



COLORADO
Department of Public
Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

August 4, 2016

Kent Brown, Town Administrator
Town of Milliken
PO Box 290
Milliken, CO 80543

Certified Mail Number: 7005 1820 0000 3207 8371

RE: Compliance Order on Consent, Number: MC-160803-1

Dear Mr. Brown:

Enclosed for the Town of Milliken's records, you will find the Town of Milliken's copy, of the recently executed Compliance Order on Consent. Please remember that this agreement is subject to a thirty-day public comment period (paragraph 64). Following initiation, if the Division receives any comments during this period we will contact your office to discuss. Also, please be advised that the first page of the Compliance Order on Consent was changed to place the assigned Order Number on the final document.

If you have any questions, please don't hesitate to contact Eric Mink at (303) 692-2312 or by electronic mail at eric.mink@state.co.us.

Sincerely,

Eric T. Mink, Enforcement Specialist
Clean Water Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Enforcement File

ec: Michael Boeglin, EPA Region VIII
Trevor Jiricek, Weld County Dept of Public Health & Environment
Aimee Konowal, Watershed Section, CDPHE
Michael Beck, Grants and Loans Unit, CDPHE
Doug Camrud, Engineering Section, CDPHE
Kelly Jacques, Field Services Section, CDPHE
Lillian Gonzalez, Permits Section, CDPHE



Mike Harris, Clean Water Enforcement Unit, CDPHE
Tania Watson, Data Management, CDPHE
Barry Cress, DOLA





COLORADO

Department of Public Health & Environment

WATER QUALITY CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT

NUMBER: MC-160803-1

IN THE MATTER OF: TOWN OF MILLIKEN
 CDPS PERMIT NOS. CO0042528 & CO0046485
 WELD COUNTY, COLORADO

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

STATEMENT OF PURPOSE

1. The mutual objectives of the Parties in entering into this Consent Order are:
 - a. To establish compliance requirements and criteria for the operation of Milliken's Reverse Osmosis ("RO") Water Treatment Plant; and
 - b. To resolve, without litigation, the civil penalties associated with alleged violations cited herein and in the Notice of Violation / Cease and Desist Order Numbers DO-140507-1 and IO-140507-1 (the "NOV/CDOs"), that the Division issued to Milliken on May 7, 2014.

DIVISION'S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS

2. Based upon the Division's investigation into and review of the compliance issues identified herein, and in accordance with §§25-8-602 and 605, C.R.S., the Division has made the following determinations regarding Milliken, and Milliken's compliance with the Act and its permits.
3. At all times relevant to the violations cited herein, Milliken was a municipality as defined by §31-1-101(6), C.R.S.
4. Milliken is a "person" as defined by §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).

5. Milliken owns and/or operates a RO water treatment plant located at 40°19'8" N and 104°51'47" W (the "RO Facility") near the town of Milliken, Weld County, Colorado.
6. The RO Facility consists of a drinking water treatment plant that uses RO filtration and the addition of an anti-scalant chemical for the treatment of well water. The RO process creates a secondary waste stream that consists of RO concentrate. The RO Facility does not provide treatment of the RO concentrate.
7. The RO Facility is the subject of the Colorado Discharge Permit System, Permit No. CO-0046485 (the "RO Permit"). The previous RO Permit became effective on September 1, 2007 (the "2007 Permit"). The previous RO Permit expired on August 31, 2012 and was administratively continued until the current RO Permit became effective on January 1, 2016 (the "2016 Permit").
8. The RO Permit authorizes Milliken to discharge RO concentrate wastewater from the RO Facility through Outfall 001A, and into the Little Thompson River in accordance with the effluent limits, monitoring requirements, and other conditions of the RO Permit.
9. On May 7, 2014 the Division issued the Notice of Violation / Cease and Desist Order Number IO-140507-1 to Milliken for violations of the 2007 Permit (the "RO NOV/CDO").
10. On February 18, 2015, the Division issued Amendment Number One to the RO NOV/CDO, which established a chronic dissolved selenium limit equal to the temporary modification value of 13.1 µg/L, as established in Regulation 38 for the applicable stream segment (COSPBT09). The Water Quality Control Commission amended Regulation 38 on August 10, 2015 and the changes created by the amendment became effective on December 31, 2015. The amendment revised the chronic dissolved selenium temporary modification value stream segment COSPBT09's to 12.3 µg/L. The revised temporary modification value has an expiration date of December 31, 2020, and has been incorporated into the 2016 permit.
11. Milliken also owns and/or operates a domestic wastewater treatment facility, located at 40°20'2.86" N and 104°50'19.45" W (the "Wastewater Facility"), near the town of Milliken, Weld County, Colorado. The Wastewater Facility is a mechanical plant, consisting of extended aeration activated sludge treatment with secondary clarification and UV disinfection. The Wastewater Facility has a hydraulic capacity of 0.70 MGD and an organic capacity of 2,000 lbs BOD₅/day.
12. The Wastewater Facility is the subject of the Colorado Discharge Permit System, Permit No. CO-0042528 (the "Wastewater Permit"). During the times relevant to the violations cited herein, two versions of the Wastewater Permit were in place: the version that was effective February 1, 2002 through April 30, 2010 (the "2002 Permit"), and the version that was effective May 1, 2010 through September 30, 2015 (the "2010 Permit"). The Wastewater Permit has subsequently been reissued, and the current version became effective August 1, 2015 (the "2015 Permit").
13. The Wastewater Permit authorizes Milliken to discharge treated wastewater from the Wastewater Facility through Outfall 001A, into the Big Thompson River. Outfall 001A is physically located at approximately 40°20'13.6" N and 104°50'9.6" W and is the only outfall authorized by the Wastewater Permit. The Wastewater Permit includes requirements to monitor influent loading to the Wastewater Facility at a representative point prior to biological treatment, which is designated in the Wastewater Permit as Outfall 300I.
14. On May 7, 2014 the Division issued the Notice of Violation / Cease and Desist Order Number DO-140507-1 to Milliken for violations of the Wastewater Permit (the "Wastewater NOV/CDO").

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

VIOLATIONS PERTAINING TO THE RO FACILITY
Failure to Comply with Permit Effluent Limitations

16. Pursuant to Part I.A.1. of the 2007 Permit, Milliken's effluent at Outfall 001A shall not exceed, among others not subject of this action, the effluent discharge limitations specified below:

Town of Milliken RO Facility DISCHARGE LIMITATIONS			
EFFLUENT PARAMETER	30- DAY AVERAGE	7-DAY AVERAGE	DAILY MAXIMUM
Potentially Dissolved Selenium, ug/l	12	NA	Report
Until 2/28/10			
Beginning 3/1/10	4.6	NA	Report

17. Pursuant to Part I.E. of the 2007 Permit, Milliken is required to summarize and report the analytical results of its effluent monitoring to the Division via monthly DMRs. Each DMR is to include a certification by Milliken that the information provided therein is true, accurate and complete to the knowledge and belief of Milliken.
18. Milliken's DMRs submitted for Outfall 001A for the monitoring periods between February 2009 and March 2012 include, among other information and data, the following effluent concentration summary data which exceeded the limitations listed in Part I.A.1. of the 2007 Permit:

Town of Milliken RO Facility EFFLUENT SELF-MONITORING DATA	
DISCHARGE MONITORING PERIOD	SAMPLE MEASUREMENTS FOR OUTFALL 001A
Potentially Dissolved Selenium	30 DAY AVG. LIMIT= 12 ug/l
May 1 - May 31, 2009	15.5
July 1 - July 31, 2009	12.1
February 1 - February 28, 2010	13.1
Potentially Dissolved Selenium	30 DAY AVG. LIMIT= 4.6 ug/l
March 1 - March 31, 2010	10.6
April 1 - April 30, 2010	10.4
Potentially Dissolved Selenium	30 DAY AVG. LIMIT= 4.6 ug/l



Town of Milliken RO Facility EFFLUENT SELF-MONITORING DATA	
DISCHARGE MONITORING PERIOD	SAMPLE MEASUREMENTS FOR OUTFALL 001A
May 1 - May 31, 2010	29
June 1 - June 30, 2010	10.7
July 1 - July 31, 2010	29.3
Potentially Dissolved Selenium	30 DAY AVG. LIMIT= 4.6 ug/l
August 1 - August 31, 2010	24.3
September 1 - September 30, 2010	15
October 1 - October 31, 2010	12.9
November 1 - November 30, 2010	14.5
December 1 - December 31, 2010	12.3
January 1 - January 31, 2011	16.8
February 1 - February 28, 2011	15
March 1 - March 31, 2011	24.8
April 1 - April 30, 2011	17.2
May 1 - May 31, 2011	22.3
June 1 - June 30, 2011	23
July 1 - July 31, 2011	30.5
August 1 - August 31, 2011	14.6
September 1 - September 30, 2011	13.4
October 1 - October 31, 2011	11.2
November 1 - November 30, 2011	16.6
December 1 - December 31, 2011	14.5
January 1 - January 31, 2012	12.6
February 1 - February 29, 2012	18.2
March 1 - March 31, 2012	18.1

19. Potentially dissolved selenium is a “pollutant” or indicator thereof, as defined by §25-8-103(15), C.R.S., and its implementing permit regulation 5 CCR 1002-61, §61.2(76).

20. The 2007 Permit does not authorize the pollutant levels identified above in paragraph 18. Milliken does not have any other permit authorizing such discharge from the RO Facility into State Waters.
21. Milliken's failure to comply with the 2007 Permit effluent limitations, as identified above in paragraph 18, constitutes violations of Part I.A.1. of the 2007 Permit.

Failure to Properly Monitor and Report

22. Pursuant to Part I.B.1. of the 2007 Permit, in order to obtain an indication of compliance or non-compliance with the effluent limitations of the 2007 Permit, Milliken is required to monitor effluent parameters at the frequencies specified by the 2007 Permit and report the results on a DMR. If Milliken monitors any parameter more frequently than required by the 2007 Permit, Milliken is required to report the results of the monitoring and indicate the increased frequency.
23. Pursuant to Part I.E. of the 2007 Permit, Milliken is required to report all monitoring results on a monthly basis using Division approved DMRs. The 2007 Permit specifies that DMRs shall be filled out accurately and completely in accordance with requirements of the 2007 Permit and the instructions on the forms. Milliken is required to ensure the DMRs are mailed to the Division so that they are received no later than the 28th day of the month following the monitoring period.
24. Milliken failed to submit DMRs to the Division for Outfalls 001A and MON1 at the RO Facility for the monitoring periods of April 2012 through July 2014. Milliken submitted these DMRs subsequent to the issuance of the Wastewater NOV/CDO.
25. Milliken failed to submit DMRs to the Division by the 28th day of the month following the end of monitoring periods identified below:

Town of Milliken RO Facility LATE DMRs		
DISCHARGE MONITORING PERIOD	OUTFALL NUMBER	DMR RECEIPT DATE
February 1-28, 2009	001A, MON1	October 5, 2010
March 1-31, 2009	001A, MON1	October 5, 2010
April 1-30, 2009	001A, MON1	October 5, 2010
May 1-31, 2009	001A, MON1	August 14, 2009
June 1-30, 2009	001A, MON1	August 14, 2009
September 1-30, 2009	001A, MON1	October 5, 2010
September 1-30, 2011	001A, MON1	November 1, 2011
November 1-30, 2011	001A, MON1	January 9, 2012
December 1-31, 2011	001A, MON1	February 9, 2012
March 1-31, 2012	001A, MON1	May 8, 2012

26. Milliken's failure to submit DMRs to the Division for Outfalls 001A and MON1 for the monitoring periods of April 2012 through February 2014, as identified above in paragraph 24, constitutes violations of Part I.E. of the 2007 Permit.
27. Milliken's failure to submit DMRs to the Division by the 28th day of the month following each monitoring period, as identified in paragraph 25, constitutes violations of Part I.E. of the 2007 Permit.

28. On March 7, 2011, a representative of the Division (the "Inspector") conducted an on-site inspection of the RO Facility pursuant to the Division's authority under §25-8-306, C.R.S., to determine Milliken's compliance with the Water Quality Control Act and the 2007 Permit. During the inspection, the Inspector interviewed RO Facility representatives, reviewed the RO Facility's records, and performed a physical inspection of the RO Facility.
29. During the inspection on March 7, 2011, among other findings, the Inspector found that Milliken was incorrectly reporting pH sampling frequency on Milliken's DMRs. From January 2007 through January 2011, Milliken was sampling for pH seven (7) days per week while reporting a sample frequency of three (3) days per week on the DMRs.
30. Subsequent to the issuance of the RO NOV/CDO, Milliken submitted revised DMRs reporting the actual frequency of analysis for the January 1, 2007 through June 30, 2014 time period.
31. Milliken's failure to correctly report the actual pH sample frequency, as identified above in paragraph 29, constitutes violations of Part I.E. of the 2007 Permit.

Failure to Adhere to Permit Compliance Schedule

32. Pursuant to Part I.A.2.a. of the 2007 Permit, Milliken was required to follow the schedule for activities required to meet final potentially dissolved selenium limits, as outlined in the table below.

Town of Milliken RO Facility Compliance Schedule: Activities to Meet Potentially Dissolved Selenium Final Limits	
Activity	Milestone Date
Milliken shall submit a report on the progress of addressing the uncertainty of the underlying standard for selenium, as well as options available to Milliken for alternate disposal methods or treatment to meet the current underlying standard.	April 30, 2008
Milliken shall submit a report on the progress of addressing the uncertainty of the underlying standard for selenium, as well as options available to Milliken for alternate disposal methods or treatment to meet the current underlying standard.	April 30, 2009
Milliken shall submit a report on the progress of addressing the uncertainty of the underlying standard for selenium, as well as options available to Milliken for alternate disposal methods or treatment to meet the current underlying standard.	February 28, 2010
Milliken shall submit a report documenting the options available to meet the underlying (or new) selenium standards, including the chosen option. This should include a cost analysis of the available options, as well as potential funding sources.	February 28, 2011
Milliken shall submit a progress report summarizing the progress in implementing the chosen option to show compliance with the final potentially dissolved selenium limitations.	February 28, 2012

33. Pursuant to Part I.A.2. of the 2007 Permit, Milliken was required to submit either a report of progress or, in the case of specific actions being required by identified dates, a written notice of compliance or noncompliance, any remedial actions taken, and the probability of meeting the

next scheduled requirements by no later than 14 calendar days following each date identified in the schedules of compliance.

- 34. Milliken failed to comply with the milestones of the compliance schedule and failed to submit to the Division any of the reports required by Part I.A.2.a. and I.A.2. of the 2007 Permit.
- 35. Milliken's failure to submit the required compliance schedule reports and complete construction or other appropriate activities to meet the final potentially dissolved selenium limitations constitutes violations of Part I.A.2.a. and I.A.2. of the 2007 Permit.

VIOLATIONS PERTAINING TO THE WASTEWATER FACILITY
Failure to Properly Monitor and Report

- 36. Pursuant to Part I.D.2. of the 2002 Permit and Part I.D.1. of the 2010 Permit, Milliken is required to report all monitoring results on a monthly basis using Division approved DMRs. The 2002 Permit and 2010 Permit specify that DMRs shall be filled out accurately and completely in accordance with requirements of the 2002 Permit and 2010 Permit and the instructions on the forms. Milliken is required to ensure the DMRs are mailed to the Division so that they are received no later than the 28th day of the month following the monitoring period.
- 37. Milliken failed to submit DMRs to the Division for Outfalls 001A and 300I at the Wastewater Facility for the monitoring periods of February 2009 through March 2009 and April 2012 through June 2014. Milliken submitted these DMRs subsequent to the issuance of the Wastewater NOV/CDO.
- 38. Milliken failed to submit DMRs to the Division by the 28th day of the month following the end of the monitoring periods identified below:

Town of Milliken Wastewater Facility		
LATE DMRs		
DISCHARGE MONITORING PERIOD	OUTFALL NUMBER	DMR RECEIPT DATE
January 1-31, 2009	001A, 300I	May 5, 2010
April 1-30, 2009	001A, 300I	August 14, 2009
May 1-31, 2009	001A, 300I	August 14, 2009
December 1-31, 2009	001A, 300I	March 2, 2010

- 39. Milliken's failure to submit DMRs to the Division for Outfalls 001A and 300I for the monitoring periods of February 2009 through March 2009 and April 2012 through June 2014, as identified above in paragraph 37, constitutes violations of Part I.D.2. of the 2002 Permit or Part I.D.1. of the 2010 Permit.
- 40. Milliken's failure to submit DMRs to the Division by the 28th day of the month following each monitoring period, as identified above in paragraph 38, constitutes violations of Part I.D.2. of the 2002 Permit.
- 41. Pursuant to Part I.A.1. and Part I.A.2. of the 2010 Permit, Milliken is required to monitor influent and effluent flows via continuous flow measuring devices equipped with a chart recorder or totalizer and report the results of the monitoring to the Division via monthly DMRs.

42. Pursuant to Part I.D.7. of the 2010 Permit, Milliken must be able to show proof of the accuracy of any flow-measuring device used in obtaining data submitted in the monitoring report and the flow-measuring device must indicate values within ten (10) percent of the actual flow.
43. On March 7, 2011, a representative of the Division (the "Inspector") conducted an on-site inspection of the Wastewater Facility pursuant to the Division's authority under §25-8-306, C.R.S., to determine Milliken's compliance with the Water Quality Control Act and the 2010 Permit. During the inspection, the Inspector interviewed Wastewater Facility representatives, reviewed the Wastewater Facility's records, and performed a physical inspection of the Wastewater Facility.
44. During the inspection on March 7, 2011, the Inspector noted that the flow rates recorded by the influent chart recorder did not reflect the actual flows measured by the influent flume.
45. During the inspection on March 7, 2011, the Inspector noted that the effluent flow meter's ultrasonic readout was not accurate within ten (10) percent of the effluent flume's staff gage and the flow meter was not equipped with recording capabilities.
46. Milliken's failure to properly monitor influent and effluent flows, as identified above in paragraphs 44 and 45, constitutes violations of Part I.A.1. and Part I.A.2. of the 2010 Permit.
47. Milliken's failure to establish proof of accuracy of the effluent flow metering device, as identified in paragraph 45, constitutes a violation of I.D.7. of the 2010 Permit.
48. Pursuant to Part I.A.1. of the 2010 Permit, Milliken is required to monitor the discharge at Outfall 001A and report the 30-day and 7-day averages for *E. coli* in order to provide an indication of compliance or non-compliance with the effluent limitations of the 2010 Permit.
49. Pursuant to Part I.C.6. of the 2010 Permit, Milliken is required to calculate the 30-day and 7-day averages for *E. coli* using geometric mean.
50. During the inspection on March 7, 2011, the Inspector reviewed Milliken's records for May 1, 2010 through January 1, 2011, including lab reports, field data, and bench sheets, and noted that Milliken was calculating the 30-day and 7-day averages for *E. coli* using arithmetic mean instead of the required geometric mean.
51. Subsequent to the issuance of the Wastewater NOV/CDO, Milliken recalculated the 30-day and 7-day average *E. coli* concentrations using the geometric mean and submitted revised DMRs with accurate data for the for May 1, 2010 through June 30, 2014 time period.
52. Milliken's failure to properly report *E. coli*, as identified above in paragraph 50, constitutes violations of Parts I.A.1. and Part I.C.6. of the 2010 Permit.

TOWN OF MILLIKEN'S POSITION ON ALLEGED VIOLATIONS

53. Subsequent to the issuance of the RO NOV/CDO, Milliken discontinued the use of RO Facility for drinking water treatment on December 2, 2014. This change eliminated the discharge to the Little Thompson River associated with the RO concentrate water.

ORDER AND AGREEMENT

54. Based on the foregoing factual and legal determinations, pursuant to its authority under §§25-8-602 and 605, C.R.S., and in satisfaction of the civil penalties associated with the alleged violations cited herein and in the NOV/CDOs, the Division orders Milliken to comply with all provisions of this Consent Order, including all requirements set forth below.
55. Milliken agrees to the terms and conditions of this Consent Order. Milliken agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602 and 605, C.R.S., and is an enforceable requirement of the Act. Milliken also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Milliken against the Division:
- a. The issuance of this Consent Order;
 - b. The factual and legal determinations made by the Division herein; and
 - c. The Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.
56. Notwithstanding the above, Milliken does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Milliken pursuant to this Consent Order shall not constitute evidence of fault and liability by Milliken with respect to the conditions of the RO Facility. Milliken expressly reserves its rights to deny any of the Division's factual or legal determinations or defend itself in any other third party proceeding relating to the information identified in this Consent Order.

Compliance Requirements

57. During all times relevant to this compliance schedule, and until such a time that Milliken can comply with the Colorado Water Quality Control Act and the terms and conditions of the 2016 Permit, including any future modifications or reissued versions, Milliken shall not discharge from the RO Facility by maintaining the continued shut down of the RO Water Treatment Plant.
58. Within one hundred and eighty (180) calendar days of the effective date of this Consent Order, Milliken shall submit to the Division, in writing, a final decision regarding the choice of a long term selenium control strategy to ensure continued attainment with all 2016 Permit limits. If Milliken decides that its preferred selenium controlled strategy is terminating the operation of the RO Water Treatment Plant for the foreseeable future, Milliken shall not be subject to the Compliance Requirement in paragraph 59 (below). If new information and/or technologies becomes available to Milliken in the future that allows the operation of the RO Facility to be a feasible and effective strategy to meet all terms and condition of the 2016 Permit, including any future modifications or reissued versions, Milliken reserves the right to present that new information and/or technologies in a revised evaluation and request that a revised schedule be developed, in coordination with the Division, under the framework of this Consent Order.
59. Within three hundred and sixty (360) calendar days of the effective date of this Consent Order, Milliken shall submit an implementation plan to the Division, in writing. The implementation plan shall incorporate any major milestones with completion dates, including but not limited to: the obtaining of funding, engineering design completion, final design approval, construction bidding process, construction progress reports, and construction completion.

60. Milliken shall submit written quarterly progress reports to the Division outlining efforts taken to achieve compliance with this Order. The first report shall be submitted to the Division on or before September 30, 2016 and subsequent reports shall be due at the end of every quarter thereafter. At a minimum, each report shall outline activities completed in the previous quarter and activities planned for the next quarter, to remain in compliance with this Order. The progress reports shall be required until the issuance of written notice from the Division that the reports are no longer necessary.
61. All documents submitted under this Consent Order shall use the same titles as stated in this Consent Order, and shall reference both the number of this Consent Order and the number of the paragraph pursuant to which the document is required. No plan submitted for Division approval under this Consent Order may be implemented unless and until written approval is received from the Division. Any approval by the Division of a plan submitted under this Consent Order is effective upon receipt by Milliken. All approved plans, including all procedures and schedules contained in the plans, are hereby incorporated into this Consent Order, and shall constitute enforceable requirements under the Act.

CIVIL PENALTY

62. Based upon the factors set forth in §25-8-608(1), C.R.S., and consistent with Departmental policies for violations of the Act, Milliken shall pay one hundred seventy three thousand six hundred ninety four dollars and fifty cents (\$173,694.50) in civil penalties. The Division intends to petition the Executive Director, or his designee, to impose the one hundred seventy three thousand six hundred ninety-four dollar and fifty cent (\$173,694.50) civil penalty for the above violation(s) and Milliken agrees to make the payment within thirty (30) calendar days of the issuance of an Order for Civil Penalty by the Executive Director or his designee. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

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

SCOPE AND EFFECT OF CONSENT ORDER

63. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the civil penalties associated with the violations cited herein and in the NOV/CDOs.
64. This Consent Order is subject to the Division's "Public Notification on Administrative Enforcement Actions Policy," which includes a thirty (30) day public comment period. The Division and Milliken each reserve the right to withdraw consent to this Consent Order if comments received during the thirty day period result in any proposed modification to the Consent Order.
65. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or his designee imposes the civil penalty, following the public comment period. Any

violation of the provisions of this Consent Order by Milliken, including any false certifications, shall be a violation of a final order or action of the Division for the purpose of §25-8-608, C.R.S., and may result in the assessment of civil penalties of up to ten thousand dollars per day for each day during which such violation occurs.

66. The Parties' obligations under this Consent Order are limited to the matters expressly stated herein or in approved submissions required hereunder. All submissions made pursuant to this Consent Order are incorporated into this Consent Order and become enforceable under the terms of this Consent Order as of the date of approval by the Division.
67. The Division's approval of any submission, standard, or action under this Consent Order shall not constitute a defense to, or an excuse for, any prior violation of the Act, or any subsequent violation of any requirement of this Consent Order or the Act.
68. Notwithstanding paragraph 56 above, the violations described in this Consent Order will constitute part of Milliken's compliance history.
69. Milliken shall comply with all applicable Federal, State, and/or local laws in fulfillment of its obligations hereunder and shall obtain all necessary approvals and/or permits to conduct the activities required by this Consent Order. The Division makes no representation with respect to approvals and/or permits required by Federal, State, or local laws other than those specifically referred to herein.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

70. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to civil penalties for the specific instances of violations cited herein and in the NOV/CDOs. The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof, and/or injunctive relief.
71. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
72. Milliken reserves its rights and defenses regarding the RO Facility and Wastewater Facility, other than proceedings to enforce this Consent Order.
73. Nothing in this Consent Order shall preclude the Division from imposing additional requirements necessary to protect human health or the environment and to effectuate the purposes of the Consent Order. Nor shall anything in this Consent Order preclude the Division from imposing additional requirements in the event that additional information is discovered that indicates such requirements are necessary to protect human health or the environment.
74. Milliken releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims or for any injuries or damages to persons or property resulting from acts or omissions of Milliken, or those acting for or on behalf of Milliken, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. Milliken shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by Milliken in carrying out activities pursuant to this Consent

Order. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents or representatives.

OFFSITE ACCESS

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

SITE ACCESS AND SAMPLING

76. The Division shall be permitted to oversee any and all work being performed under this Consent Order. The Division shall be permitted access to the RO Facility property at any time work is being conducted pursuant to this Consent Order, and during reasonable business hours during any period work is not being conducted, for the purposes of determining Milliken's compliance with the Act, the Regulations, and this Consent Order. The Division shall be permitted to inspect work sites, operating and field logs, contracts, manifests, shipping records, and other relevant records and documents relating to this Consent Order or any requirement under this Consent Order and to interview Milliken personnel and contractors performing work required by this Consent Order. Nothing in this paragraph limits or impairs the Division's statutory authorities to enter and inspect the RO Facility.
77. The Division may conduct any tests necessary to ensure compliance with this Consent Order and to verify the data submitted by Milliken. Milliken shall notify the Division in writing of any sampling activities undertaken pursuant to any plan or requirement of this Consent Order a minimum of seventy-two (72) hours prior to the sampling being conducted, and shall provide split samples to the Division upon request.
78. Milliken shall notify the Division in writing of any excavation, construction (including the construction of monitoring wells) or other investigatory or remedial activities undertaken pursuant to any plan or requirement of this Consent Order a minimum of seventy-two (72) hours prior to beginning the excavation, construction, or required activity. Milliken shall provide the Division any blue print, diagram, construction or other permits for any construction activity undertaken pursuant to this Consent Order upon request.

FORCE MAJEURE

79. Milliken shall perform the requirements of this Consent Order within the schedules and time limits set forth herein and in any approved plan unless the performance is prevented or delayed by events that constitute a force majeure. A force majeure is defined as any event arising from causes which are not reasonably foreseeable, which are beyond the control of Milliken, and which cannot be overcome by due diligence.
80. Within seventy-two (72) hours of the time that Milliken knows or has reason to know of the occurrence of any event which Milliken has reason to believe may prevent Milliken from timely compliance with any requirement under this Consent Order, Milliken shall provide verbal

notification to the Division. Within seven (7) calendar days of the time that Milliken knows or has reason to know of the occurrence of such event, Milliken shall submit to the Division a written description of the event causing the delay, the reasons for and the expected duration of the delay, and actions which will be taken to mitigate the duration of the delay.

81. The burden of proving that any delay was caused by a force majeure shall at all times rest with Milliken. If the Division agrees that a force majeure has occurred, the Division will so notify Milliken. The Division will also approve or disapprove of Milliken's proposed actions for mitigating the delay. If the Division does not agree that a force majeure has occurred, or if the Division disapproves of Milliken's proposed actions for mitigating the delay, it shall provide a written explanation of its determination to Milliken. Pursuant to the Dispute Resolution section, within fifteen (15) calendar days of receipt of the explanation, Milliken may file an objection.
82. Delay in the achievement of one requirement shall not necessarily justify or excuse delay in the achievement of subsequent requirements. In the event any performance under this Consent Order is found to have been delayed by a force majeure, Milliken shall perform the requirements of this Consent Order that were delayed by the force majeure with all due diligence.

DISPUTE RESOLUTION

83. If the Division determines that a violation of this Consent Order has occurred; that a force majeure has not occurred; that the actions taken by Milliken to mitigate the delay caused by a force majeure are inadequate; that Milliken's Notice of Completion should be rejected pursuant to paragraph 89, the Division shall provide a written explanation of its determination to Milliken. Within fifteen (15) calendar days of receipt of the Division's determination, Milliken shall:
 - a. Submit a notice of acceptance of the determination; or
 - b. Submit a notice of dispute of the determination.

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

84. If the Division disapproves or approves with modifications any original or revised plan submitted by Milliken pursuant to this Consent Order, the Division shall provide a written explanation of the disapproval or approval with modifications. Within fifteen (15) calendar days of receipt of the Division's approval with modifications or disapproval of the plan, Milliken shall:
 - a. In the case of an approval with modifications only, submit a notice of acceptance of the plan as modified and begin to implement the modified plan;
 - b. In the case of a disapproval only, submit a revised plan for Division review and approval. Milliken may not select this option if the Division has included in its disapproval an alternate plan that shall be implemented by Milliken; or
 - c. Submit a notice of dispute of the disapproval or approval with modifications.

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

85. If Milliken submits a revised plan, the plan shall respond adequately to each of the issues raised in the Division's written explanation of the disapproval or approval with modifications. The

Division may determine that failure to respond adequately to each of the issues raised in the Division's written explanation constitutes a violation of this Consent Order. The Division shall notify Milliken in writing of its approval, approval with modifications, or disapproval of the revised plan. If the Division disapproves the revised plan, it may include in its disapproval a plan for implementation by Milliken. Such disapproval and plan shall be deemed effective and subject to appeal in accordance with the Act and the Colorado State Administrative Procedures Act, §§ 24-4-101 through 108, C.R.S. (the "APA"), unless Milliken submits a notice of dispute, pursuant to paragraph 83 above, of the Division's disapproval and plan for implementation. All requirements and schedules of the Division's plan shall not become effective pending resolution of the dispute.

NOTICES

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

For the Division:

Eric Mink
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CWE-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: 303-692-2312
E-mail: eric.mink@state.co.us

For the Town of Milliken:

Kent Brown, Town Administrator
Town of Milliken
PO Box 290
Milliken, CO 80543
Telephone: 970-660-5047
E-mail: kbrown@millikenco.gov

OBLIGATIONS UNAFFECTED BY BANKRUPTCY

87. The obligations set forth herein are based on the Division's police and regulatory authority. These obligations require specific performance by Milliken of corrective actions carefully designed to prevent on-going or future harm to public health or the environment, or both. Enforcement of these obligations is not stayed by a petition in bankruptcy. Milliken agrees that the penalties set forth in this Consent Order are not in compensation of actual pecuniary loss. Further, the obligations imposed by this Consent Order are necessary for Milliken, the RO Facility, and the Wastewater Facility to achieve and maintain compliance with State law.

MODIFICATIONS

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

COMPLETION OF REQUIRED ACTIONS

89. Milliken shall submit a Notice of Completion to the Division upon satisfactory completion of all requirements of this Consent Order. The Division shall either accept or reject Milliken's Notice of Completion in writing within thirty (30) calendar days of receipt. If the Division rejects Milliken's Notice of Completion, it shall include in its notice a statement identifying the requirements that the Division considers incomplete or not satisfactorily performed and a schedule for completion. Milliken shall, within fifteen (15) calendar days of receipt of the Division's rejection, either:
- a. Submit a notice of acceptance of the determination; or
 - b. Submit a notice of dispute.

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

NOTICE OF EFFECTIVE DATE

90. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or his designee imposes the civil penalty following closure of the public comment period referenced in paragraph 64. If the penalty as described in this Consent Order is not imposed, or an alternate penalty is imposed, this Consent Order becomes null and void.

BINDING EFFECT AND AUTHORIZATION TO SIGN

91. This Consent Order is binding upon Milliken and its elected officials, employees, agents, representatives, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. Milliken agrees to provide a copy of this Consent Order to any contractors and other agents performing work pursuant to this Consent Order and require such agents to comply with the requirements of this Consent Order. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

FOR THE TOWN OF MILLIKEN:


_____ Date: 7/20/16
Kent Brown, Town Administrator

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:


_____ Date: 8/3/16
Nicole Rowan, P.E.
Clean Water Program Manager
WATER QUALITY CONTROL DIVISION