



COLORADO

Department of Public Health & Environment

WATER QUALITY CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT

NUMBER: **IC-2601XX-1**

IN THE MATTER OF: CITY OF BRIGHTON
 CDPS PERMIT NO. CO0046728
 ADAMS COUNTY, COLORADO

The Colorado Department of Public Health and Environment (“Department”), through the Water Quality Control Division (“Division”), issues this Compliance Order on Consent (“Consent Order”), pursuant to the Division’s authority under §§25-8-602 and 605, C.R.S. of the Colorado Water Quality Control Act (“Act”) §§25-8-101 to 1008, C.R.S., and its implementing regulations, with the express consent of City of Brighton (“Brighton”). The Division and Brighton may be referred to collectively as the “Parties.”

STATEMENT OF PURPOSE

1. The mutual objectives of the Parties in entering into this Consent Order are:
 - a. To establish compliance requirements and criteria for the continued operation of Brighton’s Reverse Osmosis Water Treatment Plant facility, located at 4350 East Bromley Lane, Brighton, Colorado (“Facility”); 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, Number IO-231211-2 (“NOV/CDO”), that the Division issued to Brighton on December 11, 2023.

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 Brighton’s compliance with its permit.
3. At all times relevant to the alleged violations identified herein, Brighton was a municipality as defined by §31-1-101(6), C.R.S.
4. Brighton is a “person” as defined under the Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
5. Brighton owns and/or operates the Facility.

6. The Facility treats groundwater using reverse osmosis which creates 80% potable water and 20% concentrate. The untreated concentrate is discharged to the South Platte River.
7. The Facility is the subject of the Colorado Discharge Permit System, Permit Number CO0046728 (“Permit”). The current version of the Permit initially became effective on May 1, 2016. The Permit has been modified five times since, with the most recent modification on April 1, 2021, and the Permit is currently administratively continued.
8. The Permit authorizes Brighton to discharge wastewater from the Facility through Outfall 001A, located at approximately 39.9772, -104.8325, into the South Platte River.
9. Pursuant to 5 CCR 1002-61, §61.8, Brighton must comply with all the terms and conditions of the Permit, and violations of such terms and conditions as specified in the Permit may make Brighton subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-613, C.R.S.

Failure to Comply with Permit Effluent Limitations

10. Pursuant to Part I.A.1. and I.A.2. of the Permit, Brighton’s effluent at Outfall 001A shall not exceed, among others not subject to this action, the effluent discharge limitations specified in the table below:

CITY OF BRIGHTON - REVERSE OSMOSIS FACILITY EFFLUENT DISCHARGE LIMITATIONS FOR OUTFALL 001					
Parameter		Limitation		Sampling	
		30-day Avg.	Daily Max	Frequency	Type
Solids, total suspended (“TSS”) (mg/L)		30	45	Quarterly	Composite
Sulfate (mg/L), effective 1/1/2025		607	--	Monthly	Composite
Whole Effluent Toxicity (“WET”), Acute (%)	LC50 Statre 48Hr Acute <i>Ceriodaphnia dubia</i>	--	LC50 ≥ 100%	Quarterly	Grab

11. Pursuant to Part I.D.4. of the Permit, Brighton’s monitoring results shall be summarized for each calendar month and reported on Division approved discharge monitoring reports (“DMRs”) via the Division’s NetDMR service. The DMR forms shall be filled out accurately and completely in accordance with requirements of the Permit.
12. Brighton’s DMRs include, among other information and data, the following effluent data, which exceeded the effluent limitations outlined in Part I.A.2. of the Permit:

CITY OF BRIGHTON - REVERSE OSMOSIS FACILITY EFFLUENT SELF-MONITORING DATA		
REPORTING PERIOD	SAMPLE MEASUREMENTS FOR OUTFALL 001	
TSS (mg/L)	30-DAY AVG. LIMIT = 30	DAILY MAXIMUM = 45
4/1/2024 - 6/30/2024	47	47
Sulfate (mg/L) <i>Ceriodaphnia dubia</i>	30-DAY AVG. LIMIT = 607	DAILY MAXIMUM = N/A
1/1/2025 - 1/31/2025	870	--

CITY OF BRIGHTON - REVERSE OSMOSIS FACILITY EFFLUENT SELF-MONITORING DATA		
2/1/2025 - 2/28/2025	843	--
3/1/2025 - 3/31/2025	899	--
4/1/2025 - 4/30/2025	854	--
5/1/2025 - 5/31/2025	930	--
6/1/2025 - 6/30/2025	933	--
7/1/2025 - 7/31/2025	968	--
8/1/2025 - 8/31/2025	837	--
9/1/2025 - 9/30/2025	874	--
10/1/2025 - 10/31/2025	772	--
11/1/2025 - 11/30/2025	776	--
WET, Acute (%) <i>Ceriodaphnia dubia</i>	30-DAY AVG. LIMIT = N/A	DAILY MAXIMUM = LC50 ≥ 100%
10/1/2019 - 12/31/2019	--	<100%
4/1/2020 - 6/30/2020	--	75.6%
7/1/2020 - 9/30/2020	--	87.3%
7/1/2021 - 9/30/2021	--	64.2%
10/1/2021 - 12/31/2021	--	69.0%
1/1/2022 - 3/31/2022	--	78.0%
4/1/2022 - 6/30/2022	--	52.5%
7/1/2022 - 9/30/2022	--	59.3%
10/1/2022 - 12/31/2022	--	62.9%
1/1/2023 - 3/31/2023	--	85.1%
4/1/2023 - 6/30/2023	--	89.8%
7/1/2023 - 9/30/2023	--	68.6%
1/1/2024 - 3/31/2024	--	50.5%
4/1/2024 - 6/30/2024	--	59.3%
7/1/2024 - 9/30/2024	--	62.4%
10/1/2024 - 12/31/2024	--	62.7%
1/1/2025 - 3/31/2025	--	56.8%

13. WET is a “pollutant” or indicator thereof, as defined by §25-8-103, C.R.S. and its implementing permit regulation 5 CCR 1002-61, §61.2(76).
14. The Permit does not authorize the pollutant levels identified in Paragraph 12 above. Division records establish that during the reporting periods identified above, Brighton did not have any other permit authorizing such discharge into State Waters.
15. Brighton’s failure to comply with the Permit limitations constitutes violations of Part I.A.1. and I.A.2. of the Permit.

Failure to Notify

16. Pursuant to Part I.B.3.b. of the Permit, Brighton shall provide written notification to the Division of a failure of a WET test within 14 calendar days of receiving notice of the WET testing results.

17. Division records establish that Brighton failed to notify the Division of a failure of a WET test within 14 calendar days of receiving notice of the WET testing results for the reporting periods listed below:

CITY OF BRIGHTON - REVERSE OSOMOSIS FACILITY DEFICIENT DMRS FOR OUTFALL 001A		
DISCHARGE MONITORING REPORTING PERIOD	FAILURE DATE	NOTIFICATION DATE
4/1/2022 - 6/30/2022	7/14/2022	None
7/1/2022 - 9/30/2022	10/6/2022	None
10/1/2022 - 12/31/2022	12/30/2022	None
1/1/2023 - 3/31/2023	3/30/2023	None
4/1/2022 - 6/30/2022	6/22/2023	None
7/1/2022 - 9/30/2022	9/25/2023	None

18. Brighton’s failure to notify the Division of a failure of a WET test within 14 calendar days of receiving notice of the WET testing results, as identified in Paragraph 17, constitutes a violation of Part I.B.3.b of the Permit.

Failure to Properly Monitor

19. Pursuant to Part I.A.2. of the Permit, in order to obtain an indication of probable compliance or noncompliance with the specified effluent limitations, Brighton shall monitor all effluent parameters at specified frequencies. Such monitoring is required for the life of the Permit unless otherwise specified. The results of such monitoring shall be reported on the DMR form.
20. Pursuant to Part I.D.4. of the Permit, Brighton’s monitoring results shall be summarized for each calendar month and reported on Division approved discharge monitoring reports (“DMRs”) via the Division’s NetDMR service. The DMR forms shall be filled out accurately and completely in accordance with requirements of this Permit.
21. Division records establish that Brighton failed to monitor for the reporting period and associated effluent parameters listed below:

CITY OF BRIGHTON - REVERSE OSOMOSIS FACILITY DEFICIENT DMRS FOR OUTFALL 001A	
DISCHARGE MONITORING REPORTING PERIOD	DEFICIENT PARAMETERS
10/1/2021 - 12/31/2021	Total Suspended Solids

22. Brighton’s failure to monitor all effluent parameters, as identified in Paragraph 21, constitutes a violation of Parts I.A.2. and I.D.4. of the Permit.

ORDER AND AGREEMENT

23. 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/CDO, the Division orders Brighton to comply with all provisions of this Consent Order, including all requirements set forth below.
24. Brighton agrees to the terms and conditions of this Consent Order. Brighton 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. Brighton also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Brighton 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.
25. Notwithstanding the above, Brighton does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Brighton pursuant to this Consent Order shall not constitute evidence of fault and liability by Brighton with respect to the conditions of the Facility. Brighton 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

26. By December 31, 2026, Brighton shall submit a progress report to the Division regarding the steps taken to complete construction of the new non-discharging Water Treatment Plant and decommissioning of the previous Facility. At a minimum, the report shall outline activities undertaken since the Consent Order was executed and activities planned to remain in compliance with this Order.
27. By June 1, 2027, Brighton shall reach substantial completion of the non-discharging Water Treatment Plant and provide notification of said completion to the Division.
28. By September 30, 2027, Brighton shall submit a termination application for the Permit. This termination application shall confirm that the Facility has been decommissioned and is no longer discharging.
29. 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.

CIVIL PENALTY

30. Based upon the factors set forth in §25-8-608(1), C.R.S., and consistent with Departmental policies for violations of the Act, Brighton shall pay \$20,570.00 in civil penalties. The Division intends to petition the Executive Director, or her designee, to impose the \$20,570.00 civil penalty for the

above violation(s) and Brighton agrees to make the payment within 30 calendar days of the issuance of an Order for Civil Penalty by the Executive Director or her 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:

Jacob Dyste
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

31. 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/CDO.
32. This Consent Order is subject to the Division's "Public Notification on Administrative Enforcement Actions Policy," which includes a 30 day public comment period. The Division and Brighton each reserve the right to withdraw consent to this Consent Order if comments received during the 30 day period result in any proposed modification to the Consent Order.
33. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or her designee imposes the civil penalty following the public comment period.. Any violation of the provisions of this Consent Order by Brighton, 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 \$66,895 per day for each violation.
34. 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.
35. 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.
36. Notwithstanding Paragraph 25 above, the violations described in this Consent Order will constitute part of Brighton's compliance history.
37. Brighton 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

38. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand

in lieu of any other enforcement action by the Division with respect to the specific instances of violations cited herein and in the NOV/CDO. The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof, and/or injunctive relief.

39. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
40. Brighton reserves its rights and defenses regarding the Facility, other than proceedings to enforce this Consent Order.
41. 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.
42. Brighton 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 Brighton, or those acting for or on behalf of Brighton, including its officers, employees, agents, successors, representatives, contractors, consultants, or attorneys in carrying out activities pursuant to this Consent Order. Brighton shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by Brighton 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.

FORCE MAJEURE

43. Brighton 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 Brighton, and which cannot be overcome by due diligence.
44. Within 72 hours of the time that Brighton knows or has reason to know of the occurrence of any event which Brighton has reason to believe may prevent Brighton from timely compliance with any requirement under this Consent Order, Brighton shall provide verbal notification to the Division. Within seven calendar days of the time that Brighton knows or has reason to know of the occurrence of such event, Brighton 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.
45. The burden of proving that any delay was caused by a force majeure shall at all times rest with Brighton. If the Division agrees that a force majeure has occurred, the Division will so notify Brighton. The Division will also approve or disapprove of Brighton '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 Brighton 's proposed actions for mitigating the delay, it shall provide a written explanation of its determination to Brighton. Pursuant to the Dispute Resolution section, within 15 calendar days of receipt of the explanation, Brighton may file an objection.

46. 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, Brighton shall perform the requirements of this Consent Order that were delayed by the force majeure with all due diligence.

DISPUTE RESOLUTION

47. If the Division determines that that a violation of this Consent Order has occurred; that a force majeure has not occurred; that the actions taken by Brighton to mitigate the delay caused by a force majeure are inadequate; that Brighton's Notice of Completion should be rejected pursuant to Paragraph 54, the Division shall provide a written explanation of its determination to Brighton. Within 15 calendar days of receipt of the Division's determination, Brighton shall:
- a. Submit a notice of acceptance of the determination; or
 - b. Submit a notice of dispute of the determination.

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

48. If the Division disapproves or approves with modifications any original or revised plan submitted by Brighton pursuant to this Consent Order, the Division shall provide a written explanation of the disapproval or approval with modifications. Within 15 calendar days of receipt of the Division's approval with modifications or disapproval of the plan, Brighton 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. Brighton may not select this option if the Division has included in its disapproval an alternate plan that shall be implemented by Brighton; or
 - c. Submit a notice of dispute of the disapproval or approval with modifications.

If Brighton fails to do any of the above within the specified time, Brighton 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.

49. If Brighton 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 Brighton 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 Brighton. 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 109, C.R.S. ("APA"), unless Brighton submits a notice of dispute, pursuant to Paragraph 46 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.

50. If Brighton files any notice of dispute pursuant to Paragraphs 47-49, the notice shall specify the particular matters in the Division's determination that Brighton seeks to dispute, and the basis for the dispute. Matters not identified in the notice of dispute shall be deemed accepted by Brighton. The Division and Brighton shall have 30 calendar days from the receipt by the Division of the notification of dispute to reach an agreement. If agreement cannot be reached on all issues within this 30 calendar day period, the Division shall confirm or modify its decision within an additional 14 calendar days, and the confirmed or modified decision shall be deemed effective and subject to appeal in accordance with the Act and the APA.

NOTICES

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

For the Division:

Jacob Dyste
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: 303-692-3290
E-mail: jacob.dyste@state.co.us

For Brighton:

Scott Olsen
City of Brighton
500 S. 4th Avenue
Brighton, Colorado 80601
Telephone: 303-655-2136
E-mail: solsen@brightonco.gov

OBLIGATIONS UNAFFECTED BY BANKRUPTCY

52. The obligations set forth herein are based on the Division's police and regulatory authority. These obligations require specific performance by Brighton 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. Brighton 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 Brighton and the Brighton to achieve and maintain compliance with State law.

MODIFICATIONS

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

COMPLETION OF REQUIRED ACTIONS

54. Brighton 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 Brighton's Notice of Completion in writing within 30 calendar days of receipt. If the Division rejects Brighton'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. Brighton shall, within 15 calendar days of receipt of the Division's rejection, either:
- a. Submit a notice of acceptance of the determination; or
 - b. Submit a notice of dispute.

If Brighton 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

55. This Consent Order shall be fully effective, enforceable, and constitute a final agency action upon the date when the Executive Director or her designee imposes the civil penalty following closure of the public comment period referenced in Paragraph 33.

BINDING EFFECT AND AUTHORIZATION TO SIGN

56. This Consent Order is binding upon Brighton 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. In the event that a party does not sign this Consent Order within 30 calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order. The Parties agree that this Consent Order may be electronically signed. The Parties agree that the electronic signatures appearing on this Consent Order are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

FOR CITY OF BRIGHTON:

_____ Date: _____
Michael Martinez
City Manager
City of Brighton

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

_____ Date: _____
Kelly Morgan
Clean Water Compliance & Enforcement Section Manager
WATER QUALITY CONTROL DIVISION