	**30-Day GM Limit = 126**	**Max 7-Day GM Limit = 252**
July 1, 2017 - September 30, 2017	-	686.9
January 1, 2018 - March 31, 2018	-	686.7
April 1, 2018 - June 30, 2018	-	387
July 1, 2019 - September 30, 2019	-	387.3
Total Residual Chlorine (mg/L) Beginning 11/01/16	**30-Day Average Limit = 0.047**	**Daily Max Limit = 0.081**
February 1, 2017 - February 28, 2017	-	0.12
March 1, 2017 - March 31, 2017	-	0.13
April 1, 2017 - April 30, 2017	0.072	0.19
Total Suspended Solids (mg/L)	**30-Day Average Limit = 30**	**Max 7-Day Average Limit = 45**
April 1, 2016 - June 30, 2016	50.3	62.5
October 1, 2016 - December 31, 2016	31.6	-
January 1, 2017 - March 31, 2017	47.8	58

JOHNSTOWN CENTRAL WWTF EFFLUENT SELF-MONITORING DATA		
Monitoring Period	**Sample Measurement for Outfall 001A**	
April 1, 2017 - June 30, 2017	44.6	57
October 1, 2017 - December 31, 2017	33.5	-
January 1, 2018 - March 31, 2018	54.4	69.3
April 1, 2018 - June 30, 2018	43	60
October 1, 2018 - December 31, 2018	36	-
January 1, 2019 - March 31, 2019	46.3	58
April 1, 2019 - June 30, 2019	65.5	101
July 1, 2019 - September 30, 2019	65.5	101
January 1, 2020 - March 31, 2020	32.58	-
April 1, 2020 - June 30, 2020	40	-
Total Suspended Solids (% removal)	**Minimum 85%**	-
April 1, 2015 - June 30, 2015	82.1	-
April 1, 2016 - June 30, 2016	82.8	-
January 1, 2017 - March 31, 2017	78.1	-
January 1, 2018 - March 31, 2018	84.3	-
April 1, 2018 - June 30, 2018	83.3	-
January 1, 2019 - March 31, 2019	78.1	-
April 1, 2019 - June 30, 2019	84.4	-
July 1, 2019 - September 30, 2019	84.4	-
January 1, 2020 - March 31, 2020	83.48	-
Potentially Dissolved Selenium (µg/L)	**30-Day Average Limit = 4.6**	**Max 7-Day Average Limit = 27**
June 1, 2015 - June 30, 2015	5.8	-
Total Ammonia as N (mg/L) Until 10/31/16	**30-Day Average**	**Daily Maximum**
January 1, 2016 - January 31, 2016	**Limit = 18**	**Limit = 42**
	20.1	-
February 1, 2016 - February 29, 2016	**Limit = 14.0**	**Limit = 45**
	24.1	-
Total Ammonia as N (mg/L) Starting 11/01/16	**30-Day Average**	**Daily Maximum**
March 1, 2016 - March 31, 2016	**Limit = 13.4**	**Limit = 33**
	16.3	-
December 1, 2016 - December 31, 2016	**Limit = 9.1**	**Limit = 55**
	31.9	-
January 1, 2017 - January 31, 2017	**Limit = 9.1**	**Limit = 42**
	35.2	-
February 1, 2017 - February 28, 2017	**Limit = 9.1**	**Limit = 45**
	34.1	-
March 1, 2017 - March 31, 2017	**Limit = 9.1**	**Limit = 33**
	17.8	-
April 1, 2017 - April 30, 2017	**Limit = 8.1**	**Limit = 41**
	8.5	-

JOHNSTOWN CENTRAL WWTF EFFLUENT SELF-MONITORING DATA		
Monitoring Period	**Sample Measurement for Outfall 001A**	
January 1, 2018 - January 31, 2018	**Limit = 9.1**	**Limit = 42**
	18	-
February 1, 2018 - February 28, 2018	**Limit = 9.1**	**Limit = 45**
	13	-
March 1, 2018 - March 31, 2018	**Limit = 9.1**	**Limit = 33**
	10.9	-
May 1, 2018 - May 30, 2018	**Limit = 9.1**	**Limit = 50**
	10.8	-
December 1, 2018 - December 31, 2018	**Limit = 9.1**	**Limit = 55**
	23.8	-
January 1, 2019 - January 31, 2019	**Limit = 9.1**	**Limit = 42**
	30.2	-
February 1, 2019 - February 28, 2019	**Limit = 9.1**	**Limit = 45**
	31.7	-
March 1, 2019 - March 31, 2019	**Limit = 9.1**	**Limit = 33**
	26.4	-
April 1, 2019 - April 30, 2019	**Limit = 8.1**	**Limit = 41**
	18.8	-
May 1, 2019 - May 30, 2019	**Limit = 9.1**	**Limit = 50**
	18.7	-
June 1, 2019 - June 30, 2019	**Limit = 9.1**	**Limit = 65**
	9.2	-
November 1, 2019 - November 30, 2019	**Limit = 9.1**	Limit = 36
	20	-
February 1, 2020 - February 29, 2020	**Limit = 9.1**	**Limit = 45**
	10.52	-
March 1, 2020 - March 31, 2020	**Limit = 9.1**	**Limit = 33**
	10.7	-
April 1, 2020 - April 30, 2020	**Limit = 8.1**	**Limit = 41**
	8.34	-
December 1, 2020 - December 31, 2020	**Limit = 9.1**	**Limit = 55**
	10.3	-

15. Acidic pH, *E. coli*, total residual chlorine, total suspended solids, ammonia, and selenium are "pollutants," or indicators thereof, as defined by §25-8-103(15), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(76).

16. The Central Permit does not authorize the pollutant levels identified above in paragraph 14. Division records establish that Johnstown does not have any other permit authorizing such discharge into the Little Thompson River.

17. Johnstown's failure to comply with the Central Permit effluent limitations set forth above in paragraph 14 constitutes violations of Part I.A.1. and Part I.A.2. of the Central Permit.

Failure to Properly Report

18. Pursuant to Part I.A.2. of the Central Permit, in order to obtain an indication of compliance or non-compliance with the effluent limitations specified in the Central Permit, Johnstown is required to

monitor all effluent parameters specified in the Central Permit at the frequencies specified by the Central Permit. The results of such monitoring shall be reported on the DMR.

19. Pursuant to Part I.D.1. of the Central Permit, Johnstown is required to report all monitoring results on a monthly basis using Division approved DMRs. Johnstown is required to ensure that the DMRs are received by the Division by no later than the 28th day of the month following the end of the reporting period. Pursuant to Part I.D.8. of the Central Permit, each DMR shall include a certification by Johnstown that the information provided therein is true, accurate and complete to the knowledge of Johnstown.

20. Division records establish that Johnstown failed to submit DMRs to the Division by the 28th day of the month following the reporting periods identified below:

DMR Reporting Period	Monitoring Point	DMR Due Date	Date Received
July 1, 2015 - July 31, 2015	300I, 001A	08/28/2015	09/29/2015
May 1, 2017 - May 30, 2017	300I, 001A	06/28/2017	08/23/2017
November 1, 2017 - November 30, 2017	300I, 001A	12/28/2017	02/2/2018
February 1, 2019 - February 28, 2019	300I, 001A	03/28/2019	06/18/2019
March 1, 2019 - March 31, 2019	300I, 001A	04/28/2019	06/28/2019
January 1, 2019 - March 30, 2019	001A	05/28/2019	06/21/2019
April 1, 2019 - April 30, 2019	300I, 001A	04/28/2019	07/18/2019

21. Division records, as supplemented by Johnstown's DMRs, establish that Johnstown failed to submit complete DMRs for the following reporting periods and parameters:

Reporting Period	Missing Parameter	Monitoring Point
October 1, 2017 - October 31, 2017	Potentially Dissolved Selenium (30-Day Average), Potentially Dissolved Selenium (Daily Max)	001A

22. Division records, as supplemented by Johnstown's DMRs, establish that Johnstown failed to submit complete DMRs by the due date required in Part I.D.1. of the Central Permit for the following reporting periods and parameters:

Monitoring Period	Parameter	Monitoring Point	DMR Due Date	Revised DMR Received
April 1, 2018 - June 1, 2018	Total Suspended Solids (% removal)	001A	07/28/2018	10/01/2018

23. Johnstown's failure to submit complete DMRs to the Division by the 28th day of the month following each reporting period, as identified in paragraphs 19-22 above, constitutes violations of Part I.D.1. of the Central Permit.

Failure to Maintain Records

24. Pursuant to Part I.D.6.a. of the Central Permit, Johnstown is required to establish and maintain

records that include: (i.) the date, type, exact place, and time of sampling or measurements; (ii.) the individual(s) who performed the sampling or measurements; (iii.) the date(s) the analyses were performed; (iv.) the individual(s) who performed the analysis; (v.) the analytical techniques or methods used; and (vi.) the results of such analyses.

25. During the September 28, 2017 inspection, the Inspector reviewed records from January 1, 2012 to August 31, 2017, and determined Johnstown did not have adequate records for the following:

    a. Johnstown did not maintain records of the pH and total residual chlorine sample types, analytical method, time collected or time analyzed.
    b. Johnstown did not maintain records of the selenium sample type.

26. Johnstown's failure to adequately maintain the required records constitutes violations of Part I.D.6.a. of the Central Permit.

DIVISION'S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS

LOW POINT FACILITY:

27. Based upon the Division's investigation into and review of the compliance issues identified herein, and in accordance with §§25-8-602 and 605, C.R.S., the Division has made the following determinations regarding Johnstown, the Low Point Facility and Johnstown's compliance with the Act and its implementing permit.

28. At all times relevant to the violations cited herein, Johnstown was a municipality as defined by §31-1-101(6), C.R.S.

29. Johnstown is a "person" as defined by §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).

30. Johnstown owns and/or operates Low Point Facility.

31. The Low Point Facility consists of headworks micro strainer, bar screen, spiral grit chamber, Parshall flume to measure influent flow, diversion box, two sequencing batch reactors ("SBR") in parallel, chlorination and dechlorination, and a Parshall flume to measure effluent flow. The hydraulic capacity is 0.5 MGD and the organic capacity is 1,000 lbs. BOD_5/day.

32. The Low Point Facility is the subject of the Colorado Discharge Permit System, Permit Number CO0047058 ("Low Point Permit"). The current Low Point Permit became effective on May 1, 2012 and was due to expire on April 30, 2017, but has been administratively extended pending Low Point Permit reissuance.

33. The Low Point Permit authorizes Johnstown to discharge treated wastewater from the Low Point Facility through Outfall 001A, following disinfection and prior to mixing with the receiving stream, the Big Thompson River. Outfall 001A is physically located at 40.384444° N, -104.960833° W and is the only authorized effluent outfall. The Low Point Permit also includes requirements to monitor influent loading to the Low Point Facility at a representative point prior to entering any treatment, which is designated as Permitted Feature 300I.

34. Pursuant to 5 CCR 1002-61, §61.8, Johnstown must comply with all the terms and conditions of the Low Point Permit, and violations of such terms and conditions as specified in the Low Point Permit may make Johnstown subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S.

Failure to comply with Permit Effluent Limitations

35. Pursuant to Part I.A.1. of the Low Point Permit, Johnstown's permitted discharge shall not contain effluent parameter concentrations which exceed the limitations specified in Part I.A.2. of the Low Point Permit.

36. Pursuant to Part I.A.2. of the Low Point Permit, in order to provide an indication of compliance or non-compliance with the effluent limitations of the Low Point Permit, Johnstown is required to monitor defined effluent parameters at specified frequencies and report the results on a Discharge Monitoring Report ("DMR") form.

37. Pursuant to Part I.A.2. of the Low Point Permit, Johnstown's effluent at Outfall 001A shall not exceed, among others not subject of this action, the effluent discharge limitations specified below:

JOHNSTOWN LOW POINT WWTP EFFLUENT LIMITATIONS			
EFFLUENT PARAMETER	**DISCHARGE LIMITATION**		
	30-Day Average	7-Day Average	Instant Max
***E. coli* (#/100mL) May - October**	205	410	-
***E. coli* (#/100mL) November - April**	630	1260	-
Total Residual Chlorine (mg/L)	0.011	-	0.056
BOD, 5-day, 20 deg. C (mg/L)	30	45	-
Total Suspended Solids (mg/L)	30	45	-
Total Suspended Solids (% removal)	85 (min)	-	-
pH (su)	-	-	6.5 - 9
Total Ammonia as N (mg/L) - January	8.2	-	23
Total Ammonia as N (mg/L) - February	9.0	-	33
Total Ammonia as N (mg/L) - March	11.0	-	39
Total Ammonia as N (mg/L) - April	6.4	-	Report
Total Ammonia as N (mg/L) - May	5.4	-	Report
Total Ammonia as N (mg/L) - June	5.5	-	Report
Total Ammonia as N (mg/L) - July	5.0	-	Report
Total Ammonia as N (mg/L) - August	3.8	-	Report
Total Ammonia as N (mg/L) - September	4.2	-	Report
Total Ammonia as N (mg/L) - October	12.5	-	Report
Total Ammonia as N (mg/L) - November	9.8	-	Report
Total Ammonia as N (mg/L) - December	7.0	-	30

38. Johnstown's submitted DMRs included the following effluent concentration data, which exceeded the effluent limitations of the Low Point Permit:

JOHNSTOWN LOW POINT WWTP EFFLUENT SELF-MONITORING DATA		
Monitoring Period	**Sample measurements for Outfall 001A**	
***E. coli* (#/100 mL) May - October**	**30-Day GM Limit = 205**	**Max 7-Day GM Limit = 410**
June 1, 2015 - June 30, 2015	-	579.4
September 1, 2015 - September 30, 2015	-	2,419.6
September 1, 2016 - September 30, 2016	-	2,419.6
July 1, 2018 - July 31, 2018	-	2,419.6
***E. coli* (#/100 mL) November - April**	**30-Day GM Limit = 630**	**Max 7-Day GM Limit = 1,260**
February 1, 2017 - February 28, 2017	-	2,419.6
Total Residual Chlorine (mg/L) Beginning 11/01/16	**30-Day Average Limit = 0.011**	**Daily Max Limit = 0.056**
September 1, 2015 - September 30, 2015	0.08	2.2
BOD, 5-day, 20 deg. C (mg/L)	**30-Day Average Limit = 30**	**Max 7-Day Average Limit = 45**
January 1, 2017 - January 31, 2017	35	48.7
May 1, 2017 - May 31, 2017	-	54
Total Suspended Solids (mg/L)	**30-Day Average Limit = 30**	**Max 7-Day Average Limit = 45**
February 1, 2016 - February 29, 2016	-	46.4
January 1, 2017 - January 31, 2017	30.2	-
Total Suspended Solids (% removal)	**Minimum 85%**	-
March 1, 2017 - March 31, 2017	79.8	-
pH (su)	**Minimum 6.5**	**Maximum 9**
September 1, 2019 - September 30, 2019	6.43	-
November 1, 2019 - November 30, 2019	6.45	-
Total Ammonia as N (mg/L)	**30-Day Average**	**Daily Maximum**
June 1, 2015 - June 30, 2015	**Limit = 5.5**	**Limit = Report**
	7.2	-
February 1, 2016 - February 29, 2016	**Limit = 9.0**	**Limit = 33**
	9.7	-
July 1, 2016 - July 31, 2016	**Limit = 5.0**	**Limit = Report**
	10.5	-
August 1, 2016 - August 30, 2016	**Limit = 3.8**	**Limit = Report**
	21.4	-
October 1, 2016 - October 31, 2016	**Limit = 12.5**	**Limit = Report**
	15.6	-
December 1, 2016 - December 31, 2016	**Limit = 7.0**	**Limit = 30**
	12.9	-
January 1, 2017 - January 31, 2017	**Limit = 8.2**	**Limit = 23**
	25.8	29.8
February 1, 2017 - February 28, 2017	**Limit = 9.0**	**Limit = 33**
	30.5	-
March 1, 2017 - March 31, 2017	**Limit = 11.0**	**Limit = 39**

JOHNSTOWN LOW POINT WWTP EFFLUENT SELF-MONITORING DATA		
Monitoring Period	**Sample measurements for Outfall 001A**	
	32.2	-
April 1, 2017 - April 31, 2017	**Limit = 6.4**	**Limit = Report**
	9.2	-
May 1, 2017 - May 30, 2017	**Limit = 5.4**	**Limit = Report**
	7.1	-
June 1, 2017 - June 30, 2017	**Limit = 5.5**	**Limit = Report**
	18.5	-
July 1, 2017 - July 31, 2017	**Limit = 5.0**	**Limit = Report**
	9.5	-
Total Ammonia as N (mg/L)	**30-Day Average**	**Daily Maximum**
November 1, 2017 - November 30, 2017	**Limit = 9.8**	**Limit = Report**
	12.6	-
May 1, 2018 - May 31, 2018	**Limit = 5.4**	**Limit = Report**
	5.8	-
June 1, 2018 - June 30, 2018	**Limit = 5.5**	**Limit = Report**
	6.6	-
July 1, 2018 - July 31, 2018	**Limit = 5.0**	**Limit = Report**
	13	-
August 1, 2018 - August 30, 2018	**Limit = 3.8**	**Limit = Report**
	6.9	-
October 1, 2018 - October 31, 2018	**Limit = 12.5**	**Limit = Report**
	17.3	-
November 1, 2018 - November 30, 2018	**Limit = 9.8**	**Limit = Report**
	20.2	-
December 1, 2018 - December 31, 2018	**Limit = 7.0**	**Limit =30**
	10.9	-
January 1, 2019 - January 31, 2019	**Limit = 8.2**	**Limit = 23**
	8.3	31.2
May 1, 2019 - May 31, 2019	**Limit = 5.4**	**Limit = Report**
	9	-
August 1, 2019 - August 30, 2019	**Limit = 3.8**	**Limit = Report**
	9.7	-
September 1, 2019 - September 30, 2019	**Limit = 4.2**	**Limit = Report**
	4.86	-

39. *E. coli*, total residual chlorine, BOD_5, total suspended solids, pH, and ammonia are "pollutants," or indicators thereof, as defined by §25-8-103(15), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(76).

40. The Low Point Permit does not authorize the pollutant levels identified above in paragraph 38. Division records establish that Johnstown does not have any other permit authorizing such discharge into the Big Thompson River.

41. Johnstown's failure to comply with the Low Point Permit effluent limitations set forth above in paragraph 38 constitutes violations of Part I.A.1. and Part I.A.2. of the Low Point Permit.

Failure to Properly Report

42. Pursuant to Part I.A.2. of the Low Point Permit, in order to obtain an indication of compliance or non-compliance with the effluent limitations specified in the Low Point Permit, Johnstown is required to monitor all effluent parameters specified in the Low Point Permit at the frequencies specified by the Low Point Permit. The results of such monitoring shall be reported on the DMR.

43. Pursuant to Part I.D.1. of the Low Point Permit, Johnstown is required to report all monitoring results on a monthly basis using Division approved DMRs. Johnstown is required to ensure that the DMRs are received by the Division by no later than the 28th day of the month following the end of the reporting period. Pursuant to Part I.D.8. of the Low Point Permit, each DMR shall include a certification by Johnstown that the information provided therein is true, accurate and complete to the knowledge of Johnstown.

44. Division records, as supplemented by Johnstown's DMRs, establish that Johnstown failed to submit complete DMRs for the following reporting periods and parameters:

DMR Reporting Period	Missing Parameter	Monitoring Point
August 1, 2015 - August 30, 2015	Temperature (Daily Max), Temperature (MWAT)	001A
February 1, 2017 - February 28, 2017	Flow (30-Day Average), Flow (Daily Max)	001A
DMR Reporting Period	**Missing Parameter**	**Monitoring Point**
November 1, 2018 - November 30, 2018	Flow (30-Day Average), Flow (Daily Max)	001A
January 1, 2019 - January 31, 2019	Flow (30-Day Average), Flow (Daily Max)	001A
February 1, 2019 - February 28, 2019	Oil and Grease (Instant Max)	001A

45. Division records, as supplemented by Johnstown's DMRs, establish that Johnstown failed to submit complete DMRs by the due date required in Part I.D.1. of the Low Point Permit for the following reporting periods and parameters:

DMR Monitoring Period	Monitoring Point	DMR Due Date	DMR Received
July 1, 2015 - July 31, 2015	001A, 300I	08/28/2015	09/29/2015
May 1, 2017 - May 31, 2017	001A, 300I	06/28/2017	08/16/2017
November 1, 2017 - November 30, 2017	001A, 300I	12/28/2017	02/02/2018
February 1, 2019 - February 28, 2019	001A, 300I	03/28/2019	06/18/2019
March 1, 2019 - March 31, 2019	001A, 300I	04/28/2019	07/18/2019
April 1, 2019 - April 30, 2019	001A, 300I	05/28/2019	07/18/2019

46. Division record, as supplemented by Johnstown's DMRs, establish that Johnstown failed to submit complete DMRs by the due date required in Part I.D.1. of the Low Point Permit for the following reporting periods and parameters:

Monitoring Period	Parameter	Monitoring Point	DMR Due Date	Revised DMR Received

June 1, 2018 - June 30, 2018	BOD_5 (% removal), TSS (% removal)	001A	07/28/2018	09/13/2018
July 1, 2018 - July 31, 2018	Flow (30-Day Avg), Flow (Daily Max)	001A	08/28/2018	10/23/2018

47. Johnstown's failure to submit complete DMRs to the Division by the 28th day of the month following each reporting period, as identified in paragraphs 44-46 above, constitutes violations of Parts I.A.2. and/or I.D.1. of the Low Point Permit.

ORDER AND AGREEMENT

48. Based on the foregoing factual and legal determinations, pursuant to its authority under §§25-8-602 and 605, C.R.S., and in satisfaction of the alleged violations cited herein and in the Central NOV/CDO and Low Point NOV/CDO, the Division orders Johnstown to comply with all provisions of this Consent Order, including all requirements set forth below.

49. Johnstown agrees to the terms and conditions of this Consent Order. Johnstown agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602 and 605, C.R.S., and is an enforceable requirement of the Act. Johnstown also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Johnstown against the Division:

    a. The issuance of this Consent Order;
    b. The factual and legal determinations made by the Division herein; and
    c. The Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.

50. Notwithstanding the above, Johnstown does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Johnstown pursuant to this Consent Order shall not constitute evidence of fault and liability by Johnstown with respect to the Central Facility or the Low Point Facility. Johnstown expressly reserves its rights to deny any of the Division's factual or legal determinations or defend itself in any other third party proceeding relating to the information identified in this Consent Order.

Compliance Requirements
Central WWTF ("Central Project"):

51. Johnstown shall implement the Central Project to achieve compliance with the Colorado Water Quality Control Act and the terms and conditions of the Central Permit and any renewed Permit. The Central Project includes short-term improvements to maximize BOD_5 removal and MBBR nitrification until a new Central wastewater treatment facility is constructed. Short-term improvements include: solids removal (Pond No. 2 solids removal has been completed and notification of solids removal was submitted to the Division on June 3, 2021); maintaining proper operation and maintenance of the Central Facility including making appropriate seasonal changes for the most efficient operation of the MBBRs; maintaining, repairing, and/or replacing the DAF; and initiating better process control testing. Long-term measures include planning, design, and construction of a new expanded wastewater treatment facility.

52. By **August 31, 2021**, Johnstown shall submit to the Division a complete Preliminary Effluent Limit ("PEL") Application for the new Central Wastewater Treatment Facility.

53. By **February 28, 2022,** or within 60 days of receipt of preliminary effluent limitations from the Division, whichever occurs later, Johnstown shall submit to the Division a complete Site Location Application request in accordance with §25-8-702, C.R.S. and 5 CCR 1002-22 for the new Central wastewater treatment facility.

54. By **August 31, 2022,** or within 60 days of receipt of Site Application Approval from the Division, whichever occurs later, Johnstown shall submit to the Division for approval the Final Design of the new Central wastewater treatment facility in accordance with §25-8-702, C.R.S. and 5 CCR 1002-22.

55. By **April 30, 2023**, or within 60 days of receipt of all necessary approvals, whichever occurs later, Johnstown shall notify the Division that it has commenced construction of the approved new Central wastewater treatment facility. During the course of construction, Johnstown shall not exceed the capacity rating as defined in Site Approval No. ES.11.43444, dated June 30, 2012.

56. By **April 30, 2025,** or within two years of the date of the notification provided in paragraph 55, whichever occurs later, Johnstown shall complete construction of the new Central ~~wastewater treatment facility~~Project~~WWTF~~ and provide written notification of completion.

57. Johnstown shall submit quarterly progress reports to the Division outlining efforts taken to achieve compliance with this Consent Order. The first report shall be submitted to the Division on or before **December 31, 2021**. At a minimum, each report shall outline activities undertaken in the current reporting period and planned activities for the next three months to remain in compliance with this Consent Order.

58. All documents submitted under this Order shall use the same titles as stated in this Order, and shall reference both the number of this Order and the number of the paragraph pursuant to which the document is required. Within 30 calendar days of receiving Division comments on submitted documents, Johnstown shall respond to the Division and revise, as necessary, the submitted document(s) to properly address the Division's comments and resubmit the document(s) for Division review. No plan submitted for Division approval under this Consent Order for the Central Facility pursuant to paragraphs 51-56 above, may be implemented unless and until written approval is received from the Division. Any approval by the Division of a plan submitted under this Consent Order is effective upon receipt by Johnstown. All approved plans, including all procedures and schedules contained in the plans, are hereby incorporated into this Consent Order, and shall constitute enforceable requirements under the Act.

Low Point WWTP ("Low Point Project"):

59. Johnstown shall implement the Low Point Project to achieve compliance with the Colorado Water Quality Control Act and the terms and conditions of the Low Point Permit and any renewed Permit. The Low Point Project consists of planning, design, and construction of a new expanded wastewater treatment facility. As of the date of this Order, Johnstown has commenced planning and design of the Low Point Project.

60. By **August 31, 2021**, Johnstown shall submit to the Division a complete Request for Chemical Evaluation for the Low Point Facility.

61. By **October 31, 2021**, or within 60 days of receipt of all necessary approvals, whichever occurs later, Johnstown shall notify the Division that it has commenced construction on the approved Low Point Project.

62. By **February 28, 2023,** or within 16 months after Johnstown provides the notification required by paragraph ~~60~~1, whichever occurs later, Johnstown shall achieve substantial completion of construction of the Low Point Project and provide written notification of substantial completion.

63. By **April 30, 2023**, or within two months of substantial completion, whichever occurs later, Johnstown shall complete construction of the Low Point Project and provide written notification of completion.

64. Johnstown shall submit quarterly progress reports to the Division outlining efforts taken to achieve compliance with this Consent Order. The first report shall be submitted to the Division on or before **December 31, 2021**. At a minimum, each report shall outline activities undertaken in the current reporting period and planned activities for the next three months to remain in compliance with this Consent Order.

65. All documents submitted under this Consent Order shall use the same titles as stated in this Consent Order, and shall reference both the number of this Consent Order and the number of the paragraph pursuant to which the document is required. Within 30 calendar days of receiving Division comments on submitted documents, Johnstown shall respond to the Division and revise, as necessary, the submitted document(s) to properly address the Division's comments and resubmit the document(s) for Division review. No plan submitted for Division approval under this Consent Order for the Low Point Facility pursuant to paragraphs 59-63 above, may be implemented unless and until written approval is received from the Division. Any approval by the Division of a plan submitted under this Consent Order is effective upon receipt by Johnstown. All approved plans, including all procedures and schedules contained in the plans, are hereby incorporated into this Consent Order, and shall constitute enforceable requirements under the Act.

CIVIL PENALTY AND SUPPLEMENTAL ENVIRONMENTAL PROJECTS

66. In addition to all other funds necessary to comply with the requirements of this Consent Order, Johnstown shall pay $502,523.00 in the form of expenditures on Supplemental Environmental Projects ("SEPs") in order to achieve settlement of this matter.

67. Johnstown shall perform the three SEPs identified below. Johnstown's total expenditure for the SEP shall be not less than $502,523.00. Johnstown shall include the following language in any public statement, oral or written, making reference to a SEP: "This project was undertaken in connection with the settlement of an enforcement action taken by the Colorado Department of Public Health and Environment for alleged violations of the Colorado Water Quality Control Act."

68. Johnstown shall undertake the following SEPs, which the Parties agree is intended to secure significant environmental or public health protection and improvements:

Town of Johnstown LED Light Conversion Program

a. Johnstown shall replace approximately 206 inefficient streetlights with LED lights which will reduce the energy demand and subsequently reduce pollution. As an added benefit of installing the LED streetlights, the lighting system will provide better visibility to travelers resulting in increased safety. The Light Conversion Program is expected to cost $151,438.56 and will follow the schedule listed in the LED Light Conversion Program SEP Agreement (Attachment A). Johnstown shall provide written confirmation to the Division once the project has commenced, and submit biannual reports as required in Attachment A.

b. Johnstown shall not deduct the $151,438.56 for any tax purpose or otherwise obtain any favorable tax treatment of such payment or project.

c. Johnstown hereby certifies that, as of the date of this Consent Order, it is not under any existing legal obligation to perform or develop the SEP. Johnstown further certifies that it has not received, and will not receive, credit in any other enforcement action for the SEP. In the event that Johnstown has, or will receive credit under any other legal obligation for the SEP, ~~or fails to perform this SEP,~~ Johnstown shall pay $151,438.56 to the Division as a civil penalty within 30 calendar days of receipt of a demand for payment by the Division. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment" and delivered to:

Aly Ulibarri
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CWE-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

d. Johnstown shall submit a SEP Completion Report to the Division by **December 1, 2022**. The SEP Completion Report shall contain the following information:

i. A detailed description of the SEP as implemented;
ii. A description of any operating problems encountered and the solutions thereto;
iii. Itemized costs, documented by copies of purchase orders and receipts or canceled checks or other forms of proof of payment;
iv. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Order; and
v. A description of the environmental and public health benefits resulting from implementation of the SEP (with quantification of the benefits and pollutant reductions, if feasible).

e. Failure to submit the SEP Completion Report with the required information, or any periodic report, shall be deemed a violation of this Consent Order.

Town of Johnstown Recreation Center Solar Program

f. Johnstown shall install a solar power array on the roof of the new recreation center in order to decrease the operating cost and energy demand of the recreation center. It is currently estimated the monthly demand for power is 80,000 kWh which equates to roughly 1,332 kW annually. The solar array is estimated to reduce the kilowatt hour energy demand by 153,600 kWh annually and offset annual electricity by 16%. Overall this is estimated to reduce CO_2 emissions by 239,425 lbs. annually. The Recreation Center Solar Program is estimated to cost $309,084.44 and will follow the schedule listed in the Recreation Center Solar Program SEP Agreement (Attachment B). Johnstown shall provide written confirmation to the Division once the project has commenced, and submit biannual reports as required in Attachment B.

g. Johnstown shall not deduct the $309,084.44 for any tax purpose or otherwise obtain any favorable tax treatment of such payment or project.

h. Johnstown hereby certifies that, as of the date of this Consent Order, it is not under any existing legal obligation to perform or develop the SEP. Johnstown further certifies that it has not received, and will not receive, credit in any other enforcement action for the SEP. In the event that Johnstown has, or will receive credit under any other legal obligation for the SEP, ~~or fails to perform this SEP,~~ Johnstown shall pay $309,084.44 to the Division as a civil penalty within 30 calendar days of receipt of a demand for payment by the Division. Method of payment

shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment" and delivered to:

Aly Ulibarri
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CWE-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

i. Johnstown shall submit a SEP Completion Report to the Division by **March 1, 2022**. The SEP Completion Report shall contain the following information:

vi. A detailed description of the SEP as implemented;
vii. A description of any operating problems encountered and the solutions thereto;
viii. Itemized costs, documented by copies of purchase orders and receipts or canceled checks or other forms of proof of payment;
ix. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Order; and
x. A description of the environmental and public health benefits resulting from implementation of the SEP (with quantification of the benefits and pollutant reductions, if feasible).

j. Failure to submit the SEP Completion Report with the required information, or any periodic report, shall be deemed a violation of this Consent Order.

Johnstown Housing Authority Boiler Replacement

k. Johnstown shall donate $42,000.00 to the Johnstown Housing Authority ("JHA"). The funds will be used for a boiler replacement project in Weld County, Colorado. The JHA has an existing set of boiler systems that provide heat to the low to moderate income housing facility. The current units have been operation for nearly 19 years and are very inefficient from both a heating and energy demand perspective. The units will be replaced with, at a minimum, a 93% high efficiency unit that will ensure reliable heat for the facility and lower energy cost resulting in less pollution an energy demands. The facility consists of 24 low to moderate income units, of which several of them are through housing vouchers issued by the housing authority through the U.S. Department of Housing and Urban Development. Those benefiting from this project will be the Johnstown Housing Authority and the residents of the facility. Johnstown shall make the payment of $42,000.00, and shall include with the donation a cover letter identifying the monies for the above-described project within 30 days of the effective date of this Consent Order, addressed as follows: "Johnstown Housing Authority", to the attention of Dennis Reed, Director, Johnstown Housing Authority, 202 N Greeley Ave, Johnstown, CO 80534. Johnstown shall provide the Division with a copy of the cover letter and check within 30 calendar days of the effective date of this Consent Order. Johnstown shall follow the schedule listed in the Housing Authority Boiler Replacement SEP Agreement (Attachment C). Johnstown shall provide written confirmation to the Division once the project has commenced, and a status report as required in Attachment C.

l. Johnstown shall not deduct the payment of the SEP donation described above for any tax purpose or otherwise obtain any favorable tax treatment of such payment or project.

m. Johnstown hereby certifies that, as of the date of this Consent Order, it is not under any existing legal obligation to perform or develop the SEP. Johnstown further certifies that it has not received, and will not receive, credit in any other enforcement action for the SEP. In the

event that Johnstown has, or will receive credit under any other legal obligation for the SEP, ~~or fails to perform this SEP,~~ Johnstown shall pay $42,000.00 to the Division as a civil penalty within 30 calendar days of receipt of a demand for payment by the Division. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment" and delivered to:

Aly Ulibarri
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CWE-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

n. Johnstown shall submit a SEP Completion Report to the Division by **March 1, 2021**. The SEP Completion Report shall contain the following information:

xi. A detailed description of the SEP as implemented;
xii. A description of any operating problems encountered and the solutions thereto;
xiii. Itemized costs, documented by copies of purchase orders and receipts or canceled checks or other forms of proof of payment;
xiv. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Order; and
xv. A description of the environmental and public health benefits resulting from implementation of the SEP (with quantification of the benefits and pollutant reductions, if feasible).

o. Failure to submit the SEP Completion Report with the required information, or any periodic report, shall be deemed a violation of this Consent Order.

69. All SEP projects must be completed to the satisfaction of the Division, within 2 years of the effective date of this Consent Order, and must be operated for the useful life of the SEP. In the event that Johnstown fails to comply with any of the terms or provisions of this Consent Order relating to the performance of any of the SEP projects, Johnstown shall be liable for penalties as follows:

a. Payment of a penalty in the amount of $502,523.00. The Division, in its sole discretion, may elect to reduce this penalty for environmental benefits created by the partial performance of any of the SEP projects outlined in paragraph 68 above.

b. Johnstown shall pay this penalty within 30 calendar days of receipt of written demand by the Division. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment" and delivered to:

Aly Ulibarri
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CWE-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

SCOPE AND EFFECT OF CONSENT ORDER

70. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the civil penalties associated with the violations cited herein and in the Central NOV/CDO and the Low Point NOV/CDO.

71. This Consent Order is subject to the Division's "Public Notification on Administrative Enforcement Actions Policy," which includes a thirty day public comment period. The Division and Johnstown each reserve the right to withdraw consent to this Consent Order if comments received during the thirty day period result in any proposed modification to the Consent Order.

72. This Consent Order constitutes a final agency order or action upon a determination by the Division following the public comment period. Any violation of the provisions of this Consent Order by Johnstown, including any false certifications, shall be a violation of a final order or action of the Division for the purpose of §25-8-608, C.R.S., and may result in the assessment of civil penalties of up to $54,833 per day for each violation.

73. The Parties' obligations under this Consent Order are limited to the matters expressly stated herein or in approved submissions required hereunder. All submissions made pursuant to this Consent Order are incorporated into this Consent Order and become enforceable under the terms of this Consent Order as of the date of approval by the Division.

74. The Division's approval of any submission, standard, or action under this Consent Order shall not constitute a defense to, or an excuse for, any prior violation of the Act, or any subsequent violation of any requirement of this Consent Order or the Act.

75. Notwithstanding paragraph 50 above, the violations described in this Consent Order will constitute part of Johnstown's compliance history.

76. Johnstown shall comply with all applicable Federal, State, and/or local laws in fulfillment of its obligations hereunder and shall obtain all necessary approvals and/or permits to conduct the activities required by this Consent Order. The Division makes no representation with respect to approvals and/or permits required by Federal, State, or local laws other than those specifically referred to herein.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

77. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to the specific instances of violations cited herein and in the Central NOV/CDO and the Low Point NOV/CDO. The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof, and/or injunctive relief.

78. This Consent Order does not grant any release of liability for any violations not specifically cited herein.

79. Johnstown reserves its rights and defenses regarding the Central Facility and Low Point Facility other than proceedings to enforce this Consent Order.

80. Nothing in this Consent Order shall preclude the Division from imposing additional requirements necessary to protect human health or the environment and to effectuate the purposes of the Consent Order. Nor shall anything in this Consent Order preclude the Division from imposing additional requirements in the event that additional information is discovered that indicates such requirements are necessary to protect human health or the environment.

81. Johnstown releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims or for any injuries or damages to persons or property resulting from acts or omissions of Johnstown, or those acting for or on behalf of Johnstown, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. Johnstown shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by Johnstown in carrying out activities pursuant to this Consent Order. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents~~–~~, representatives, or Johnstown~~or representatives~~.

OFFSITE ACCESS

82. To the extent any plan submitted by Johnstown requires access to property not owned or controlled by Johnstown, Johnstown shall use its best efforts to obtain site access from the present owners of such property to conduct required activities, and to allow Division access to such property to oversee such activities. In the event that site access is not obtained when necessary, Johnstown shall notify the Division in writing regarding its best efforts and its failure to obtain such access.

SITE ACCESS AND SAMPLING

83. The Division shall be permitted to oversee any and all work being performed under this Consent Order. The Division shall be permitted access to the Central Facility or Central Project property and the Low Point Facility or Low Point Project property at any time work is being conducted pursuant to this Consent Order, and during reasonable business hours during any period work is not being conducted, for the purposes of determining Johnstown's compliance with the Act, the Regulations, and this Consent Order. The Division shall be permitted to inspect work sites, operating and field logs, contracts, manifests, shipping records, and other relevant records and documents relating to this Consent Order or any requirement under this Consent Order and to interview Johnstown personnel and contractors performing work required by this Consent Order. Nothing in this paragraph limits or impairs the Division's statutory authorities to enter and inspect the Central Facility and the Low Point Facility.

Johnstown shall notify the Division in writing of any excavation, construction (including the construction of monitoring wells) or other investigatory or remedial activities undertaken pursuant to any plan or requirement of this Consent Order a minimum of 72 hours prior to beginning the excavation, construction, or required activity. Johnstown shall provide the Division any blue print, diagram, construction or other permits for any construction activity undertaken pursuant to this Consent Order upon request.

FORCE MAJEURE

84. Johnstown shall perform the requirements of this Consent Order within the schedules and time limits set forth herein and in any approved plan unless the performance is prevented or delayed by events that constitute a force majeure. A force majeure is defined as any event arising from causes which are not reasonably foreseeable, which are beyond the control of Johnstown, and which cannot be overcome by due diligence.

85. Within 72 hours of the time that Johnstown knows or has reason to know of the occurrence of any event which Johnstown has reason to believe may prevent Johnstown from timely compliance with any requirement under this Consent Order, Johnstown shall provide verbal notification to the

Division. Within seven calendar days of the time that Johnstown knows or has reason to know of the occurrence of such event, Johnstown shall submit to the Division a written description of the event causing the delay, the reasons for and the expected duration of the delay, and actions which will be taken to mitigate the duration of the delay.

86. The burden of proving that any delay was caused by a force majeure shall at all times rest with Johnstown. If the Division agrees that a force majeure has occurred, the Division will so notify Johnstown. The Division will also approve or disapprove of Johnstown's proposed actions for mitigating the delay. If the Division does not agree that a force majeure has occurred, or if the Division disapproves of Johnstown's proposed actions for mitigating the delay, it shall provide a written explanation of its determination to Johnstown. Pursuant to the Dispute Resolution section, within 15 calendar days of receipt of the explanation, Johnstown may file an objection.

87. Delay in the achievement of one requirement shall not necessarily justify or excuse delay in the achievement of subsequent requirements. In the event any performance under this Consent Order is found to have been delayed by a force majeure, Johnstown shall perform the requirements of this Consent Order that were delayed by the force majeure with all due diligence.

DISPUTE RESOLUTION

88. If the Division determines that that a violation of this Consent Order has occurred; that a force majeure has not occurred; that the actions taken by Johnstown to mitigate the delay caused by a force majeure are inadequate; that Johnstown's Notice of Completion should be rejected pursuant to paragraph 92; or that Johnstown's SEP Completion Reports submitted pursuant to paragraph 68.d, 68.i, and 68.n are deficient, the Division shall provide a written explanation of its determination to Johnstown. Within 15 calendar days of receipt of the Division's determination, Johnstown shall:

    a. Submit a notice of acceptance of the determination; or
    b. Submit a notice of dispute of the determination.

    If Johnstown fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

89. If the Division disapproves or approves with modifications any original or revised plan submitted by Johnstown pursuant to this Consent Order, the Division shall provide a written explanation of the disapproval or approval with modifications. Within 15 calendar days of receipt of the Division's approval with modifications or disapproval of the plan, Johnstown shall:

    a. In the case of an approval with modifications only, submit a notice of acceptance of the plan as modified and begin to implement the modified plan;
    b. In the case of a disapproval only, submit a revised plan for Division review and approval. Johnstown may not select this option if the Division has included in its disapproval an alternate plan that shall be implemented by Johnstown; or
    c. Submit a notice of dispute of the disapproval or approval with modifications.

    If Johnstown fails to do any of the above within the specified time, Johnstown shall be deemed to have failed to comply with the Consent Order, and the Division may bring an enforcement action, including an assessment of penalties.

90. If Johnstown submits a revised plan, the plan shall respond adequately to each of the issues raised in the Division's written explanation of the disapproval or approval with modifications. The Division may determine that failure to respond adequately to each of the issues raised in the Division's

written explanation constitutes a violation of this Consent Order. The Division shall notify Johnstown in writing of its approval, approval with modifications, or disapproval of the revised plan. If the Division disapproves the revised plan, it may include in its disapproval a plan for implementation by Johnstown. Such disapproval and plan shall be deemed effective and subject to appeal in accordance with the Act and the Colorado State Administrative Procedures Act, §§ 24-4-101 through 108, C.R.S. ("APA"), unless Johnstown submits a notice of dispute, pursuant to paragraph 94 above, of the Division's disapproval and plan for implementation. All requirements and schedules of the Division's plan shall not become effective pending resolution of the dispute.

NOTICES

91. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division:

Aly Ulibarri
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CWE-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: 303-692-3163
E-mail: aly.ulibarri@state.co.us

For Johnstown:

Matt LeCerf, Town Manager
450 S. Parish Avenue, PO Box 609
Johnstown, CO 80534
Telephone: (970)587-4664
E-mail: mlecerf@townofjohnstown.com

With a copy to:

Law Office of Avi S. Rocklin, LLC
1437 N. Denver Avenue #330
Loveland, CO 80538
Telephone: (303)537-4774
Email: avi@rocklinlaw.com

MODIFICATIONS

92. This Consent Order may be modified only upon mutual written agreement of the Parties.

COMPLETION OF REQUIRED ACTIONS

93. Johnstown shall submit a Notice of Completion to the Division upon satisfactory completion of all requirements of this Consent Order. The Division shall either accept or reject Johnstown's Notice of Completion in writing within 30 calendar days of receipt. If the Division rejects Johnstown's

Notice of Completion, it shall include in its notice a statement identifying the requirements that the Division considers incomplete or not satisfactorily performed and a schedule for completion. Johnstown shall, within 15 calendar days of receipt of the Division's rejection, either:

a. Submit a notice of acceptance of the determination; or
b. Submit a notice of dispute.

If Johnstown fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

NOTICE OF EFFECTIVE DATE

94. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon notice from the Division following closure of the public comment period referenced in paragraph 69.

BINDING EFFECT AND AUTHORIZATION TO SIGN

95. This Consent Order is binding upon Johnstown and its elected officials, employees, agents, representatives, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. Johnstown agrees to provide a copy of this Consent Order to any contractors, employees and other agents performing work pursuant to this Consent Order and require such agents to comply with the requirements of this Consent Order. In the event that a party does not sign this Consent Order within 30 calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order. The Parties agree that this Consent Order may be electronically signed. The Parties agree that the electronic signatures appearing on this Consent Order are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

FOR THE TOWN OF JOHNSTOWN:

_____ Date: _____
Gary Lebsack, Mayor
Town of Johnstown

Attest

_____
Diana Seele, Town Clerk

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

_____ Date: _____

Nathan Moore
Clean Water Compliance and Enforcement Section Manager
WATER QUALITY CONTROL DIVISION