Pretreatment Audit Report

City of La Junta
CO-0021261
La Junta, Colorado

March 22, 2021 to March 24, 2021

Prepared by:

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Pretreatment Audit Summary Table

City of La Junta Pretreatment Audit Report
CO-0021261

March 22, 2021 to March 24, 2021

Pretreatment Audit Findings	Pretreatment Requirement and Corrective Action
Section 3.0 – Resources	
1. The Pretreatment Regulations at 40 C.F.R. § 403.8(f)(3) state that the POTW shall have "sufficient resources and qualified personnel to carry out the authorities and procedures" of the Pretreatment program. Information gathered during the audit indicates that the City's commitment to the Pretreatment program is less than 0.1 FTE, which is 10% of the 1.0 FTE for the Pretreatment Coordinator's job duties reported in the 2020 Pretreatment Annual Report. No annual Pretreatment budget was provided in the Pretreatment Annual Report. Based on the EPA's evaluation of the City of La Junta's implementation of the Pretreatment program, it does not appear that the City has fulfilled the commitment to have sufficient resources and qualified personnel to implement the program.	**<u>Pretreatment Requirements</u>** 40 C.F.R. § 403.8(f)(3) **<u>Corrective Action Items</u>** Develop and submit a staffing plan to ensure the City consistently implements the Pretreatment program. The staffing plan needs to provide details regarding the FTE allocation to the Pretreatment program, a training plan for the current staff, funding levels, and an evaluation of the current and projected scope of the program to ensure the growth of the program's resources are commensurate with the growth in the service area. Thereafter, implement the plan.
Section 4.0 – Rules/Regulations and Intergovernmental Agreements	
2. 40 C.F.R. § 403.8(f)(1) states, "The POTW shall operate pursuant to legal authority enforceable in Federal, State, or local courts, which authorizes or enables the POTW to apply and to enforce the requirements of sections 307 (b) and (c), and 402(b)(8) of the Clean Water Act (Act) and any regulations implementing those sections. Such authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by State law." Based on the EPA's review, the City of La Junta's municipal ordinance, Chapter 13.12 provides a framework to implement the Pretreatment Regulations in the POTW's service area, with the following exceptions (as identified in the enclosed legal authority review):	**<u>Pretreatment Requirements</u>** 40 C.F.R. § 403.8(f)(1) **<u>Corrective Action Item</u>** Update the municipal ordinance to ensure equivalent language with the Pretreatment Regulations found in 40 C.F.R. § 403 as identified in §4.2 of this audit report and in the enclosed legal authority checklist. Submit the updated municipal ordinance to EPA for review and approval.

• Authorized Representative of the IU definition– the current definition found in Section 13.12.020(a) of the municipal ordinance is abbreviated and needs to be modified to be equivalent to the definition established in 40 CFR 403.12(l) of the Federal Pretreatment Regulations. • The City has established the Requirements for control of slug discharges and notification of slug loads in 13.12.440(g)(8) as an optional permit condition. This permit condition needs to be modified to include "if determined to be necessary by the City" and needs to be moved to the required permit conditions in 13.12.440. • Notification of discharge of hazardous waste – the notification requirements established in Section 13.12.440(i) are abbreviated, not complete and need to be modified to be equivalent to the Federal Pretreatment Regulations in 40 CFR 4013.12(p). • The ordinance has not established the authority for the City to immediately halt actual or threatened discharges. The Pretreatment Regulations at 40 CFR 403.8(f)(10(vi)(B) require that a POTW establish the "authority and procedures (after informal notice to the discharger) immediately and effectively to halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent endangerment to the health or welfare of persons."	
Section 5.0 – Local Limits	
3. Part I.B.7(c) of the City of La Junta's NPDES permit includes the following requirements for a technical evaluation of the local limits: "In accordance with 40 CFR 122.44(j)(2)(ii), the permittee shall submit to the Division and Approval Authority a technical evaluation of the need to revise or develop local limits in accordance with 40 CFR 403.5(c) and a local limits package if a technical evaluation reveals that development or revision of local limits is necessary, by September 30, 2020. The evaluation shall include, but not be limited to, a consideration of any new or revised numeric and practice-based effluent limits in this permit." The EPA has no records that indicate the City of La Junta submitted its technical evaluation of its local	**<u>Pretreatment Requirements</u>** 40 C.F.R. § 403.5(c) 40 CFR § 122.44(j)(2)(ii) La Junta Permit #CO-0021261, Part I.B.7(c) **<u>Corrective Action Item</u>** Submit a technical evaluation of the City's local limits to the EPA, as required in Part I.B.7(c) of the City's NPDES permit. The technical evaluation should include the items listed in §5.4 of this audit report and if revised or new local limits are necessary, then submit the proposed local limits to the EPA.

limits on or by September 30, 2020, as required in Part I.B.7(c) of its NPDES permit.	
Section 7.0 – Industrial User Inventory and Characterization	
4. The Pretreatment Regulations state in 40 C.F.R. § 403.8(f)(2)(*i-iii*) that a POTW shall develop and implement procedures to ensure compliance with requirements of a Pretreatment Program. a. "Identify and locate all possible Industrial Users which might be subject to the POTW Pretreatment Program. Any compilation, index or inventory of Industrial Users made under this paragraph shall be made available to the Regional Administrator or Director upon request." b. "Identify the character and volume of pollutants contributed to the POTW by the Industrial Users identified under paragraph (f)(2)(i) of this section. This information shall be made available to the Regional Administrator or Director upon request". c. "Notify Industrial Users identified under paragraph (f)(2)(i) of this section, of applicable Pretreatment Standards and any applicable requirements under sections 204(b) and 405 of the Act and subtitles C and D of the Resource Conservation and Recovery Act. Within 30 days of approval pursuant to 40 C.F.R. 403.8(f)(6), of a list of significant industrial users, notify each significant industrial user of its status as such and of all requirements applicable to it as a result of such status." The City has not developed an IU inventory of the service area, with the exception of the food service establishments.	**Pretreatment Requirements** 40 C.F.R. § 403.8(f)(2(i-iii) **Corrective Action Item** Develop an Industrial User inventory that identifies and characterizes all industrial users (sources of non-domestic wastewater) in its service area, including those that are not in the FSE sector.
5. The City of La Junta's NPDES permit issued by the CDPHE on August 30, 2019 and effective on October 1, 2019 includes a compliance schedule to meet EC and Sulfide as H2S Final Limits in Part 1.B.6 a, a compliance schedule to meet Total Recoverable Arsenic Final Limits in Part 1.B.6 b, and a compliance schedule to meet Potentially Dissolved Selenium Final Limits in Part 1.B.6 c. Each of these compliance schedules require the City	**Pretreatment Requirements** 40 C.F.R. § 403.8(f)(2(i-iii) NPDES Permit #, Part 1.B.(a-c) **Corrective Action Item** Identify and characterize non-domestic sources of EC, Sulfide as H_2S, As, and Se in their IU Inventory and notify these sources of applicable Pretreatment Standards and

to identify and to control sources of these pollutants.	Requirements.
Section 8.0 – Control Mechanism (Permit) Evaluation and Permit Specific Issues	
6. 40 C.F.R. § 403.12(o)(2) of the Pretreatment Regulations requires the City to retain reports and notices, including on BMPs, for a minimum of three years and make the records available for inspection and copying by the EPA. The City's Pretreatment records were not well organized and for some SIUs not complete, as evidenced in the SIU specific findings. According to the information gathered during the opening interview, the Pretreatment records are maintained by both the Pretreatment Coordinator and at the wastewater treatment plant. The City was unable to locate or did not submit Pretreatment records to the EPA such as the final enforcement response plan (ERP), 2019 facility inspection reports, and control documents such as the toxic organic management plan for Debourgh.	**Pretreatment Requirements** 40 C.F.R. § 403.12(o)(2) **Corrective Action Item** Evaluate the Pretreatment record keeping protocols and ensure the Pretreatment records are current and complete. In addition, EPA recommends the Pretreatment Coordinator be primarily responsible for maintaining the Pretreatment records.
7. 40 C.F.R. § 403.8(f)(2)(iv) of the Pretreatment Regulations requires the City to "Receive and analyze self-monitoring reports and other notices submitted by the Industrial User." In addition, 40 C.F.R. § 403.8(f)(2)(vii) of the Pretreatment Regulations require the City to "Investigate instances of noncompliance with Pretreatment Standards and Requirements, as indicated in the reports and notices." According to information gathered during the audit, City Hall receives the compliance reports and only date stamps the envelopes for date received then transfers the reports to the Pretreatment program. The hard copy compliance reports are not date stamped and EPA could not determine if these reports are received within the due date required by the permit.	**Pretreatment Requirements** 40 C.F.R. § 403.12(f)(2)(iv) 40 C.F.R. § 403.8(f)(2)(vii) **Corrective Action Item** Ensure the hard copy compliance reports are date stamped or ensure the envelopes are integral to the Pretreatment recordkeeping.
8. 40 C.F.R. § 403.8(f)(2)(v) of the Pretreatment Regulations requires the POTW to inspect its SIUs at least once per year. According to the City, facility inspections of Debourgh and BNSF were completed in 2019, however, the City could not find the 2019 inspection report in its Pretreatment records.	**Pretreatment Requirements** 40 C.F.R. § 403.8(f)(2)(v) **Corrective Action Item** Locate the 2019 inspection reports for Debourgh and BNSF and submit to the EPA, Otherwise, there is no documentation of

	inspections of these facilities in 2019, which is a failure to implement the Pretreatment Regulations.
9. 40 C.F.R. § 403.8(f)(2)(ii) require the City to "Identify the character and volume of pollutants contributed to the POTW." Based on EPA's review of the 2020 Debourgh inspection report, it does not adequately characterize the facility and therefore the character and volumed of pollutants contributed to the POTW. The 2020 Debourgh inspection report needs to include more detail regarding the facility's chemical storage/handling/transfer, process/unit operations, wastestream generation from these unit operations, wastestream management or wastewater treatment, and sampling procedures to provide a current characterization. In addition, the Pretreatment Regulations at 40 C.F.R. § 403.8(f)(2)(*iii*) require the City to notify IUs of applicable Pretreatment Standards and Requirements. Based on EPA's review, the Pretreatment records did not include notification or follow up to Debourgh or BNSF regarding their current conditions and status under the Pretreatment program after the 2020 facility inspection.	**<u>Pretreatment Requirements</u>** 40 C.F.R. § 403.8(f)(2)(ii) 40 C.F.R. § 403.8(f)(2)(iii) **<u>Corrective Action Item</u>** Provide more detail in the Pretreatment inspection reports to include information about the facility's chemical storage, handling, and transfer; process/unit operations; wastestream generation from these unit operations; wastestream management or wastewater treatment; and sampling procedures to provide a current characterization. Provide notification or follow up to Debourgh and BNSF regarding each facility's current conditions and status under the Pretreatment program after the 2020 facility inspection.
10. EPA evaluated the Debourgh permit to ensure the City is implementing the required permit conditions found in 40 C.F.R. § 403.8(f)(1)(iii)(B)(1-6) of the Pretreatment Regulations and incorporated in the City's municipal ordinance. The Debourgh permit needs to be updated to include the following permit conditions: a. Statement of Transferability (Cover Page of permit) - needs to be modified to be equivalent to 13.12.440(b) of the ordinance. b. Submission of all Monitoring data (Part C.3) – needs to be modified to be equivalent to 13.12.465(e) of the ordinance. c. Upset Provisions are not included in the permit, as per 13.12.590 of the ordinance. d. Bypass and notifications – modify to include required notifications pursuant to 40 CFR 403.17 of the Pretreatment Regulations.	**<u>Pretreatment Requirements</u>** 40 C.F.R. § 403.8(f)(1)(iii)(B)(1-6) City of La Junta Municipal Ordinance **<u>Corrective Action Item</u>** Modify the Debourgh Manufacturing permit to ensure implementation of these permit conditions in the municipal ordinance and federal regulations.
11. Section 13.12.435 of the municipal ordinance requires "All permittees shall reapply for a new	**<u>Pretreatment Requirements</u>**

permit ninety (90) days prior to the expiration of the old permit." Debourgh submitted its permit application on July 15, 2019, later than 90 days before the expiration date of the permit and after the June 1, 2019 reissuance date of the current permit. This is in violation of the municipal ordinance and implementing permit conditions. There were no records of enforcement for this late permit application.	City of La Junta Municipal Ordinance, Section 13.12.435 **Corrective Action Item** Provide an enforcement response to Debourgh, in accordance with the City's ERP for the submittal of the permit application past the due date required in the permit.
12. 40 C.F.R. § 403.8(f)(2)(vii) of the Pretreatment Regulations require the City to "Investigate instances of noncompliance with Pretreatment Standards and Requirements, as indicated in the reports and notices." The following non-compliance events were discovered during the review of the 2019 and 2020 Debourgh Manufacturing compliance reports. The City did not submit enforcement records that provided a response to the permit violations. The City needs to provide an enforcement response in accordance with its ERP in response to the violations identified below: a. The 2nd quarter 2019 compliance report was due on July 28, 2019 but was submitted on July 30, 2019. b. The SIU did not submit pH data for August 10, 2020 in the 3rd quarter 2020 compliance report. c. The SIU did not submit pH data for November 25, 2020 in the 4th quarter 2020 compliance report.	**Pretreatment Requirements** 40 C.F.R. § 403.8(f)(2)(vii) **Corrective Action Item** Provide an enforcement response to Debourgh, in accordance with the City's ERP for the permit condition violations in 2019 and 2020.
13. Section 13.12.435 of the municipal ordinance requires "All permittees shall reapply for a new permit ninety (90) days prior to the expiration of the old permit." BNSF submitted its permit application on July 15, 2019, later than 90 days before the expiration date of the permit and after the June 1, 2019 reissuance date of the current permit. This is in violation of the municipal ordinance and implementing permit conditions. There were no records of enforcement for this late permit application.	**Pretreatment Requirements** City of La Junta Municipal Ordinance, Section 13.12.435 **Corrective Action Item** Provide an enforcement response to BNSF, in accordance with the City's ERP for the submittal of the permit application past the due date required in the permit.
14. EPA evaluated the BNSF permit to ensure the City is implementing the required permit conditions found in 40 C.F.R. § 403.8(f)(1)(iii)(B)(1-6) of the Pretreatment Regulations and incorporated in the	**Pretreatment Requirements** 40 C.F.R. § 403.8(f)(1)(iii)(B)(1-6)

City's municipal ordinance. The BNSF permit needs to be updated to include the following permit conditions: a. Statement of Transferability (Cover Page of permit) - needs to be modified to be equivalent to 13.12.440(b) of the ordinance. b. Submission of all Monitoring data (Part C.3) – needs to be modified to be equivalent to 13.12.465(e) of the ordinance. c. Upset Provisions are not included in the permit, as per 13.12.590 of the ordinance. d. Bypass and notifications – modify to include required notifications pursuant to 40 CFR 403.17 of the Pretreatment Regulations e. Benzene and BTEX sample types are required as composites in the permit. 40 CFR 136 requires BTEX, which includes benzene, to be sampled as a grab sample. f. Section 13.12.250(b)(4) of the municipal ordinance establishes pH limits as 5.0 to 9.0 but the BNSF permit establishes pH limits as 6.0 to 9.0.	City of La Junta Municipal Ordinance **Corrective Action Item** Modify the BNSF permit to ensure implementation of the permit conditions in the municipal ordinance and federal regulations.
15. 40 C.F.R. § 403.8(f)(2)(vii) of the Pretreatment Regulations require the City to "Investigate instances of noncompliance with Pretreatment Standards and Requirements, as indicated in the reports and notices." The following non-compliance events were discovered during the review of the 2019 and 2020 BNSF compliance reports. The City did not submit enforcement records that provided a response to the permit violations. The City needs to provide an adequate enforcement response to the violations identified below: a. Late compliance reports, past the deadline due dates: i. 3rd quarter, due October 28, 2019 – submitted on October 31, 2019 ii. 4th quarter, due January 28, 2020 – submitted on January 29, 2020 iii. 4th quarter, due January 28, 2021 – submitted on February 3, 2021 b. Flow exceeding the permit limit of 25,000 gpd: i. June 1, 2020 – 37,000 gallons ii. June 8, 2020 – 54.000 gallons	**Pretreatment Requirements** 40 C.F.R. § 403.8(f)(2)(vii) **Corrective Action Item** Provide an enforcement response to BNSF, in accordance with the City's ERP for the permit condition violations in 2019 and 2020.

iii. June 22, 2020 – 30,000 gallons iv. June 30, 2020 – 30,000 gallons v. August 8, 2020 – 29,000 gallons	
Section 11.0 – Enforcement	
16. The City submitted its ERP to the EPA for review, prior to the audit. Based on the EPA's review, the ERP needs to be updated to include the following, in accordance with 40 C.F.R. § 403.8(f)(5)(i-iv): a. **Describe how the POTW will investigate instances of noncompliance.** i. The City needs to address the implementation procedures utilized to investigate instances of noncompliance which includes procedures for the IU inventory/inspections, permitting, receipt and compliance evaluation for self-monitoring reports and notifications, control authority monitoring and SNC calculations/determinations. b. **Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place.** i. The City needs to establish escalating enforcement responses it will take for the following types of IU violations: 1. Tampering with monitoring equipment/methods 2. Recordkeeping 3. Dilution 4. Refusal of entry 5. Sector control programs and BMPs 6. Trucked and Hauled Waste 7. SNC Narrative Criteria found in §13.12.020(a)-Significant Noncompliance definition, #D. "Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the	**<u>Pretreatment Requirements</u>** 40 C.F.R. § 403.8(f)(5) **<u>Corrective Action Item</u>** Modify the enforcement response plan to be in compliance with 40 C.F.R. § 403.8(f)(5)(i-iv) of the Pretreatment Regulations.

POTW's exercise of its emergency authority." 8. SNC Narrative Criteria found in §13.12.020(a)-Significant Noncompliance definition, #G. "Failure to accurately report noncompliance." 9. SNC Narrative Criteria found in §13.12.020(a)-Significant Noncompliance definition, #G. "Any other violation or group of violations, which may include a violation of Best Management Practices, which the POTW determines will adversely affect the operation or implementation of the local Pretreatment program." c. **Identify (by title) the official(s) responsible for each type of response;** i. The City's current ERP does not identify the title of the Pretreatment official responsible and the time periods for each type of enforcement response. d. **Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards** i. The ERP needs to identify and include all available enforcement action tools in Article VII-Enforcement of the Ordinance, personnel responsible, time frames	
Section 13.0 – Best Management Practices – Sector Control Program	
17. The Dental Amalgam Rule, found in 40 C.F.R. Part 441, was promulgated as a final rule with new source dental facilities required to be in compliance with the Pretreatment Standards as of July 14, 2017, and existing source dental facilities required to be in compliance as of June 14, 2020. The EPA identified a number of dental facilities in the service area through a Google search (listed in §13.4 of this audit report). There were no available records for these dental facilities to identify if they are subject to the Dental Amalgam Rule.	**Pretreatment Requirements** 40 C.F.R. § 403.8(f)(2)(i-iii) 40 C.F.R. § 441.50(a)(1) **Corrective Action Item** Characterize the dental offices identified in §13.4 of this audit report and any other dental facilities in the service area to determine if the Dental Amalgam Regulations are applicable. Provide an enforcement response in

	accordance with the ERP to non-compliance with the rule requirements for amalgam separator installation, BMP and reporting requirements.

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1.0 Introduction

The U.S. Environmental Protection Agency, Region 8 (EPA) conducted a remote audit of the Pretreatment program, administered by the City of La Junta, CO (City) from March 22, 2021 to March 24, 2021. The remote Pretreatment audit was held in lieu of an on-site audit in response to concerns related to the COVID-19 pandemic. The remote inspection, hosted on the MS-Teams platform, started on March 22, 2021 at 8 a.m. with an opening interview. Pretreatment records were reviewed, and a closing conference was held on March 24, 2021 at 2 p.m. during which the EPA presented the preliminary observations, conclusions, and findings from the audit.

Participants in the audit included:

City of La Junta, CO

Chris Menges	Pretreatment Coordinator
Tom Seaba	Director of Water/Wastewater

EPA:

Al Garcia	Region 8 Pretreatment Coordinator

The primary purpose of the EPA audit was to evaluate the Pretreatment program administered and implemented by the City. In addition, the audit served as a forum for the EPA and the City to discuss issues related to the implementation of the Pretreatment program and for the EPA to provide outreach and training to the City.

The EPA Pretreatment audit consisted of an evaluation of the following:

- The City's legal authority codified in its municipal ordinance; Chapter 13.12 - Sewers.
- Development and implementation of the City's local limits.
- The City's resources to implement the Pretreatment program in its service area.
- Implementation policies and templates developed by the City.
- Review and evaluation of the Pretreatment programmatic activities and records maintained for the permitted Significant Industrial Users (SIUs).
- Due to the remote nature of the Pretreatment audit, site inspection of selected SIUs and IUs in the service area were not completed.
- Discussion of the Pretreatment Regulations and implementation.

The following sections of the report highlight the findings, corrective actions, and recommended actions of the audit. The action items to correct program deficiencies and meet regulatory requirements are identified in the Pretreatment Audit Summary Table, beginning on page 2 of this report. Specific actions to clarify and strengthen program implementation are provided as recommendations within the body of the audit report.

2.0 Publicly Owned Treatment Works (POTW) Information

The City owns and operates two Publicly Owned Treatment Works (POTW). The mechanical POTW located at 1021 East 3rd Street, La Junta, CO (Lat: 37°59'16.61"N, Long: 103°31'51.55"W) services the legal boundaries of the City, located on the south side of the Arkansas River. The lagoons located in the La Junta Industrial Park east of Harris Road and the La Junta Municipal Golf Course (Lat: 38° 2'3.80"N, Long: 103°30'20.61"W), services the Industrial Park service area. The service area for the City's mechanical POTW is shown in Figure 1 and the service area for the lagoon POTW is shown in Figure 4. Due to the pandemic and the necessity for a remote audit, POTW tours were not completed.

The POTW schematic diagram of the City's mechanical POTW is shown in Figure 2 and Google Earth views of the City's mechanical and lagoon POTWs are shown in Figures 3 and 5, respectively.

2.1 NPDES Permit

The City's NPDES permit #CO-0021261 issued by the Colorado Department of Public Health and Environment (CDPHE) on August 30, 2019 and effective on October 1, 2019 contain provisions for an EPA-approved Pretreatment program in Part I.B.7. The City's NPDES permit will expire on September 30, 2024.

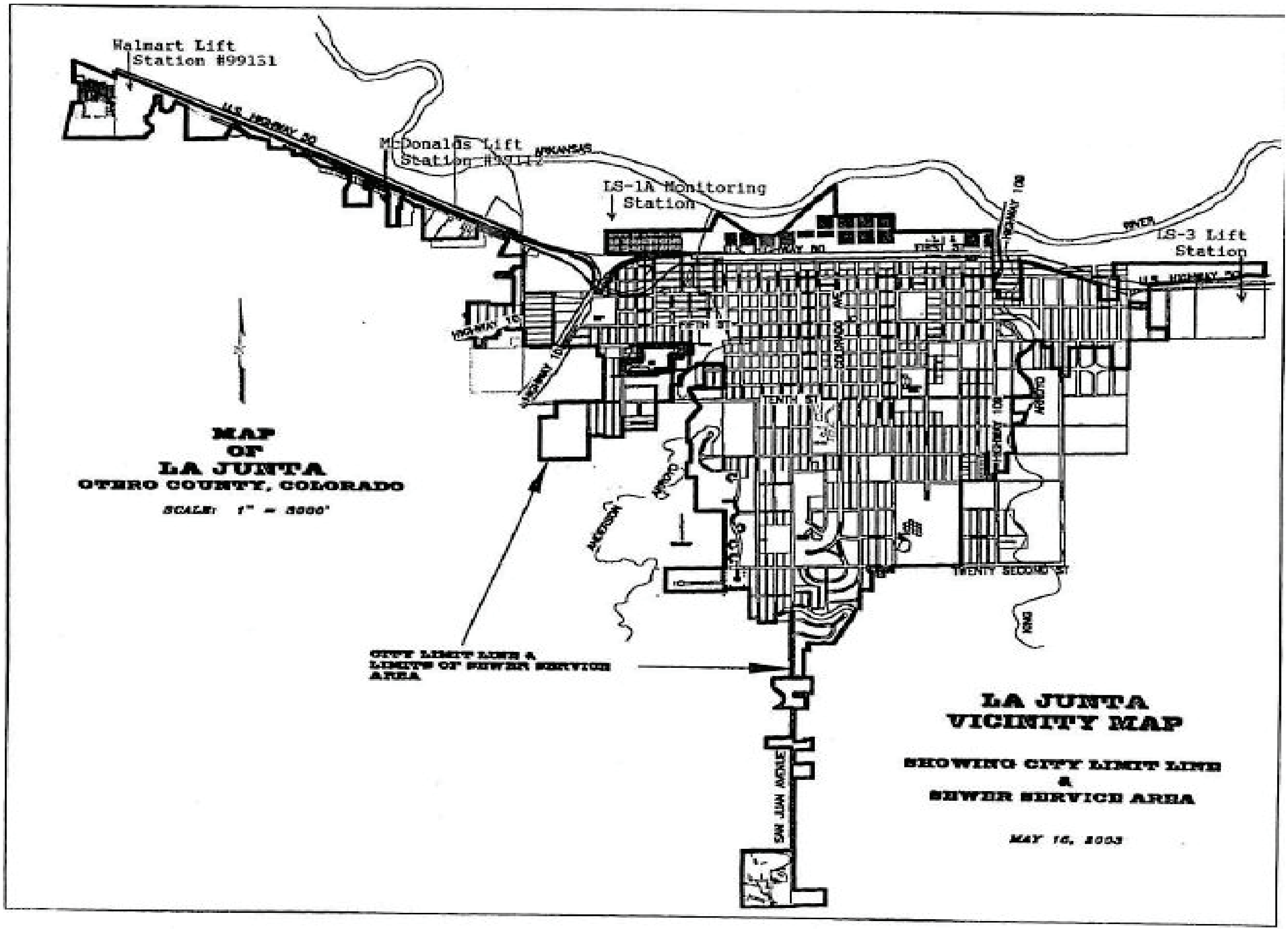

Figure 1 –City of La Junta Service Area

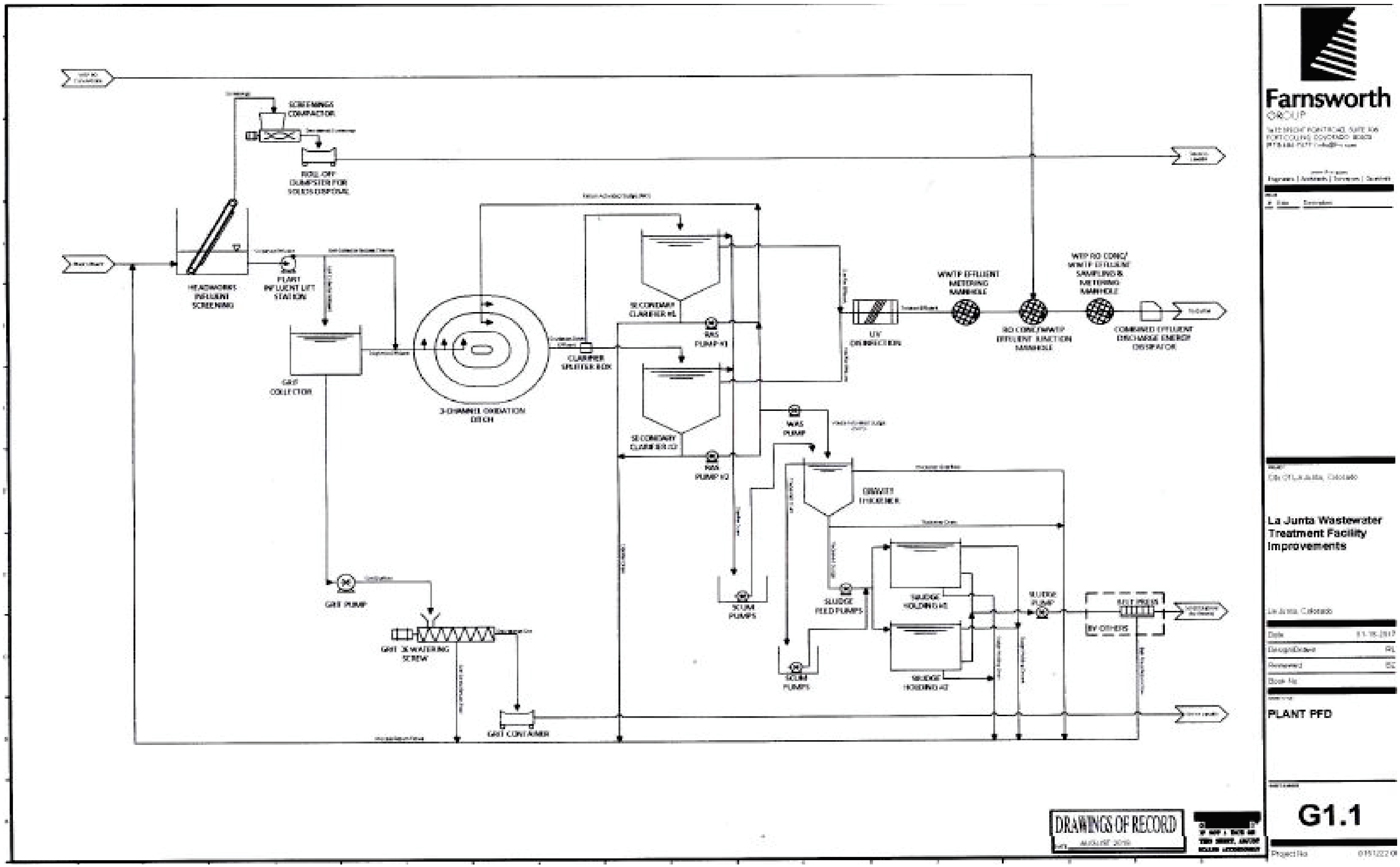

Figure 2 –City of La Junta Mechanical POTW Schematic Diagram

Figure 3 – City of La Junta Google Earth View

Figure 4 - City of La Junta POTW - Industrial Service Park Service Area - Google Earth View

Figure 5 - La Junta Industrial Service Park Lagoon - Google Earth View

3.0 Resources

3.1 Resources Regulatory Background

The Pretreatment Regulations found in 40 C.F.R. § 403.8(f)(1-6) include POTW Pretreatment requirements and procedures to implement an approved Pretreatment program. These requirements and procedures include the legal authority and the implementation procedures of the Pretreatment program (permitting, inspections, sampling, industrial waste survey, receipt of IU reporting and notification, record-keeping, slug discharge control, data evaluation and enforcement for non-compliance). In addition, the Pretreatment Regulations found in 40 C.F.R. § 403.8(f)(3) state that the POTW shall have sufficient resources and qualified personnel to carry out the authorities and implementation procedures of the Pretreatment program.

A Pretreatment program, in compliance with the criteria listed in the Pretreatment Regulations, requires adequate and qualified staffing to implement the Pretreatment program in its service area. The resources required for each implementation activity depend largely on the size of the service area, number of IUs/SIUs/sector control programs, and Pretreatment program policies. A compliant program also requires a consistent funding mechanism to ensure the program is adequately funded and equipped to fully implement the program.

3.2 Evaluation of the City's Resources and Funding

Based on the EPA's evaluation of the City's implementation of the program and as outlined in the audit report, it does not appear that the City has fulfilled the commitment to have sufficient resources and qualified personnel to implement the program, as required in 40 C.F.R. § 403.8(f)(3) of the Pretreatment Regulations.

The City reported in its 2020 Pretreatment Annual Report that it commits 1.0 FTE to the implementation of the Pretreatment program. Information gathered during the audit indicates that the City's commitment to the Pretreatment program is less than 0.1 FTE or 10% of the Pretreatment Coordinator's job duties. The previous Pretreatment Coordinator retired in 2017 and the current Pretreatment Coordinator was assigned to the position in February 2018, along with his current duties as a water and wastewater technician for the City. The Pretreatment Coordinator also performs backflow prevention, lagoon checks/inspections, lift station measurements, compliance assurance, sampling, completing the consumer confidence report (drinking water) and other related water/wastewater duties. The City needs to ensure that it provides adequate resources to the programmatic activities of the Pretreatment program such as the industrial user inventory and characterization, SIU permit management, trucked and hauled waste control, and the dental amalgam program. The implementation of these Pretreatment program activities was identified as deficient and requiring corrective action items.

The City stated in the audit that it provides a percentage of the wastewater budget to the Pretreatment program. The City did not provide the annual Pretreatment budget in the 2020 Pretreatment Annual Report and did not have an estimate of the budget during the audit. Therefore, EPA was unable to evaluate the funding available to determine if this was adequate to perform the programmatic activities of the Pretreatment program. The City needs to ensure sufficient resources to implement the program effectively, including qualified personnel and funding.

3.3 Examples of Available Pretreatment Training/Resources

This is not a comprehensive list of all Pretreatment related training/resources available. The City is encouraged to seek out training and resources that will support its Pretreatment program implementation. EPA is also available to the City for Pretreatment training opportunities.

The Region 8 Pretreatment workshop provides training sessions directly related to Pretreatment implementation, updates to upcoming regulations and policies, and networking opportunities.

The EPA provides "Pretreatment 101" webinar training designed to provide consistent national training to local and state Pretreatment programs. The webinar series is located at https://www.epa.gov/npdes/national-pretreatment-program-events-training-and-publications#training. Archived presentations may be downloaded, and a schedule of future training opportunities is located at the website.

An additional resource available is the Pretreatment Coordinators Group discussion forum, found at the following website:

https://groups.io/g/Pretreatment/topics

Corrective Action Items:

1. Develop and submit a staffing plan to ensure the City consistently implements the Pretreatment program. The staffing plan needs to provide details regarding the FTE allocation to the Pretreatment program, a training plan for the current staff, funding levels, and an evaluation of the current and projected scope of the program to ensure the growth of the program's resources are commensurate with the growth in the service area. Thereafter, implement the plan.

4.0 Municipal Ordinance and Intergovernmental Agreements

4.1 Legal Authority Background

40 C.F.R. § 403.8(f)(1) of the Pretreatment Regulations states:

"The POTW shall operate pursuant to legal authority enforceable in Federal, State, or local courts, which authorizes or enables the POTW to apply and to enforce the requirements of sections 307 (b) and (c), and 402(b)(8) of the Clean Water Act (Act) and any regulations implementing those sections. Such authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by State law.

At a minimum, this legal authority shall enable the POTW to:

i. Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by Industrial Users where such contributions do not meet applicable Pretreatment Standards and Requirements or where such contributions would cause the POTW to violate its NPDES permit;

ii. Require compliance with applicable Pretreatment Standards and Requirements by Industrial Users;

iii. Control through Permit, order, or similar means, the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements. In the case of Industrial Users identified as significant under §403.3(v), this control shall be achieved through individual permits or equivalent individual control mechanisms issued to each such User…

iv. Require (A) the development of a compliance schedule by each Industrial User for the installation of technology required to meet applicable Pretreatment Standards and Requirements and (B) the submission of all notices and self-monitoring reports from Industrial Users as are necessary to assess and assure compliance by Industrial Users with Pretreatment Standards and Requirements, including but not limited to the reports required in §403.12.

v. Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by Industrial Users, compliance or noncompliance with applicable Pretreatment Standards and Requirements by Industrial Users. Representatives of the POTW shall be authorized to enter any premises of any Industrial User in which a Discharge source or treatment system is located or in which records are required to be kept under §403.12(o) to assure compliance with Pretreatment Standards. Such authority shall be at least as extensive as the authority provided under section 308 of the Act;

vi. (A) Obtain remedies for noncompliance by any Industrial User with any Pretreatment Standard and Requirement. All POTW's shall be able to seek injunctive relief for noncompliance by Industrial Users with Pretreatment Standards and Requirements. All POTWs shall also have authority to seek or assess civil or criminal penalties in at least the amount of $1,000 a day for each violation by Industrial Users of Pretreatment Standards and Requirements.

(B) Pretreatment requirements which will be enforced through the remedies set forth in paragraph (f)(1)(vi)(A) of this section, will include but not be limited to, the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the POTW; any requirements set forth in control mechanisms issued by the POTW; or any reporting requirements imposed by the POTW or these regulations in this part. The POTW shall have authority and procedures (after informal notice to the discharger) immediately and effectively to halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent endangerment to the health or welfare of persons. The POTW shall also have authority and procedures (which shall include notice to the affected industrial users and an opportunity to respond) to halt or prevent any discharge to the POTW which presents or may present an endangerment to the environment or which threatens to interfere with the operation of the POTW. The Approval Authority shall have authority to seek judicial relief and may also use administrative penalty authority when the POTW has sought a monetary penalty which the Approval Authority believes to be insufficient.

vii. Comply with the confidentiality requirements set forth in §403.14."

The provisions in 40 C.F.R. § 403.8(f)(1)(i-vii) do not provide local Pretreatment programs with legal authority, but they do establish the minimum requirements for the local municipality to implement the Pretreatment program. A POTW's legal authority is derived from State law. Therefore, State law must confer the minimum legal authority required by the Pretreatment Regulations on a POTW.

To apply the regulatory authority provided by State law, it is necessary for the POTW to establish local regulations to legally implement and enforce pretreatment requirements. A POTW's legal authority is typically established in a sewer use ordinance as part of the municipality's code, or in the case of a sanitation district, its Rules and Regulations. The EPA's 2007 *Model Pretreatment Ordinance* provides a template for POTWs that are required to develop pretreatment programs and can be found at the following website:

https://www3.epa.gov/npdes/pubs/pretreatment_model_suo.pdf

4.2 City of La Junta Municipal Ordinance

EPA approved the City's Pretreatment program on December 28, 1984. According to records maintained by EPA, the City updated its legal authority (municipal ordinance) in 1991 to incorporate the Domestic Sewage Exclusion regulations, in 1994 to incorporate hauled waste requirements and in 1997 to update definitions and additional Pretreatment Standards/Requirements in 1997 and on December 23, 2014 to update the Pretreatment Streamlining regulations. In addition, the City established local limits on July 5, 1995 and updated its local limits on December 12, 2003.

The City provided its Pretreatment legal authority found in its municipal ordinance, Chapter 13.12 – Sewers to the EPA for review. Based on the EPA's review, the City's municipal provides a framework to implement the Pretreatment Regulations in the POTW's service area, with the following exceptions (as identified in the attached legal authority review):

- Authorized Representative of the IU definition– the current definition found in Section 13.12.020(a) of the municipal ordinance is abbreviated and needs to be modified to be equivalent to the definition established in 40 CFR 403.12(l) of the Federal Pretreatment Regulations.
- The City has established the Requirements for control of slug discharges and notification of slug loads in 13.12.440(g)(8) as an optional permit condition. This permit condition needs to be modified to include "if determined to be necessary by the City" and needs to be moved to the required permit conditions in 13.12.440.
- Notification of discharge of hazardous waste – the notification requirements established in Section 13.12.440(i) are abbreviated, not complete and need to be

modified to be equivalent to the Federal Pretreatment Regulations in 40 CFR 4013.12(p).

- The ordinance has not established the authority for the City to immediately halt actual or threatened discharges. The Pretreatment Regulations at 40 CFR 403.8(f)(10(vi)(B) require that a POTW establish the "authority and procedures (after informal notice to the discharger) immediately and effectively to halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent endangerment to the health or welfare of persons."

4.3 Inter-Jurisdictional or Governmental Agreements (IGA)

4.3.1 IGA Regulatory Background

A POTW's authority to implement and enforce its approved Pretreatment program is directly related to its regulatory jurisdiction. The POTW's authority is established in ordinance or Rules and Regulations, which are in effect for its service area. Local entities with connectors, or outside jurisdictions to the service area that contribute wastewater, must establish legally binding mechanisms to ensure that all IUs in these outside contributing jurisdictions are subject to enforceable Pretreatment standards and requirements, as required in §403.8(f)(1).

40 C.F.R. § 403.8(f)(1)(i) states, "The POTW shall operate pursuant to legal authority enforceable in Federal, State or local courts, which authorizes or enables the POTW to apply and to enforce the requirements of sections 307 (b) and (c), and 402(b)(8) of the Act and any regulations implementing those sections. *Such authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by State law.*" [*Emphasis added*]

The local entity that implements the Pretreatment program must either obtain this authority for itself through an IGA or ensure that the outside contributing jurisdiction has both the authority and the obligation to implement and enforce the Pretreatment Standards and Requirements against every IU that discharges to the POTW.

4.3.2 Evaluation of the City's IGAs with Outside Contributing Jurisdictions

According to information gathered during the audit, the City does not have any outside contributing jurisdictions.

<u>Corrective Action Item</u>:

1. Update the municipal ordinance to ensure equivalent language with the Pretreatment Regulations found in 40 C.F.R. § 403 as identified in §4.2 of this audit report and in the enclosed legal authority checklist. Submit the updated municipal ordinance to EPA for review and approval.

5.0 Local Limits

5.1 Local Limits Regulatory Background

40 C.F.R. § 403.8(f)(4) of the Pretreatment Regulations require POTWs that are developing pretreatment programs to develop and enforce specific limits on prohibited discharges or demonstrate that the limits are not necessary. 40 C.F.R. § 403.5(c)(1) states, "Each POTW developing a POTW Pretreatment Program pursuant to §403.8 shall develop and enforce specific limits to implement the prohibitions listed in paragraphs (a)(1) and (b) of this section [*general and specific prohibitions*]. Each POTW with an approved pretreatment program shall continue to develop these limits as necessary and effectively enforce such limits." [*Clarification and emphasis added*].

The National Pretreatment Program consists of three types of national pretreatment standards established by regulation that apply to industrial users. These include prohibited discharge standards, categorical standards, and local limits. Prohibited discharge and categorical standards are developed by the EPA to establish nationwide Pretreatment Standards. Prohibited discharge standards, comprised of general and specific prohibitions found in 40 C.F.R. 403.5(a) and (b) of the Pretreatment Regulations, apply to all IUs regardless of the size or type of operation. Categorical standards are uniform, technology-based standards that apply to specific process wastewater discharges from industrial categories. These categorical standards are found at 40 C.F.R. Parts 405 through 471.

The EPA's promulgation of categorical standards does not relieve a POTW from its obligation to evaluate the need for and to develop local limits to meet the general and specific prohibitions in the Pretreatment Regulations. Because specific prohibitions and categorical standards provide only general protection against pass through and interference, local limits based on POTW-specific conditions may be necessary. Local limits are developed by POTWs to enforce the specific and general prohibitions, as well as any state and local regulations.

An EPA-approved Pretreatment program is required to develop local limits that are protective of the POTW, the collection system, and the POTW's site-specific standards. These site-specific standards may be NPDES permit effluent limits, biosolids limits, environmental criterion, worker health and safety standards or other local standards.

The EPA recommends that POTWs establish their local limits based on the maximum allowable headworks loading (MAHL) calculated for each pollutant of concern. The MAHL approach enables the POTW to calculate local limits considering the portion of the MAHL that is controllable (non-domestic discharges from IUs) from the uncontrollable portion (domestic sources, background concentrations, etc.). A pollutant's MAHL is determined by first calculating its Allowable Headworks Loading (AHL) for each POTW's site-specific standard or environmental criterion. Local limit development uses a mass-balance approach to determine the AHLs for a POTW based on the environmental and treatment plant criteria.

An AHL is the estimated maximum loading of a pollutant that can be received at a POTW's headworks, that should not cause a POTW to violate a treatment plant limit or environmental criterion. An AHL is developed to prevent interference or pass through. An AHL is calculated for each applicable POTW site-specific standard: pass through, sludge contamination, air quality standards, and the various forms of interference (i.e. biological treatment inhibition, sludge digestion inhibition). The AHLs for each pollutant of concern (POC) are calculated based on the various suitable environmental criteria, plant flow rates, and plant removal efficiency. After calculating a series of AHLs for each POC, the lowest AHL is chosen as the MAHL.

MAHLs estimate the maximum combined loadings that can be received at the POTW's headworks from all sources. Maximum allowable industrial loadings (MAIL), developed by the POTW, represent the amount of pollutant loadings the POTW can receive from controlled sources (i.e., industrial users, some commercial sources, and some hauled waste) that the POTW chooses to control through local limits. Local limits can take many forms based on how MAILs are allocated by the POTW. The designation and implementation of these MAILs, including the allocation of loadings to SIUs, are left to each POTW. The POTW should provide a reasonable method of allocating the MAIL to the SIUs while ensuring the implementation procedures do not exceed the calculated MAHL. Typically, the POTWs allocate the MAIL as a uniform concentration-based or a mass limit to each SIU.

The local limits should be based on the following:

- Sampling of the service area to develop a representative data set collected for local limits (e.g. influent, effluent, biosolids, commercial, residential, industrial, trucked/hauled waste).
- Evaluation of the current POTW standards/criteria (including, but not limited to: NPDES permit limits/conditions, water quality standards, biosolids standards).
- Identification of the POTW removal efficiency and pollutant partitioning.
- Evaluation of data to ensure it is current and representative of current conditions.
- Identification of pollutants of concern.
- Calculations of loadings and determination of MAHL.
- Development of local limits and allocation methods.

5.2 Local Limits Requirements Established in the City's NPDES Permits

The City's NPDES permit issued by the CDPHE on August 30, 2019 and effective on October 1, 2019 include local limit requirements in Part I.B.7(c). The local limits requirements are as follows:

"The Permittee shall establish and enforce specific local limits to implement the general and specific prohibitions found in 40 CFR 403.5(a) and (b). The Permittee shall continue to develop these limits as necessary and effectively enforce such limits. Where the Permittee determines that revised or new local limits are necessary, the Permittee shall submit the proposed local limits to the Approval Authority in an approvable form in accordance with 40 CFR 403.18.

In accordance with 40 CFR 122.44(j)(2)(ii), the permittee shall submit to the Division and Approval Authority a technical evaluation of the need to revise or develop local limits in accordance with 40 CFR 403.5(c) and a local limits package if a technical evaluation reveals that development or revision of local limits is necessary, by September 30, 2020. The evaluation shall include, but not be limited to, a consideration of any new or revised numeric and practice-based effluent limits in this permit."

5.3 The EPA Evaluation of the City's Local Limits

The City's local limits were updated in 2003 and are incorporated in Section 13.12.260 of the municipal ordinance. The local limits applicability language is as follows:

"No user of the wastewater utility shall discharge wastes or wastewaters containing pollutants in excess of the following specific pollutant limitations. The specific pollutant limitations apply to composite samples except where noted. The Director may also prohibit, by written notice, any pollutant discharged to the POTW sewers that is within the allowable concentration limitations but that interferes with or upsets a sewage treatment process at the POTW."

Table 1 – City of La Junta Local Limits

Pollutant	Symbol	Local Limits (µg/L)
Arsenic, Total	As	41.0
Boron, Total	B	2.56 mg/L
Cadmium, Total	Cd	28.0
Chloride	Cl	5,674.0 mg/L
Chromium, Total	Cr	918.0
Chromium, Hexavalent	Cr^{6+}	143.0
Copper, Total	Cu	905.0
Cyanide, Total	CN	86.0
Lead, Total	Pb	193.0
Mercury, Total	Hg	<0.2
Molybdenum, Total	Mo	177.0
Nickel, Total	Ni	179.0
Selenium, Total	Se	68.0
Silver, Total	Ag	463.0
Zinc, Total	Zn	2.3 mg/L

5.3.1 Numeric Ordinance Limits

In addition to the established technically-based local limits, the City has incorporated the following numeric ordinance limits that are not site-specific, and have not undergone the rigor of approval/ public participation for the technically-based local limits:

- Benzene, toluene, ethylbenzene, and xylenes (BTEX) at 750.0 µg/L
- Benzene at 50.0 µg/L
- Petroleum Oil and Grease at 69.0 mg/L
- Upper pH limit at 9.0 S.U. established in Section 13.12.250(b)(4) of the municipal ordinance.

The EPA recommends the City evaluate these numeric ordinance limits, that are not technically-based on site-specific conditions and standards, to ensure the limits have an underlying basis for incorporation into its Rules and Regulations. A basis for adoption for these numeric ordinance limits may be contained in EPA or other scientific reports, collection system observations, studies performed in other POTWs, etc.

5.3.2 Dilution Prohibition

The City has incorporated a prohibition on dilution in Section 13.12.290 of the municipal ordinance to ensure the IUs are appropriately managing their regulated wastestreams to meet compliance with an applicable Pretreatment Standard or Requirement established by the City:

"No industrial user shall increase the use of process water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with any applicable limitations."

The dilution prohibition language in Section 13.12.290 meets the requirement in 40 CFR Part 403.6(d) of the Pretreatment Regulations.

5.4 Local Limits Technical Evaluation-Regulatory Background

40 C.F.R.§ 122.44(j)(2)(ii) of the NPDES regulations require POTWs to provide a written technical evaluation of the need to revise local limits following permit issuance or reissuance. The technical evaluation is a detailed re-evaluation of data, criteria, conditions, and assumptions on which local limits are based to determine whether any significant changes affecting the local limits have occurred. Chapter 7 of the *Local Limits Development Guidance Manual*, EPA-833-R-04-002A, July 2004 provides guidance on completing the technical evaluation of local limits.

The Annual Pretreatment Reports submitted to the EPA provide the POTW with an opportunity to perform reviews for exceedances of the established MAHL for the POCs, on an annual basis. The POTW compares both the maximum and average influent data for the reporting year against the MAHL to determine if there were any exceedances. In addition, the POTW is required to report biosolids data to determine if there were any changes or concerns with the biosolids loadings. An exceedance of the established MAHL may be indicative of a change in the service area, changes to the POTW operations or changes to domestic or non-domestic loadings and may indicate a need to recalculate the local limits. However, the annual review may not have addressed conditions that can change over time, such as operating conditions, environmental criteria/standards, data, or assumptions that may make local limits no longer appropriate, protective or legally-defensible.

As a follow-up to MAHL exceedances listed on the annual report and as required during a permit reissuance, a POTW should compare its current conditions and requirements with those that existed when the local limits were developed. The EPA recommends that POTWs determine if re-calculating existing local limits, or developing MAHLs for new pollutants of concern, is necessary in response to the following criteria:

1. Removal Efficiencies
    a. Modification to the POTW or new POTW brought online.
    b. Changes in POTW processes or operations that have affected the POTW removal efficiencies.
2. Total POTW or IU Loading
    a. Significant changes to flow to the POTW.
    b. Significant changes to loadings to the POTW due to new IUs, changes in loadings at existing IUs or significant growth in the service area.
    c. Significant changes in loadings from SIUs in the service area.
3. Limiting Criteria
    a. New or revised NPDES permit limits.
    b. New or revised biosolids standards.
    c. Changes in EPA or State Criteria (acute and chronic water quality standards for the receiving waters, reuse water quality criteria) at the time of local limit development to existing criteria.
4. Sludge Characteristics or Method of Disposal
    a. Changes in loadings to biosolids.
    b. Changes in biosolids disposal methods.
5. Background Concentrations of Pollutants in Receiving Water

5.5 Technical Evaluation of the City's Local Limits

Part I.B.7(c) of the City's NPDES permit includes the following requirements for a technical evaluation of the local limits:

"In accordance with 40 CFR 122.44(j)(2)(ii), the permittee shall submit to the Division and Approval Authority a technical evaluation of the need to revise or develop local limits in accordance with 40 CFR 403.5(c) and a local limits package if a technical evaluation reveals that development or revision of local limits is necessary, by September 30, 2020. The evaluation shall include, but not be limited to, a consideration of any new or revised numeric and practice-based effluent limits in this permit."

The EPA has no records that indicate the City submitted its technical evaluation of its local limits on or by September 30, 2020, as required in Part I.B.7(c) of its NPDES permit. The City is required by the NPDES permit to submit a technical evaluation of its local limits to the EPA. The technical evaluation should include the items listed in §5.4 of this audit report and if revised or new local limits are necessary, then submit the proposed local limits to the EPA.

5.6 Permit or Site-Specific Limits

Local municipalities implementing the Pretreatment program should have the ability to establish site or permit-specific limits as deemed necessary to be protective of the POTW. This is a beneficial authority because situations or projects may occur in the service area that the municipality may want to provide control to protect the POTW. However, the current limits in the ordinance may not address the pollutant of concern.

The EPA considers the development of any local limit, whether codified in the municipal ordinance/rules and regulations or developed on a site-specific situation (i.e., permits-specific limit) to be a program modification under 40 C.F.R §403.18 (53 FR 40579, Final Rule, General Pretreatment Regulations for Existing and New Sources, October 17, 1988). The development of any local limit is required to follow the approval and public notice provisions, both at the local level and by submitting to the EPA.

40 C.F.R §403.5(c)(3) of the Pretreatment Regulations state, "Specific effluent limits shall not be developed and enforced without individual notice to persons or groups who have requested such notice and an opportunity to respond." The EPA recommends that POTWs conduct public participation in the local limits process (whether codified in the municipal ordinances/rules and regulations or new limits developed in a permit) as openly as possible. This may involve notifying the SIUs/IUs and other affected parties of the proposed limits or announcing a 30-day public comment period. This would allow sufficient time for the public to participate, which is a fundamental goal of the Clean Water Act in Section 101(e).

The City has established the ability to develop site or permit-specific limits in Section 13.12.280(c) of its municipal ordinance:

"The Control Authority reserves the right to establish discharge limitations more stringent than federal and state requirements or limitations contained herein, if deemed necessary to comply with objectives of this Chapter."

Based on the EPA's review of the Pretreatment records, the City has not established site-specific limits in the currently issued SIU permits.

Corrective Action Items

1. Submit a technical evaluation of its local limits to the EPA, as required in Part I.B.7(c) of the City's NPDES permit. The technical evaluation should include the items listed in §5.4 of this audit report and if revised or new local limits are necessary, then submit the proposed local limits to the EPA.

6.0 Pretreatment Operating Procedures

6.1 Regulatory Background

40 C.F.R. §403.8(f)(2) of the Pretreatment Regulations states, "The POTW shall *develop and implement* procedures to ensure compliance with the requirements of a Pretreatment Program." [*emphasis added*] The Pretreatment Regulations identify these minimum procedures in 40 C.F.R. §403.8(f)(2)(i-viii) to include the following **implementation** activities, summarized below:

- Identify and locate all possible IUs that might be subject to the Pretreatment program;
- Obtain information describing the character and volume of wastes discharged by IUs;
- Notify IUs of all applicable Pretreatment standards and other applicable State or Federal standards or requirements;
- Review self-monitoring reports and other notices submitted by IUs;
- Randomly sample and analyze effluents from IUs;
- Evaluate whether each SIU needs a slug discharge control plan;
- Investigate instances of noncompliance with Pretreatment standards and requirements;
- Comply with public participation requirements.

The requirements listed in 40 C.F.R. §403.8(f)(2) include the **development** of procedures. Adequate and updated standard operating procedures (SOPs) provide the following benefits to a Pretreatment program:

- Develop the baseline knowledge of the Pretreatment Regulations and establish the framework for program implementation,
- Adequately implement the authorities established in the municipal ordinance and ensure consistency in program implementation,
- Retain institutional and historical knowledge developed within the POTW's program, and
- Provide a valuable training resource for new or inexperienced staff members.

Ultimately, the benefits of valid SOPs to the Pretreatment program are increased efficiency, along with improved data comparability, credibility, and legal defensibility. In addition, the development of written SOPs and templates allow the EPA to determine if the procedures adequately implement the legal authority developed in the municipal ordinance/rules and regulations as required in 40 C.F.R. §403.8(f):

"A POTW Pretreatment program must be based on the following legal authority and include the following procedures. These authorities and procedures shall at all times be fully and effectively exercised and implemented."

6.2 Standard Operating Procedures (SOPs)

The EPA evaluated the City's procedures and templates during the audit to ensure these meet the requirements listed in 40 C.F.R.§ 403.8(f)(2). As discussed in §6.1 of this audit report, developing SOPs are beneficial for the City's Pretreatment program but most importantly, to ensure adequate implementation of the authorities established in the municipal ordinance and ensure consistency in program implementation. The City has not developed the procedures or policies to implement the programmatic activities of the Pretreatment Regulations. The EPA recommends the City evaluate the necessity to develop SOPs for Pretreatment programmatic activities.

The EPA evaluated required Pretreatment SOPs and detailed comments are provided in later sections within this audit report:

- Industrial User Inventory and Characterization Procedures (*discussed in §7.0*);
- Sampling Plan, Site-Specific Sampling Protocol, Quality Assurance and Quality Control (*discussed in §10.0*); and
- Enforcement Response Plan and Data Compliance Evaluation (*discussed in §11.0*).

6.3 Templates

Templates and checklists are also critical to a Pretreatment program to ensure consistent and appropriate implementation of the Pretreatment regulations. The City has developed a permit application for discharging facilities and an SIU permit template. The permit application appears to provide adequate information and data for the City to develop an appropriate control mechanism. The evaluation of the permit template is included in §8.4 of this audit report.

6.4 Records and Data Management

6.4.1 Regulatory Background

The recordkeeping requirements of the Pretreatment program are established in 40 C.F.R. §403.12(o)(1-3):

"(1) Any Industrial User and POTW subject to the reporting requirements established in this section shall maintain records of all information resulting from any monitoring activities required by this section, including documentation associated with Best Management Practices. Such records shall include for all samples:

(i) The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;

(ii) The dates analyses were performed;

(iii) Who performed the analyses;

(iv) The analytical techniques/methods use; and

(v) The results of such analyses.

(2) Any Industrial User or POTW subject to the reporting requirements established in this section (including documentation associated with Best Management Practices) shall be required to retain for a minimum of 3 years, any records of monitoring activities and results (whether or not such monitoring activities are required by this section) and shall make such records available for inspection and copying by the Director and the Regional Administrator (and POTW in the case of an Industrial User). This period of retention shall be extended during the course of any unresolved litigation regarding the Industrial User or POTW or when requested by the Director or the Regional Administrator.

(3) Any POTW to which reports are submitted by an Industrial User pursuant to paragraphs (b), [baseline monitoring reports] (d), [90-day compliance reports] (e), [categorical industrial user monitoring reports] and (h) [significant industrial user monitoring reports] of this section shall retain such reports for a minimum of 3 years and shall make such reports available for inspection and copying by the Director and the Regional Administrator. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the Industrial User or the operation of the POTW Pretreatment Program or when requested by the Director or the Regional Administrator."

6.4.2 Recordkeeping and Data Management Procedures

Due to the Covid Pandemic and the remote nature of the audit, the physical recordkeeping and organization was not evaluated by the EPA.

6.5 Receipt of Monitoring Reports and Notifications

The Pretreatment regulations in 40 C.F.R. §403.8(f)(2)(vii) require a POTW to "Investigate instances of noncompliance with Pretreatment Standards and Requirements, as indicated in the reports and notices required under §403.12 [IU compliance reports], or indicated by analysis, inspection, and surveillance activities [control authority monitoring]." This requires the POTW to ensure adequate receipt and tracking of self-monitoring reports and notifications, have procedures to evaluate the data and information contained within these reports and notices, and determine compliance with the Pretreatment standards (e.g., permit limits and conditions).

The self-monitoring reports are received by the City and according to information gathered during the opening interview of the audit, the City evaluates the compliance reports and sends the reports to the wastewater treatment plant to be filed. The compliance reports are digitally scanned to create an electronic report filing system. Based on a review of the Pretreatment records documented in §8.4 of this audit report, it does not appear that the City is consistently evaluating the self-monitoring reports for compliance.

6.6 Management of Confidential Records

40 C.F.R. § 403.14 of the Pretreatment Regulations establishes the public availability of the Pretreatment records and the provisions to establish confidential business information (CBI). The City has incorporated the public availability and confidentiality requirements in Section 13.12.515 of the municipal ordinance:

“(a) All information and data submitted by a discharger to the POTW may be submitted to the Environmental Protection Agency, pursuant to the Clean Water Act and the regulations promulgated by the EPA governing the POTW. Such information shall be considered subject to public disclosure; provided, however, that the discharger may request that information not be subject to public disclosure, in accordance with 40 C.F.R., Part 2, as follows:

(1) A discharger may assert a business confidentiality claim covering part or all of the information in a manner described below, and that information covered by such a claim will be disclosed only by means of the procedure set forth below,

(2) If no claim of business confidentiality is asserted, all information will be subject to public disclosure without further notice to the discharger.

(b) Method and time of asserting business confidentiality claim. A discharger which is submitting information to the Authority may assert a business confidentiality claim covering the information by placing on (or attaching to) the information, at the time it is submitted to the Authority, a cover sheet, stamped or typed legend or other suitable form of notice employing language, such as trade secret, proprietary or company confidential. Allegedly confidential portions of otherwise nonconfidential documents should be clearly identified by the business and may be submitted separately to facilitate identification and handling by the Authority. If the business desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state.

(c) Nothing in this Section shall prevent the disclosure of information and data regarding the nature and content of a discharger's effluent and the frequency of discharge or a standard or limitation to be met by the discharger, and this information shall be available to the public with no restrictions. The provisions of this Section shall be subject to any public disclosure requirements which may exist under local, state and federal law.”

According to information gathered during the audit, the City does not maintain confidential business information.

<u>Corrective Action Items</u>:

1. None identified

7.0 Industrial User Inventory and Characterization

7.1 Regulatory Background

The Pretreatment Regulations state in 40 C.F.R. § 403.8(f)(2)(*i-iii*) that a POTW shall develop and implement procedures to ensure compliance with requirements of a Pretreatment Program. [These requirements are summarized after the regulation language in **bold** and *italics* font].

i. “Identify and locate all possible Industrial Users which might be subject to the POTW Pretreatment Program. Any compilation, index or inventory of Industrial Users made under this paragraph shall be made available to the Regional Administrator or

Director upon request." ***This requires a POTW to develop and maintain an inventory of IUs in the service area***.

ii. "Identify the character and volume of pollutants contributed to the POTW by the Industrial Users identified under paragraph (f)(2)(i) of this section. This information shall be made available to the Regional Administrator or Director upon request." ***This requires a POTW to characterize the IUs in the inventory of the service area.***

iii. "Notify Industrial Users identified under paragraph (f)(2)(i) of this section, of applicable Pretreatment Standards and any applicable requirements under sections 204(b) and 405 of the Act and subtitles C and D of the Resource Conservation and Recovery Act. Within 30 days of approval pursuant to 40 C.F.R. 403.8(f)(6), of a list of significant industrial users, notify each significant industrial user of its status as such and of all requirements applicable to it as a result of such status." ***These procedures must include the notification of IUs of applicable Pretreatment Standards and other applicable requirements.***

The Pretreatment Regulations at 40 C.F.R. § 403.8(f)(6) state, "The POTW shall prepare and maintain a list of its non-domestic or Industrial Users meeting the criteria in §403.3(v)(1). The list shall identify the criteria in §403.3(v)(1) applicable to each Industrial User and, where applicable, shall also indicate whether the POTW has made a determination pursuant to §403.3(v)(2) that such Industrial User should not be considered a Significant Industrial User. The initial list shall be submitted to the Approval Authority pursuant to §403.9 or as a non-substantial modification pursuant to §403.18(d). Modifications to the list shall be submitted to the Approval Authority pursuant to §403.12(i)(1)."

The Pretreatment Regulations in 40 C.F.R. §403.12(i)(1) require that programs maintain an IU inventory that contains information on the IU's status under the Pretreatment program. 40 C.F.R. §403.12(i)(1) states that a program shall maintain "An updated list of the POTW's Industrial Users, including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. This list shall identify which Industrial Users are subject to categorical Pretreatment Standards and specify which Standards are applicable to each Industrial User. The list shall indicate which Industrial Users are subject to local standards that are more stringent than the categorical Pretreatment Standards. The POTW shall also list the Industrial Users that are subject only to local Requirements, such as local limits and site-specific BMPs. The list must also identify Industrial Users subject to categorical Pretreatment Standards that are subject to reduced reporting requirements under paragraph (e)(3) and identify which Industrial Users are Non-Significant Categorical Industrial Users."

Approved Pretreatment programs are required by the Pretreatment Regulations to understand their service area and outside contributing jurisdictions, by developing and maintaining an inventory of IUs. In addition, the Pretreatment Regulations require a Pretreatment program to characterize the IUs listed on the inventory and notify the IU of their status under the Pretreatment program. For example, the following characterizations may apply to an IU, based on information received from questionnaires, drive-by or facility inspections:

- The IU is not characterized as significant, based on volume and characteristic of the discharged wastewater.
- The IU is characterized as significant and issued a permit.
- The IU is not characterized as significant, but loadings need to be controlled using BMPs in a source control program.
- The IU is generating wastewaters that are significant but is characterized as a zero-discharging facility.

The **Industrial Waste Inventory and Characterization** or industrial waste survey (IWS)/ IU inventory procedures are an important component to an effective Pretreatment program because this is a POTW's first exposure to the IUs, allows the POTW to determine if an IU is significant, notify the IU of its status under the Pretreatment regulations, and determine the appropriate type of control mechanisms for these facilities to protect the POTW and collection system.

7.2 Industrial User Identification and Characterization Procedure

The City has not developed an IU Identification and Characterization procedure that addresses methods to identify IUs in its service area, characterize their contribution of pollutants, notify these IUs of their status under the Pretreatment program, and to develop and maintain or update the IU inventory. As required by 40 C.F.R. §403.8(f)(2), "develop and implement procedures" that "enable the POTW" to comply with these Pretreatment Program requirements. A procedure and consistent implementation will ensure the City is identifying IUs, characterizing their pollutants, and including this information on the updated IU inventory.

7.3 Industrial User Database of the City's Service Area

The City has not developed an IU inventory of the service area, with the exception of the food service establishments (FSEs). The FSEs are identified in the Grease Trap Pumping Schedule submitted to the EPA by the City. The Grease Trap Pumping Schedule identifies the FSEs, their location and management. In addition, the document provides information such as grease trap frequency, most recent grease trap servicing, and pumper. The Grease Trap Pumping Schedule meets the 40 C.F.R. § 403.8(f)(2)(*i-iii*) requirements for the FSEs to identify, characterize and notify of applicable Pretreatment Standards and Requirements.

However, the City has not developed an Industrial User inventory that identifies all industrial users (sources of non-domestic wastewater) in its service area, including those that are not in the FSE sector. The City does not have a recent characterization of the IUs on the inventory to identify flows and non-domestic pollutants that may impact the POTW and collection system. The City does not have a plan or procedure to maintain the IU inventory to ensure the information and records on the IUs capture current conditions. A plan or procedure could include available tools to the City such as the industrial waste survey, drive by inspections, facility inspections, sampling, etc. to ensure the characterization of IUs is based on current data/information.

The City's NPDES permit issued by the CDPHE on August 30, 2019 and effective on October 1, 2019 includes a compliance schedule to meet EC and Sulfide as H2S Final Limits in Part 1.B.6 a, a compliance schedule to meet Total Recoverable Arsenic Final Limits in Part 1.B.6 b, and a compliance schedule to meet Potentially Dissolved Selenium Final Limits in Part 1.B.6 c. Each of these compliance schedules require the City to identify and to control sources of these pollutants. The City needs to identify and characterize non-domestic sources of EC, Sulfide as H_2S, As, and Se in their IU Inventory and notify these sources of applicable Pretreatment Standards and Requirements.

The City should collaborate with the local building department to ensure the Pretreatment program has approval authority for building permits or certificate of occupancies. This will help the Pretreatment program to gather information necessary for the IU Inventory. In addition, the City should collaborate and provide cross-training to the local Fire departments in the service area to help gather information on IUs that may be relevant to the Pretreatment program during their facility inspections.

The EPA currently provides "Pretreatment 101" webinar training, and a training for "Industrial User Inventory and Characterization Procedures," provided in September 2010, is archived at the following website:

https://www.epa.gov/npdes/national-pretreatment-program-events-training-and-publications#pretreat101

Corrective Action Items:

1. Develop an Industrial User inventory that identifies and characterizes all industrial users (sources of non-domestic wastewater) in its service area, including those that are not in the FSE sector.

2. Identify and characterize non-domestic sources of EC, Sulfide as H_2S, As, and Se in their IU Inventory and notify these sources of applicable Pretreatment Standards and Requirements.

8.0 Control Mechanism (Permit) Evaluation and Permit Specific Issues

8.1 Regulatory Background

POTWs are required to issue control mechanisms to IUs identified through IU Inventory and Characterization procedures as SIUs. Individual permits or general control mechanisms authorize the discharge of wastewater to a POTW upon condition that the discharger complies with the permit limitations and conditions. An SIU permit is effective for only a limited period and should be revocable by the issuing authority at any time for just cause. In addition, the POTW's legal authority will typically include a provision that forbids the discharge of industrial wastewater from a SIU without a current permit.

The Pretreatment Regulations establish the required permit conditions in 40 C.F.R. § 403.8(f)(1)(iii)(B)(1-6) that include the following minimum elements:

1. Statement of duration (in no case more than five years);
2. Statement of non-transferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;
3. Effluent limits, including Best Management Practices, based on applicable general Pretreatment Standards, categorical Pretreatment Standards, local limits, and State and local law;
4. Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on the applicable general Pretreatment Standards, categorical Pretreatment Standards, local limits, and State and local law;
5. Statement of applicable civil and criminal penalties for violation of Pretreatment Standards and requirements, and any applicable compliance schedule. Such schedules may not extend the compliance date beyond applicable federal deadlines;
6. Requirements to control Slug Discharges, if determined by the POTW to be necessary.

The reporting and notification requirements in permit condition #4 above are found in 40 C.F.R. § 403.12 of the Pretreatment Regulations and include the following:

- Baseline Monitoring Reports – 403.12(b)
- Compliance Schedule Progress Reports – 403.12(c)
- 90-Day Compliance Reports – 403.12(d)
- CIU Periodic Compliance Reports – 403.12(e)
- Notice of Potential Problems, including Slug Loading – 403.12(f)
- Notification of Changes Affecting Slug Discharge Potential – 403.8(f)(2)(vi)
- 24-Hour Non-Compliance Notification – 403.12(g)
- SIU Periodic Compliance Reports – 403.12(h)
- Notification of Changed Discharge – 403.12(j)
- Notification of Hazardous Waste Discharge – 403.12(p)
- Notification of Bypass – 403.17

Under general principles of administrative law, permit applicants and other interested parties may challenge the POTW's permit decisions, including the permit limitations and conditions and the POTW's authority to issue the permit. The POTW must ensure that it has the requisite legal authority to impose Pretreatment Standards and Requirements in SIU permits and that it exercises its authority in a consistent and non-arbitrary manner. The local ordinance must clearly provide the POTW with the following authorities to support the permit requirements found in 40 C.F.R. § 403.8(f)(1)(iii):

- Authority to regulate all Industrial Users contributing wastewater to the POTW
- Authority to require and issue permits, orders, or other control mechanisms, including:
  - Authority to require Industrial Users to submit all data that the POTW deems relevant to permit decisions and provisions for public access to data.

  - Authority to enter, inspect, and sample to verify information supplied by the Industrial User as well as to assess the Industrial User's compliance status.
  - Authority to incorporate local limits, including BMPs (if applicable).
  - Authority to incorporate federal and state Pretreatment Standards and Requirements.
  - Authority to require self-monitoring, record keeping, reporting, and notifications by the permittee.
  - Authority to develop other appropriate permit conditions.
- Authority to enforce sewer use ordinance and discharge permit violations.
- Authority to require the development of a slug discharge control plan.

The POTW is required to establish the legal authority to require an IU to complete and file a permit application, with current information, to receive an initial or reissued permit. A permit application enables the POTW to obtain the information necessary to characterize the facility, to evaluate the quality and quantity of wastewater discharged, or projected to be discharged for a new facility, and to determine the applicable Pretreatment Standards and controls. The permit application serves as the formal request from the IU to discharge to the POTW and is required to be signed by a responsible corporate officer of the IU, as defined in 40 C.F.R. § 403.12(l) of the Pretreatment Regulations. In addition to the permit application, the POTW should evaluate, if available, historic IU effluent data, compliance reports, previous inspection reports, Safety Data Sheets, etc.

Throughout the permit drafting process, the POTW should carefully and thoroughly document each step in a permit rationale or statement of basis. A statement of basis is a document that provides a justification of the permit conditions and limits based on a characterization of the IU, its wastewater discharge, and the applicable Pretreatment Standards and Requirements. The statement of basis should include a description of the facility's production, process(es), wastewater generation/management, and discharge locations to adequately characterize the facility. The statement of basis should also identify the appropriate Federal, State, and Local Pretreatment Standards, based on the IU's characterization; and should provide justification for permit conditions and requirements, such as pollutants of concern, monitoring/reporting frequencies, representative sampling types, notification requirements, slug discharge control, operation and maintenance requirements, etc.

The statement of basis facilitates defending any challenges that the permit terms and conditions were developed arbitrarily or capriciously and provides the required documentation in the permit record of any relief from otherwise applicable requirements (i.e., pollutants not expected to be present, equivalent limits, decisions on general control mechanisms, decisions on Non-Significant Categorical Industrial User (NSCIU) classification, and decisions on reduced monitoring requirements). In addition, the statement of basis can serve as a resident document to preserve institutional knowledge and continuity for new or different staff members.

The EPA updated the IU Permitting Guidance Manual, 833-R-12-0001A in September 2012. This guidance manual supports the implementation of the permit conditions found in 40 C.F. R. § 403.8(f)(1)(B)(1-6) of the Pretreatment Regulations. The guidance manual is intended to provide both new and experienced permit writers with conceptual support and specific examples to strengthen their permit development expertise. The guidance manual references technical guidance developed by the EPA regarding local limits, enforcing Pretreatment Standards and Requirements, controlling hauled waste, information regarding compliance inspections and sampling, and BMPs.

The IU Permitting Guidance Manual can be found at the following website:

https://www.epa.gov/sites/production/files/2015-10/documents/industrial_user_permitting_manual_full.pdf

8.2 The EPA's Evaluation of the City's Permitting Legal Authority

EPA evaluated the City's municipal ordinance to ensure it provides an adequate framework to require permit coverage, to deny or condition non-domestic wastewater contributions and to establish adequate permit conditions.

- Section 13.12.435 – establishes the requirement for SIUs to obtain a wastewater discharge permit.
- Section 13.12.435(c) – establishes the requirement for existing IUs to provide a permit application at least 90 days before the expiration of the permit.
- Section 13.12.420(a) – contains the permit application contents.
- Section 13.12.270 – establishes the authority for the City to deny or conditions wastewaters discharged to the public sewers.
- Section 13.12.440 – establishes the permit conditions to prevent Passthrough or Interference and to protect the POTW, worker health and safety, biosolids and the receiving stream water quality.

8.3 Permit Template Overview

The City did not provide a permit template for the EPA to review during the audit. EPA evaluated the SIU permit issued to Debourgh to ensure it aligns with 40 C.F.R. § 403.8(f)(1)(iii)(B)(1-6) of the Pretreatment Regulations and the required permit conditions incorporated in the City's municipal ordinance.

8.4 Specific Permit Record Findings

The City has identified two SIUs in the service area that are issued wastewater discharge permits under the Pretreatment program. One SIU, Debourgh Manufacturing, is a categorical industrial user subject to the Metal Finishing Regulations found in 40 CFR 433 and the other SIU, BNSF Railway Company, is subject to local limits.

Findings from the EPA's review of the Pretreatment records, including the facility inspection report, statement of basis, permit, compliance evaluation, and enforcement records are listed below:

8.4.1 Pretreatment Records Overview

1. 40 C.F.R. § 403.12(o)(2) of the Pretreatment Regulations requires the City to

retain reports and notices, including on BMPs, for a minimum of three years and make the records available for inspection and copying by the EPA. The City's Pretreatment records were not well organized and for some SIUs not complete, as evidenced in the SIU specific findings. According to the information gathered during the opening interview, the Pretreatment records are maintained by both the Pretreatment Coordinator and at the wastewater treatment plant. The City was unable to locate or did not submit Pretreatment records to the EPA such as the final enforcement response plan (ERP), 2019 facility inspection reports, and control documents such as the toxic organic management plan for Debourgh. The City needs to evaluate its record keeping protocols and ensure the Pretreatment Records are complete. In addition, EPA recommends the Pretreatment Coordinator be responsible for maintaining the Pretreatment records.

2. 40 C.F.R. § 403.8(f)(2)(iv) of the Pretreatment Regulations requires the City to "Receive and analyze self-monitoring reports and other notices submitted by the Industrial User." In addition, 40 C.F.R. § 403.8(f)(2)(vii) of the Pretreatment Regulations require the City to "Investigate instances of noncompliance with Pretreatment Standards and Requirements, as indicated in the reports and notices."

   The City developed an internal self-monitoring report checklist to ensure the compliance reports are complete and in compliance with the permit conditions, however, this internal checklist was not included for all compliance reports. The City should consistently complete and sign the internal compliance checklists and needs to ensure the self-monitoring reports are evaluated for compliance and non-compliance of permit conditions are identified and addressed, according to its Enforcement Response Plan (ERP).

3. According to information gathered during the audit, City Hall receives the compliance reports and only date stamps the envelopes for date received then transfers the reports to the Pretreatment program. The hard copy compliance reports are not date stamped and EPA could not determine if these reports are received within the due date required by the permit. After the Pretreatment audit was completed, the City submitted the date stamped envelopes as proof of receipt. The City needs to either ensure the hard copy compliance reports are date stamped or ensure the envelopes are an integral portion of the Pretreatment records.

8.4.2 Debourgh Manufacturing

1. 40 C.F.R. § 403.8(f)(2)(v) of the Pretreatment Regulations requires the POTW to inspect its SIUs at least once per year. According to the City, a facility inspection of Debourgh was completed in 2019, however, the City could not find the 2019 inspection report in its Pretreatment records. Locate the 2019 inspection report and submit to the EPA. Otherwise, there is no documentation of a Debourgh inspection in 2019, which is a failure to implement the Pretreatment Regulations.

2. 40 C.F.R. § 403.8(f)(2)(ii) requires the City to "Identify the character and

volume of pollutants contributed to the POTW." Based on EPA's review of the 2020 Debourgh inspection report, it does not adequately characterize the facility and therefore the character and volumed of pollutants contributed to the POTW. The 2020 Debourgh inspection report needs to include more detail regarding the facility's chemical storage/handling/transfer, process/unit operations, wastestream generation from these unit operations, wastestream management or wastewater treatment, and sampling procedures to provide a current characterization.

   a. For example, the 2019 permit application states that the facility has a paint stripper for off-spec paint jobs, which was not included in the 2020 inspection report.

3. The Pretreatment Regulations at 40 C.F.R. § 403.8(f)(2)(*iii*) require the City to notify IUs of applicable Pretreatment Standards and Requirements. Based on EPA's review, the Pretreatment records did not include notification or follow up to Debourgh regarding its current conditions and status under the Pretreatment program after the 2020 facility inspection.

4. Section 13.12.435 of the municipal ordinance requires that "All permittees shall reapply for a new permit ninety (90) days prior to the expiration of the old permit." Debourgh submitted its permit application on July 15, 2019, later than 90 days before the expiration date of the permit and after the June 1, 2019 reissuance date of the current permit. This is in violation of the municipal ordinance and implementing permit conditions. There were no records of enforcement for this late permit application. The City needs to provide an enforcement response, in accordance with its ERP.

5. The City developed a permit rationale for the 2019 permit to justify permit conditions and limits. EPA recommends the City develop permit rationales that adequately justify permit conditions and limits by describing current conditions at the facility, based on the recent permit application and information received during the facility inspection, compliance reports and notifications.

6. EPA evaluated the Debourgh permit to ensure the City is implementing the required permit conditions found in 40 C.F.R. § 403.8(f)(1)(iii)(B)(1-6) of the Pretreatment Regulations and incorporated in the City's municipal ordinance. The Debourgh permit needs to be updated to include the following permit conditions: (*permit review checklist enclosed*)

   a. Statement of Transferability (Cover Page of permit) - needs to be modified to be equivalent to 13.12.440(b) of the ordinance.
   b. Submission of all Monitoring data (Part C.3) – needs to be modified to be equivalent to 13.12.465(e) of the ordinance.
   c. Upset Provisions are not included in the permit, as per 13.12.590 of the ordinance.
   d. Bypass and notifications – modify to include required notifications pursuant to 40 CFR 403.17 of the Pretreatment Regulations.

7. The following non-compliance events were discovered during the review of the 2019 and 2020 compliance reports. The City did not submit enforcement

records that provided a response to the permit violations. The City needs to provide an enforcement response in accordance with its ERP in response to the violations identified below:

a. The 2nd quarter 2019 compliance report was due on July 28, 2019 but was submitted on July 30, 2019.
b. The SIU did not submit pH data for August 10, 2020 in the 3rd quarter 2020 compliance report.
c. The SIU did not submit pH data for November 25, 2020 in the 4th quarter 2020 compliance report.

8.4.3 BNSF Railway Company

1. 40 C.F.R. § 403.8(f)(2)(v) of the Pretreatment Regulations requires the POTW to inspect its SIUs at least once per year. According to the City, a facility inspection of BNSF was completed in 2019, however, the City could not find the 2019 inspection report in its Pretreatment records. Locate the 2019 inspection report and submit to the EPA. Otherwise, there is no documentation of a BNSF inspection in 2019, which is a failure to implement the Pretreatment Regulations. The City stated that due to the COVID-19 pandemic, a facility inspection in 2020 was not completed.
2. Section 13.12.435 of the municipal ordinance requires that "All permittees shall reapply for a new permit ninety (90) days prior to the expiration of the old permit." BNSF submitted its permit application on July 15, 2019, later than 90 days before the expiration date of the permit and after the June 1, 2019 reissuance date of the current permit. This is in violation of the municipal ordinance and implementing permit conditions. There were no records of enforcement for this late permit application. The City needs to provide an enforcement response, in accordance with its ERP.
3. EPA evaluated the BNSF permit to ensure the City is implementing the required permit conditions found in 40 C.F.R. § 403.8(f)(1)(iii)(B)(1-6) of the Pretreatment Regulations and incorporated in the City's municipal ordinance. The BNSF permit needs to be updated to include the following permit conditions:

   a. Statement of Transferability (Cover Page of permit) - needs to be modified to be equivalent to 13.12.440(b) of the ordinance.

   b. Submission of all Monitoring data (Part C.3) – needs to be modified to be equivalent to 13.12.465(e) of the ordinance.

   c. Upset Provisions are not included in the permit, as per 13.12.590 of the ordinance.

   d. Bypass and notifications – modify to include required notifications pursuant to 40 CFR 403.17 of the Pretreatment Regulations.

   e. Benzene and BTEX sample types are required as composites in the permit. 40 CFR 136 requires BTEX, which includes benzene, to be sampled as a grab sample. The permit needs to be modified to correct the sampling type.

f. Section 13.12.250(b)(4) of the municipal ordinance establishes pH limits as 5.0 to 9.0 but the BNSF permit establishes pH limits as 6.0 to 9.0. The permit needs to be modified to adequately implement the ordinance.

4. The following non-compliance events were discovered during the review of the 2019 and 2020 compliance reports. The City did not submit enforcement records that provided a response to the permit violations. The City needs to provide an adequate enforcement response to the violations identified below:

   a. Late compliance reports, past the deadline due dates:

      i. 3rd quarter, due October 28, 2019 – submitted on October 31, 2019
      ii. 4th quarter, due January 28, 2020 – submitted on January 29, 2020
      iii. 4th quarter, due January 28, 2021 – submitted on February 3, 2021

   b. Flow exceeding the permit limit of 25,000 gpd:

      i. June 1, 2020 – 37,000 gallons
      ii. June 8, 2020 – 54.000 gallons
      iii. June 22, 2020 – 30,000 gallons
      iv. June 30, 2020 – 30,000 gallons
      v. August 8, 2020 – 29,000 gallons

<u>Corrective Action Items</u>:

1. Evaluate the Pretreatment record keeping protocols and ensure the Pretreatment records are current and complete. In addition, EPA recommends the Pretreatment Coordinator be responsible for maintaining the Pretreatment records.
2. Ensure the hard copy compliance reports are date stamped or ensure the envelopes are integral to the Pretreatment recordkeeping.
3. Locate the 2019 inspection reports for Debourgh and BNSF and submit to the EPA, Otherwise, there is no documentation of inspections of these facilities in 2019, which is a failure to implement the Pretreatment Regulations.
4. Provide more detail in the Pretreatment inspection reports to include information about the facility's chemical storage, handling, and transfer;, process/unit operations;, wastestream generation from these unit operations;, wastestream management or wastewater treatment;, and sampling procedures to provide a current characterization.
5. Provide notification or follow up to Debourgh and BNSF regarding its each facility's current conditions and status under the Pretreatment program after the 2020 facility inspection. Modify the Debourgh Manufacturing permit to ensure implementation of these permit conditions in the municipal ordinance and federal regulations:

   a. Statement of Transferability (Cover Page of permit) - needs to be modified to be equivalent to 13.12.440(b) of the ordinance.

   b. Submission of all Monitoring data (Part C.3) – needs to be modified to be equivalent to 13.12.465(e) of the ordinance.

c. Upset Provisions are not included in the permit, as per 13.12.590 of the ordinance.
d. Bypass and notifications – modify to include required notifications pursuant to 40 CFR 403.17 of the Pretreatment Regulations.

6. Provide an enforcement response to Debourgh, in accordance with the City's ERP for the submittal of the permit application past the due date required in the permit.

7. Provide an enforcement response to Debourgh, in accordance with the City's ERP for the permit condition violations in 2019 and 2020:

   a. The 2nd quarter 2019 compliance report was due on July 28, 2019 but was submitted on July 30, 2019.
   b. The SIU did not submit pH data for August 10, 2020 in the 3rd quarter 2020 compliance report.
   c. The SIU did not submit pH data for November 25, 2020 in the 4th quarter 2020 compliance report.

8. Provide an enforcement response to BNSF, in accordance with the City's ERP for the submittal of the permit application past the due date required in the permit.

9. Modify the BNSF permit to ensure implementation of the permit conditions in the municipal ordinance and federal regulations:

   a. Statement of Transferability (Cover Page of permit) - needs to be modified to be equivalent to 13.12.440(b) of the ordinance.

   b. Submission of all Monitoring data (Part C.3) – needs to be modified to be equivalent to 13.12.465(e) of the ordinance.

   c. Upset Provisions are not included in the permit, as per 13.12.590 of the ordinance.

   d. Bypass and notifications – modify to include required notifications pursuant to 40 CFR 403.17 of the Pretreatment Regulations

   e. Benzene and BTEX sample types are required as composites in the permit. 40 CFR 136 requires BTEX, which includes benzene, to be sampled as a grab sample. The permit needs to be modified to correct the sampling type.

   f. Section 13.12.250(b)(4) of the municipal ordinance establishes pH limits as 5.0 to 9.0 but the BNSF permit establishes pH limits as 6.0 to 9.0. The permit needs to be modified to adequately implement the ordinance.

10. Provide an enforcement response to BNSF, in accordance with the City's ERP for the permit condition violations in 2019 and 2020.:

    a. Late compliance reports, past the deadline due dates:

       i. 3rd quarter, due October 28, 2019 – submitted on October 31, 2019
       ii. 4th quarter, due January 28, 2020 – submitted on January 29, 2020
       iii. 4th quarter, due January 28, 2021 – submitted on February 3, 2021

    b. Flow exceeding the permit limit of 25,000 gpd:

       i. June 1, 2020 – 37,000 gallons

ii. June 8, 2020 – 54.000 gallons
iii. June 22, 2020 – 30,000 gallons
iv. June 30, 2020 – 30,000 gallons
v. August 8, 2020 – 29,000 gallons

9.0 Significant Industrial User Facility Inspections

9.1 Regulatory Background

The General Pretreatment Regulations at 40 C.F.R. § 403.8(f)(1)(v) states that the POTW shall have the legal authority to:

"Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by Industrial Users, compliance or noncompliance with applicable Pretreatment Standards and Requirements by Industrial Users. Representatives of the POTW shall be authorized to enter any premises of any Industrial User in which a Discharge source or treatment system is located or in which records are required to be kept under §403.12(o) to assure compliance with Pretreatment Standards. Such authority shall be at least as extensive as the authority provided under section 308 of the Act;"

40 C.F.R. § 403.8(f)(2)(v) of the Pretreatment Regulations requires the POTW to inspect its SIUs at least once per year. 40 C.F.R. § 403.8(f)(2)(ii) require the City to "Identify the character and volume of pollutants contributed to the POTW." 40 C.F.R. § 403.8(f)(2)(vii) establishes the standard of evidence collection during sampling or inspection activities:

"Investigate instances of noncompliance with Pretreatment Standards and Requirements, as indicated in the reports and notices required under §403.12, or indicated by analysis, inspection, and surveillance activities described in paragraph (f)(2)(v) of this section. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions."

Typically, an inspector is the only representative from the POTW that regularly appears at the IU's facility and significantly represents the POTW's role as a responsible public agency, observing the actions and evaluating the performance of the regulated industry.

9.2 Right of Entry

The City has established the authority for right of entry in §13.12.495 of the municipal ordinance:

"(a) The Authority may inspect the facilities of any discharger to determine compliance with the requirements of this Chapter. The discharger shall allow the Authority or its representatives to enter upon the premises of the discharger at all reasonable hours, for the purposes of inspection, sampling or examination of records. The Authority shall have the right to set up on the discharger's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and metering or measuring operations. The Authority shall have the right to copy records and make use of digital imagery or other photography. The inspectors, agents or representatives of the Authority charged with the enforcement of this Section shall be deemed to be performing a governmental function for the benefit and health and welfare of the general public, and neither the Authority nor any individual inspector, agent or representative shall be held liable for any loss or damage, whether real or asserted, caused or alleged to have been caused as a result of the performance of such government function. The failure or refusal of such owners or occupants to comply with this provision shall be grounds for the disconnection of water and/or sewer service to the facility, pursuant to the enforcement and/or termination of service provisions of this Chapter. Any industrial user or POTW subject to the reporting requirements established in this Chapter shall be required to retain for a minimum of five (5) years any records of monitoring activities and results (whether or not such monitoring activities are required by this Section) and shall make such records available for inspection and copying by the Director and Regional Administrator (and POTW in the case of an industrial user). This period of retention shall be extended during the course of any unresolved litigation regarding the industrial user or POTW or when requested by the Director or the Regional Administrator.

(b) Whenever the Director finds it necessary, an industrial user shall provide and operate, at its expense, monitoring equipment and facilities sufficient to allow inspection, sampling and flow measurements of the private sewer or internal drainage system. Whenever required by the Director, any significant industrial user or user discharging prohibited substances or specific pollutants serviced by a private sewer carrying nonresidential wastewater shall install a monitoring facility for each separate discharge that the Director finds necessary to monitor. Each separate monitoring acility shall meet requirements set forth by the Director with safe and independent access for City personnel at all times. The industrial user shall maintain the facility it owns and operates and all sampling and measuring equipment at all times in a safe and proper operating condition at the industrial user's expense.

(c) The Control Authority is authorized to randomly sample and analyze the effluent from industrial users and conduct surveillance activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards.

(d) Inspection and sampling the effluent from each significant industrial user shall occur as often as the Control Authority deems necessary to ensure compliance with this Chapter, but at least once a year."

The municipal ordinance adequately establishes the right of entry authority for the City, as required in 40 C.F.R. § 403.8(f)(1)(v) of the Pretreatment Regulations.

9.3 Facility Inspection Records – Background

40 C.F.R.§ 403.8(f)(2)(vii) of the Pretreatment Regulations requires the POTW to meet the criterion for evidence collection "with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions." This is performed during facility inspections by adequate documentation in the inspection report of the observations, surveillance, inspections, sampling performed, and analysis gathered during facility inspections. A complete and well-developed inspection report that provides a current

characterization of the facility will benefit the POTW's Pretreatment program for programmatic decisions such as categorical determinations, slug discharge/spill potential, changes at the facility that may affect the current permit conditions, sampling frequencies, etc.

As discussed in §2.11.2 of the *Industrial User Inspection and Sampling Manual for POTW*s, EPA-831B17001, January 2017, the inspection report generated from the facility inspections should accomplish the following three objectives: 1) organize and coordinate all information in a comprehensive, usable manner for use by the POTW's compliance personnel; 2) identify areas that may require follow-up activity; and 3) provide significant background information on the facility that can be reviewed prior to conducting subsequent inspections at the facility. The quality of this documentation will, to a large degree, determine how effective these follow-up activities will be at the facility. The information in the inspection report must be presented in a clear, concise, and well-organized manner.

The Industrial User Inspection and Sampling Manual for POTWs describes the information necessary to characterize a facility in §§2.10.3 and 2.12. The manual also discusses the records to review at a facility to help determine the facility's compliance in §2.10.8. It is important for Pretreatment programs to capture the following information during facility inspections to characterize the facility, and document facility changes to ensure the SIU's permit addresses current conditions:

- Chemical storage areas, including potential spill concerns during chemical receiving and transfer/handling.
- Process tanks or processing areas – detailed descriptions of the process including tank contents, capacities.
- Wastestream generation from the process areas and disposal/discharge practices – frequency of discharge rinse water tanks, whether spent chemical solutions tanks discharged to the POTW or hauled off site, proximity to floor/trench drains, slug discharge control and spill containment measures, etc.
- Wastestream management (treatment, recycling, hauling off site, evaporation, etc.).
- Waste treatment system.
- Wastestream or hazardous waste storage areas, including potential spill concerns.
- Discharge monitoring points.
    - Evaluation of the sampling/monitoring protocols to determine if these are appropriate to provide representative data of the wastewaters regulated by the permit.

A facility inspection of a permitted SIU should include a review of relevant records used to support compliance with the permit conditions and that may not be reported in the self-monitoring compliance reports such as pH and continuous flow monitoring records, tank change out logs, analytical reports, waste manifests, operation and maintenance logs, etc. A detailed facility inspection report with descriptions of tank contents, capacities, generated wastestreams, plumbing, and management of the wastestreams will benefit the POTW to establish the baseline for the year and to determine if any changes will impact the permit conditions/limits or associated documents such as the slug discharge control plan, spill plan, treatment system operation manual or sampling protocol.

During the Pretreatment audit, the EPA discussed inspection procedures with the City. The EPA performs facility inspections by gathering verbal information in an opening conference, then performing a walkthrough to visually confirm the information gathered during the opening interview. The EPA structures its information gathering by following the raw materials/chemical supply through the unit operations and ultimately to the finished product or service. A closing conference is performed to gather follow-up information, review records, and to provide preliminary conclusions to the facility.

9.4 Evaluation of the City's Inspection Reports/Records

The EPA evaluated the inspection reports and other records related to the facility inspection for the SIU annual facility inspection. As discussed in §§ 8.4.2 of this audit report, the 2020 inspection report for Debourgh Manufacturing provides minimal characterization of the facility and should be improved to include information regarding the facility's chemical storage/handling, process, (sources, flow volume and types of discharges) wastewater generation, slug discharge potential, waste treatment methods, sampling procedures, and review of records in the annual inspection report. The inspection reports should also include digital photos to further support information gathered during the inspection.

9.5 Notification of Applicable Pretreatment Standards

The Pretreatment Regulations at 40 C.F.R. § 403.8(f)(2)(*iii*) require the City to notify IUs of applicable Pretreatment Standards and Requirements. Based on the EPA's review of the inspection records, it does not appear that the City is providing notification to the SIUs regarding the applicable Pretreatment Standards and applicable corrective action items as a follow-up to the facility inspections. The City needs to either provide a copy of the inspection report or follow-up correspondence to the IUs to meet this requirement.

9.6 Facility Inspections

Due to the Covid-19 pandemic and the remote Pretreatment audit, there were no onsite facility inspections completed.

<u>Corrective Action Items:</u>

1. Corrective action items related to facility inspections are identified in §8 of this audit report.

10.0 Control Authority Compliance Monitoring

10.1 Regulatory Background

40 C.F.R. § 403.8(f)(1)(v) of the Pretreatment Regulations requires the POTW to have the legal authority to "Carry out all inspection, surveillance, and monitoring procedures necessary to determine, independent of information supplied by Industrial Users, compliance or noncompliance with applicable Pretreatment Standards and requirements." Further, 40 C.F.R. § 403.8(f)(2)(v) require a POTW to "Randomly sample and analyze the effluent from Industrial Users and conduct surveillance activities in order to identify,

independent of information supplied by Industrial Users, occasional and continuing noncompliance with Pretreatment Standards. Inspect and sample the effluent from each Significant Industrial User at least once a year."

The standard to which POTWs are held for purposes of evidence collection during a Control Authority monitoring event is outlined in 40 C.F.R. § 403.8(f)(2)(vii): "Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence which is admissible in enforcement proceedings or judicial actions."

In addition, a POTW is required to ensure the Control Authority monitoring events are based on representative conditions at the monitoring point, to ensure that these sampling events are legally defensible and of the same quality as required for self-monitoring events. 40 C.F.R. § 403.12(g)(3) of the Pretreatment Regulations require, "The reports …must be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data are representative of conditions occurring during the reporting period."

An enforceable sample must be representative of the nature and character of the discharges during the reporting period and is required to be representative in composition to that in the larger volume of wastewater being discharged. A POTW is required to implement a Control Authority monitoring program that meets the compliance monitoring requirements of the Pretreatment Regulations, provides representative data for compliance determinations, and that would be legally defensible in court, if such an enforcement action is taken by the POTW. In addition, representative and legally defensible data helps the POTW support other program objectives such as local limits evaluation, and permit development or reissuance.

10.2 Sampling Plan and Protocols

As required in 40 C.F.R. § 403.8(f)(2), the POTW shall "develop and implement procedures to ensure compliance with the requirements of a Pretreatment Program." The development and implementation of a sampling plan or procedures ensures the POTW is appropriately and consistently performing sampling or monitoring events, as well as providing enforceable data that is representative of the discharge conditions at the facility. The sampling plan should include the following:

- purpose and objective of the sampling program,
- specific sampling protocols at each facility sampling location to ensure representative sampling, and
- appropriate QA/QC procedures to ensure legally defensible data.

10.2.1 Site-Specific Sampling Protocols

The sampling protocols should include specific procedures used at each facility to ensure adequate and representative sampling protocols. The development of the sampling protocols will ensure the sampling events are performed in accordance with appropriate standards and procedures and produce quality data that is legally defensible.

At a minimum, the specific sampling protocols at each sampling location should include the following:

- Sampling locations – should include all monitoring points included in the SIU's permit, including the use of digital photos for each monitoring point.
- Type of sample – the POTW is required to ensure the sampling event is representative of the SIU's discharge, as required by 40 C.F.R. §403.12(g)(3). The type of sample will be dependent on the parameter to be sampled and discharge characteristics. The type of sample could include specifications for use of automatic samplers (including programming to provide representative sampling) or manual sampling techniques.
- Type of Flow Measurement – if applicable
- Parameters for Analysis – based on the SIU's permit
- Sample Volume
- Type of Sample Containers
- Sample Preservation Techniques
- Sample Identification and Chain of Custody Procedures
- QA/QC Procedures

10.2.2 Quality Assurance/Quality Control (QA/QC)

QA and QC are tools which are necessary in a sampling program to maintain a level of quality, such as legally defensible data, in the measurement, documentation, and interpretation of sampling data. The QA/QC procedures are used to obtain data that are both precise (degree of closeness between two or more samples) and accurate (degree of closeness between the results obtained from the sample analysis and the true value that should have been obtained). Proper implementation of QA/QC procedures will result in an increase in the POTW's confidence in the validity of the reported analytical data.

The QA/QC procedures used to ensure data collected is valid and legally defensible include, but are not limited to the following:

- equipment maintenance/calibration,
- proper sampling bottles, proper sampling techniques that are adequate and representative of the discharge from the facility,
- field blanks, equipment blanks, method blanks, standards, blind duplicates, and.
- ensuring sampling personnel are adequately trained.

10.3 The EPA Evaluation of the City's Control Authority Monitoring

10.3.1 SOPs

The City developed a sampling plan for Debourgh and BNSF that describes sampling techniques and methods at the SIUs to ensure appropriate and representative sampling. The sampling plans for Debourgh and BNSF should be modified to incorporate QA/QC samples to produce enforceable data.

10.3.2 City's Control Authority Monitoring

Based on the EPA's review of the Pretreatment records, the City samples its SIUs at least once per year and meets the Control Authority monitoring frequency required in 40 C.F.R. § 403.8(f)(2)(v).

Corrective Action Items:

1. No corrective action items identified

11.0 Enforcement

11.1 Regulatory Background

The EPA establishes the regulatory requirement to develop and implement an Enforcement Response Plan (ERP) in 40 C.F.R. § 403.8(f)(5)(i-iv) of the Pretreatment Regulations. The regulations state:

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

(i) Describe how the POTW will investigate instances of noncompliance;

(ii) Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;

(iii) Identify (by title) the official(s) responsible for each type of response;

(iv) Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards"

The development and implementation of an ERP is an important component of an effective Pretreatment Program. Although a successful Pretreatment program should provide outreach to facilities in the service area regarding the applicability of the Pretreatment Standards and compliance with these standards, in many situations, enforcement is the necessary driving force that makes the Pretreatment program functional.

The ERP establishes a framework for POTWs to formalize procedures for investigating and responding to instances of IU noncompliance and to ensure that POTWs enforce against IUs objectively, consistently, and equitably. A well-developed ERP should help the POTW decide what resources are needed to enforce the Pretreatment Standards/Requirements and assist in dealing with IU violations. In addition, the ERP will provide notice to the IUs regarding the POTW's responsibility to respond to violations of Pretreatment Standards/Requirements.

11.2 Enforcement Legal Authority

The EPA evaluated the City's enforcement authority and remedies found in its municipal ordinance.

1. Civil/Criminal penalties established in §13.12.610;
2. Injunctive relief provisions established in §13.12.570(a);
3. Authority to enforce against falsification/tampering established in §13.12.620;
4. Notice of violations authority established in §13.12.540;
5. Administrative orders authority established in §13.12.570(B);
6. Administrative penalty authority established in §13.12.630;
7. Show cause hearing provisions in §13.12.550;
8. Suspensions of service provisions in §13.12.580;
9. ERP incorporated into ordinance in §13.12.529;
10. Permit termination provisions established in §13.12.530; and
11. Publication of IUs in significant noncompliance in §13.12.520.

11.3 Enforcement Response Plan

The City submitted its ERP to the EPA for review, prior to the audit. Based on the EPA's review, the ERP needs to be updated to include the following, in accordance with 40 C.F.R. § 403.8(f)(5)(i-iv): (*Note: the La Junta ERP Review checklist will be enclosed with the audit report*)

- **Describe how the POTW will investigate instances of noncompliance;**
  - The City needs to address the implementation procedures utilized to investigate instances of noncompliance which includes procedures for the IU inventory/inspections, permitting, receipt and compliance evaluation for self-monitoring reports and notifications, control authority monitoring and SNC calculations/determinations.
- **Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;**
  - The City needs to establish escalating enforcement responses it will take for the following types of IU violations:
    - Tampering with monitoring equipment/methods
    - Recordkeeping
    - Dilution
    - Refusal of entry
    - Sector control programs and BMPs
    - Trucked and Hauled Waste
    - SNC Narrative Criteria found in §13.12.020(a)-Significant Noncompliance definition, #D. "Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority."
    - SNC Narrative Criteria found in §13.12.020(a)-Significant Noncompliance definition, #G. "Failure to accurately report noncompliance."
    - SNC Narrative Criteria found in §13.12.020(a)-Significant Noncompliance definition, #G. "Any other violation or group of violations, which may include a violation of Best Management

Practices, which the POTW determines will adversely affect the operation or implementation of the local Pretreatment program."

- **Identify (by title) the official(s) responsible for each type of response;**
  - The City's current ERP does not identify the title of the Pretreatment official responsible and the time periods for each type of enforcement response.
- **Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards**
  - The ERP needs to identify and include all available enforcement action tools in Article VII-Enforcement of the Ordinance, personnel responsible, time frames

11.4 Compliance Evaluation

Based on EPA's review described in §§6.5 and 8.3 of this audit report, the City is inconsistent with evaluating the self-monitoring reports or notices for compliance.

11.5 SNC Calculations and Public Participation

40 C.F.R. § 403.8(f)(2)(viii) of the Pretreatment Regulations require a POTW to comply with the public participation requirements in the enforcement of National Pretreatment Standards. These procedures shall include a provision for at least annual public notification in a newspaper of general circulation, that provides meaningful public notice within the jurisdictions served by the POTW, of IUs which, at any time during the previous 12 months, were in SNC with applicable Pretreatment requirements. The SNC determinations are both calculation of numeric Pretreatment Standards, as listed in 40 C.F.R. § 403.8(f)(2)(viii)(A-D) and determination of violations of the narrative Pretreatment Standards, as listed in 40 C.F.R. § 403.8(f)(2)(viii)(E-H).

The City stated that it performs SNC calculations or determinations when violations occur. However, EPA did not find records for SNC determination of narrative criteria. The City needs to ensure that it evaluates and determines if the IUs are in violation of the narrative SNC criteria found in the municipal ordinance, §13.12.020(a)-Significant Noncompliance definition, #D-H.

Corrective Action Items:

1. Modify the enforcement response plan to be in compliance with 40 C.F.R. § 403.8(f)(5)(i-iv) of the Pretreatment Regulations.

12.0 Trucked and Hauled Waste

12.1 Regulatory Background

In addition to receiving wastes through the collection system, many POTWs accept trucked and hauled wastes. As stated in 40 C.F.R. § 403.1(b)(1), pollutants from nondomestic sources that are transported to the POTW by truck or rail are also subject to the Pretreatment Regulations. They may also be subject to categorical Pretreatment Standards.

Therefore, hauled wastes from CIUs or hauled waste that otherwise qualifies the discharger as an IU must be regulated in accordance with the requirements of the Pretreatment Regulations, including any applicable requirements for permitting and inspecting the generating facility. Hauled wastes, like wastes received through the collection system, have the potential to negatively affect the POTW, making regulatory control of the wastes necessary.

Most wastewaters hauled or trucked to a POTW are domestic septage, typically from homes outside the POTW's service area, but compatible in nature. Because such discharges are predominantly compatible wastes, treatment at a POTW is the most appropriate disposal method. The biosolids regulations at 40 C.F.R. § 503.9(f) define domestic septage as the liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar system that holds only domestic sewage. Domestic septage does not include liquid or solid material removed from any system that receives either commercial wastewater or industrial wastewater, and it does not include grease removed from a restaurant grease trap.

The POTW cannot know for certain the nature and concentration of the trucked wastes and the impact on the POTW without implementing some type of control or surveillance program. Unlike discharges from IUs directly connected to the POTW, the makeup of a load of hauled waste is virtually unknown without some type of monitoring, be it visual or analytical. Even compatible loads of domestic septage can cause problems for a POTW due to high strength or discharge rate. Domestic septage can be partially digested, higher in metals concentrations than normal domestic wastes, or contain small amounts of household contaminants (e.g., cleaners). Similarly, disinfectants used in portable toilets have the potential to affect POTW operations.

Receipt of hauled hazardous waste (as defined in Resource Conservation and Recovery Act (RCRA)) might not only affect POTW operations but also could subject the POTW to additional reporting requirements. The Domestic Sewage Exclusion, specified in 40 C.F.R. § 261.4(a)(1)(ii), provides that hazardous wastes mixed with domestic sewage and under control of the Pretreatment program are exempt from the RCRA waste regulations. However, hazardous wastes received by truck or rail (or dedicated pipe) at the treatment plant are not exempt from the regulations. POTWs that accept hazardous wastes from those sources are subject to *permit by rule* status under RCRA [40 C.F.R. § 270.60(c)] provided that certain requirements are met. The POTW must be in compliance with all its NPDES permit requirements and the waste must comply with all federal, state, and local pretreatment requirements.

12.2 Legal Authority

The City has adopted the Federal specific discharge prohibitions for trucked and hauled wastes found in 40 C.F.R. § 403.5(b)(8) of the Pretreatment Regulations. This is incorporated by the City in §13.12.250(b)(8) of the municipal ordinance:

"Any trucked or hauled pollutants, except at discharge points designated by the POTW."

In addition, the City incorporated specific liquid waste hauling regulations in §13.12.391 of the municipal ordinance that establish requirements for application, permitting, sampling, and reporting.

12.3 Trucked and Hauled Waste Disposal Location and Control Mechanisms

The City currently has permitted two waste haulers, Dean and Rotorooter. The City only accepts hauled oil and grease waste generated from the food service establishments in the service area. The waste haulers are required to submit the generated waste manifests to the POTW.

The City's designated liquid waste hauler discharge point is located at the industrial park service area lagoon (see Figure 5). The waste haulers currently have access 24 hours a day, 7 days a week to the unlocked POTW gate and specified discharge point, which are the inactive lagoon cells of the POTW. According to the City, it conducts daily inspections of the lagoon POTW and waste hauler discharge point. The hauled oil and grease is allowed to dry and the City dredges this waste and hauls it to the sanitary landfill.

According to information received during the audit, the City is aware of only one RV station in the service area and this is located at the KOA campground site. The EPA recommends the City evaluate this RV dump station and ensure it is only receiving RV waste.

<u>Corrective Action Items</u>:

1. No corrective action items identified.

13.0 Best Management Practices – Sector Control Programs

13.1 Regulatory Background

BMPs are defined in 40 C.F.R. § 403.3(e) as "schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in 40 C.F.R. § 403.5(a)(1) [General Prohibitions] and (b) [Specific Prohibitions]. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage."

40 C.F.R. § 403.5(c)(4) states, "POTWs may develop Best Management Practices (BMPs) to implement paragraphs (c)(1) [develop limits to implement the general/specific prohibitions] and (c)(2) [develop and enforce specific effluent limits for industrial users that contribute pollutants that may result in Interference and Pass-Through] of this section. Such BMPs shall be considered local limits and Pretreatment Standards for the purposes of this part and section 307(d) of the Act." The regulations establish that BMPs are enforceable Pretreatment Standards.

13.2 Authority in Rules and Regulations

The City established the authority to implement BMPs in its Rules and Regulations as follows:

- BMP definition in §13.12.120;
- BMP recordkeeping requirements in §13.12.490;
- BMPs established as a permit condition in §13.12.440(c); and
- BMPs established as an SNC criterion in §13.12.120.

13.3 Sector Control Programs

The City has established the legal authority to implement BMPs for similar IUs that discharge Fats, Oils and Grease (FOG) is found in §13.12.350 of the municipal ordinance:

"(1) Grease, oil and sand interceptors shall be provided when, in the opinion of the Director, they are necessary for the proper handling of liquid wastes, sand and other harmful ingredients, except that such interceptors or tanks shall not be required for private living quarters or dwelling units.
(2) All interceptors shall be of a type and capacity approved by the Director and shall be located under cover and so as to be readily and easily accessible for cleaning and inspection. Interceptors shall not be located so as to receive rainwater or unpolluted runoff.
(3) Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight and equipped with easily removable covers which, when bolted in place, shall be gastight and watertight.
(4) Where installed, all grease, oil and sand interceptors shall be maintained by the owner, at his or her expense, in continuously efficient operation at all times. Interceptors shall be cleaned at least once a week.
(5) Failure by the owner to properly clean and maintain these units shall be considered sufficient cause for disconnection of premises from the public sewer or punitive actions as provided for in this Chapter."

13.3.1 Oil and Grease Sector Control Program

The City has 24 food service establishments (FSE) in the service area that have installed and are maintaining grease collection interceptors, based on the City's sizing requirements. The City requires these FSEs to maintain/pump out their grease interceptors at a frequency of monthly to annually, depending on the loadings from each FSE. The City requires that it be on-site during the pumping event to oversight and to receive the manifests/paperwork. The City currently does not perform independent inspections of the grease interceptors.

13.4 Dental Amalgam BMP Sector Control Program

The Dental Amalgam Rule, found in 40 C.F.R. Part 441, was promulgated as a final rule with new source dental facilities required to be in compliance with the Pretreatment Standards as of July 14, 2017, and existing source dental facilities required to be in compliance as of June 14, 2020. Compliance with the rule requires the installation of an ISO1143 amalgam separator or equivalent device, and compliance with the following two BMPs:

- Prohibition on the use of oxidizing or chlorine-containing line cleaners; and
- Ensuring all amalgam process wastewater including chair-side traps, screens, vacuum pump filters, dental tools, cuspidors or collection devices are treated through the amalgam separator.

In addition, the new and existing dental facilities are required in 40 C.F.R. § 441.50 of the Dental Amalgam Rule to provide a report that characterizes the dental facility and certifies compliance. The new source dental facilities are required to be in compliance upon discharge and submit a one-time compliance report within 90 days of startup.

During the audit, EPA identified through a Google search the following dental offices in the service area:

- Dr. David Trujillo 317 West 3rd Street, #101
- Dr. Ryan Anderson 13 East 4th Street
- Dental Depot 17 West 4th Street
- Smile High Dentistry 317 West 3rd Street, #101
- Kid & Family Smiles 214 Santa Fe Avenue
- Dr. Lee Allen 15 West 4th Street
- Young at Heart Kids Dental Vision Braces 313 West 3rd Street, #103

There were no available records for these dental offices to identify if they are subject to the Dental Amalgam Rule. The City needs to characterize these and any other dental facilities in the service area to determine if the Dental Amalgam Regulations are applicable and provide enforcement to non-compliance with the rule requirements for amalgam separator installation, BMP and reporting requirements.

<u>Corrective Action Items</u>:

1. Characterize the dental offices identified in §13.4 of this audit report and any other dental facilities in the service area to determine if the Dental Amalgam Regulations are applicable and provide an enforcement response in accordance with the ERP to non-compliance with the rule requirements for amalgam separator installation, BMP and reporting requirements.