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A. Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint in this action alleging that Defendant Russell Stover Candies, Inc. (“Russell Stover”), violated the Clean Water Act (“CWA” or “Act”).

B. The Complaint alleges that Russell Stover violated the specific prohibition against industrial discharges of wastewater with a pH below 5.0 Standard Units (s.u.) to a publicly owned treatment works (“POTW”), in violation of 33 U.S.C. §§ 1311 and 1317, and the Pretreatment Standards at 40 C.F.R. Part 403.5(b), during the period between December 15, 2005 and March 2009.

C. Notwithstanding the assertions referenced in Paragraph B, above, Russell Stover has promptly cooperated with EPA to resolve these allegations.

D. On July 29, 2009, EPA issued Russell Stover an Order for Compliance, pursuant to Section 309(a) of the CWA, that required Russell Stover to take action to eliminate its low pH discharges to the POTW (Phase I), to provide background information to EPA on the company’s historical discharges to the POTW, and to submit bi-monthly progress reports to EPA on the company’s action to achieve compliance with the CWA.

E. Russell Stover does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

F. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

G. NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I (General

Provisions), and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. GENERAL PROVISIONS

1. Jurisdiction and Venue. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and 33 U.S.C. § 1319(b), and over the Parties. Venue lies in this District pursuant to 28 U.S.C. §§ 1391(b) and 1395(a) and 33 U.S.C. § 1319(b), because the violations alleged in the Complaint are alleged to have occurred in, and Russell Stover conducts business in, this judicial district.
2. Consent to Jurisdiction and Venue. For purposes of this Decree, or any action to enforce this Decree, Russell Stover consents to the Court's jurisdiction over this Decree and any such action and over Russell Stover and consents to venue in this judicial district. For purposes of this Consent Decree, Russell Stover agrees that the Complaint states claims upon which relief may be granted pursuant to 33 U.S.C. § 1319.
3. Retention of Jurisdiction. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree as provided in Paragraph 12 (Modification), or effectuating or enforcing compliance with the terms of this Decree.
4. Applicability. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Russell Stover and any successors, assigns, or other entities or persons otherwise bound by law.
5. Transfer of Property. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Russell

Stover of its obligation to ensure that the terms of the Decree are implemented. At least 30 days prior to such transfer, Russell Stover shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to the United States Attorney for the District of Kansas, and the United States in accordance with Paragraph 11 (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

6. Distribution of Consent Decree. Russell Stover shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties are directly related to compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Russell Stover shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

7. Responsibility of Russell Stover. In any action to enforce this Consent Decree, Russell Stover shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

8. Purpose of Decree. It is the express purpose of this Decree to further the objectives of the Clean Water Act as well as regulations and permits issued pursuant to that Act. All obligations in this Decree shall have the objective of causing Russell Stover to be and remain in full compliance with the Clean Water Act, the regulations and permits issued pursuant to that Act, as well as state and local laws, regulations, and permits authorized pursuant to that Act.

9. Definitions. Terms used in this Consent Decree that are defined in the Clean Water Act or in regulations promulgated pursuant to that Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Iola POTW" shall mean the publicly owned treatment works owned and operated by the City of Iola, Kansas, and that treats domestic and industrial wastewater in Iola, Kansas, and which discharges to the Neosho River subject to a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA (Permit No. KS0099414).

b. "Complaint" shall mean the complaint filed by the United States in this action.

c. "Consent Decree" or "Decree" shall mean this Decree.

d. "Day" shall mean a calendar day.

e. "Date of Lodging" shall mean the date on which this Consent Decree is filed with this court.

f. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.

g. "Effective Date" shall mean the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

h. "Facility" shall mean Russell Stover's candy manufacturing plant located in Iola, Kansas.

- i. "Russell Stover" shall mean the entity named as the Defendant in the Complaint.
- j. "Paragraph" shall mean a portion of this Decree identified by an Arabic numeral.
- k. "Parties" shall mean the United States and Russell Stover.
- l. "Section" shall mean a portion of this Decree identified by a Roman numeral.
- m. "United States" shall mean the United States of America, acting on behalf of EPA.
- n. "Violation Period" shall mean the days between and including December 15, 2005 and March 31, 2009.

10. Costs. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Russell Stover.

11. Notices. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Ellen M. Mahan, Deputy Section Chief
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-10129

To EPA:

Howard Bunch
Senior Assistant Regional Counsel
U.S. EPA, Region 7
Kansas City, KS 66101

and

Paul Marshall
Pretreatment Coordinator
U.S. EPA, Region 7
901 N. 5th Street
Kansas City, KS 66101

To Russell Stover:

Robert Lambrechts, Esq.
Lathrop and Gage, LLP
10851 Mastin Boulevard, Building 82, Suite 1000
Overland Park, KS 66210-1669

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

12. Modification. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties.

Requests for extension of time for deadlines required by this Consent Decree made by Russell Stover may be granted and made enforceable under this Consent Decree upon written approval by EPA. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court. Any disputes concerning modification of this Decree shall be resolved pursuant to Section VI (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 58 (Standard of Review), the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

13. Termination.

a. After Russell Stover has completed the requirements of Section III (Compliance Requirements) of this Decree, has thereafter maintained continuous satisfactory compliance with this Consent Decree and applicable permits for a period of one calendar year, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Russell Stover may serve upon the United States in accordance with Paragraph 11 (Notices) a request for termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

b. Following the United States' receipt of Russell Stover's request for termination, the Parties shall confer informally concerning the request and any disagreement that the Parties may have as to whether Russell Stover has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

c. If the United States does not agree that the Decree may be terminated, Russell Stover may invoke the dispute resolution procedures of Section VI (Dispute Resolution). However, Russell Stover shall not invoke the procedures of that Section until at least ninety days after service of its request for termination.

14. Public Participation. This Consent Decree shall be lodged with the Court for a period of not less than thirty days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Russell Stover consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Consent Decree, unless the United States has notified Russell Stover in writing that it no longer supports entry of the Consent Decree.

15. Headings. Headings in this Decree are provided for convenience only and shall not affect the substance of any provision.

16. Computation of Time. The computation of any period of time set forth in this Decree shall be governed by Rule 6 of the Federal Rules of Civil Procedure. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.

17. Signatories. Each undersigned representative of Russell Stover and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of

Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

18. Counterparts. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Russell Stover agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

19. Integration. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

20. Final Judgment. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the Parties. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

21. Right of Entry. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States, the State of Kansas, or the City of Iola, in accordance with the terms of this Consent Decree;

c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data; and

e. assess Defendant's compliance with this Consent Decree.

22. Split Samples. Upon request, Russell Stover shall provide EPA or its authorized representatives splits of any samples taken by Russell Stover pursuant to this Consent Decree.

23. Retention of Information.

a. Until two years after the termination of this Consent Decree, Russell Stover shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Russell Stover's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Russell Stover shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

b. At the conclusion of the information-retention period provided in this Paragraph, Russell Stover shall notify the United States at least ninety days prior to the destruction of any documents, records, or other information subject to the requirements of the

preceding Paragraph and, upon request by the United States, Russell Stover shall deliver any such documents, records, or other information to EPA. Russell Stover may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Russell Stover asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Russell Stover. However, no documents, records, or other information submitted pursuant to or necessary to determine compliance with the requirements of this Consent Decree shall be withheld on grounds of privilege.

c. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

24. Other Authorities. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Russell Stover to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

II. CIVIL PENALTY

25. Civil Penalty. Within 30 days after the Effective Date of this Consent Decree, Russell Stover shall pay the sum of \$585,000 as a civil penalty, together with interest accruing from the Date of Lodging, at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging.

26. Payment of Civil Penalty. Russell Stover shall pay the civil penalty due by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to Russell Stover following lodging of the Consent Decree by the Financial Litigation Unit of the U.S. Attorney's Office for the District of Kansas. At the time of payment, Russell Stover shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in the above-captioned case, and shall refer to U.S.A.O. file number 2011V00276 and DOJ case number 90-5-1-1-10129, to the United States in accordance Paragraph 11 (Notices); by email to _____ and by mail to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

27. Tax Treatment. Russell Stover shall not deduct any civil or stipulated penalties paid under this Consent Decree in calculating its federal income tax.

III. COMPLIANCE REQUIREMENTS AND INJUNCTIVE RELIEF

28. Within thirty (30) days of the Effective Date of this Consent Decree, EPA shall terminate the July 29, 2009 Order, and thereafter Defendant's monitoring, reporting and

injunctive obligations to address the violations alleged in the Complaint shall be governed by this Consent Decree.

29. Cessation of Discharges with pH below 5.0. s.u. Upon the Effective Date, Russell Stover shall cease all discharges to the City of Iola's wastewater treatment plant with a pH less than 5.0. (s.u.), in violation of 40 C.F.R. 403.5(a). As a means of achieving this requirement, Russell Stover shall continue to neutralize and measure the pH of wastewaters from its equipment cleaning procedures, as described in "Sanitation Procedures," Attachment 1. Russell Stover shall also provide EPA written notice thirty days prior to making changes in these neutralization and/or pH measurement procedures.

30. Sampling. Beginning with the Effective Date, Russell Stover shall sample its wastewater at the point of discharge to the Iola POTW for the following parameters: total suspended solids, biochemical oxygen demand, and pH. This sampling shall be performed in a manner designed to achieve results that accurately represent the quality of the Russell Stover's discharge of wastewater to the Iola POTW, and in accordance with the terms of the Sampling Plan set forth in Attachment 1 to this Decree

31. Phase II Compliance.

a. If at any time, EPA determines upon review of the sampling required by Paragraph 30 (Sampling) or any other relevant information that Russell Stover's discharges alone, or in combination with other discharges, are causing a violation of 40 C.F.R. Part 403, including, but not limited to, any violation of the specific prohibition against low pH discharges of 40 C.F.R. 403.5(b)(2), EPA may issue a written determination that Russell Stover must design and install additional, or "Phase II pretreatment" at its Facility. Within the first thirty days of

receipt of such a determination, Russell Stover may request a meeting or conference call with EPA for the purpose of discussion on the scope of appropriate compliance actions. EPA will act in good faith to try to schedule such a meeting/call within 15 days of receipt of such request from Russell Stover.

b. Within ninety days of EPA issuing a written determination pursuant to this Paragraph, or forty five days after the occurrence of a meeting/conference call to discuss EPA's determination of the need for Phase II pretreatment, whichever occurs first, Russell Stover shall submit to EPA a Phase II compliance plan that shall, at a minimum: (1) identify the causes of the violation of 40 C.F.R. Part 403; (2) propose sufficient process changes and/or additional wastewater treatment equipment to address the identified violations of 40 C.F.R. 403; (3) propose a schedule for implementing the changes or installations; and (4) provide for regular reporting of information necessary to determine compliance with the requirements and proposed schedule contained in the plan. Review and implementation of this Phase II compliance plan will proceed in accordance with Paragraph 33 (Approval of Deliverables).

c. Upon completion of the actions required in the Phase II compliance plan required by this Paragraph, Russell Stover shall demonstrate that its discharges to the Iola POTW, alone or in conjunction with other discharges, have not caused additional violations of 40 C.F.R. Part 403 for one calendar year.

32. Sampling Plan. If determined by EPA to be necessary to properly identify the causes of non-compliance with 40 C.F.R. 403.5(b)(2) that are detected pursuant to sampling performed pursuant to this Decree, within thirty (30) days of the a written request from EPA, Respondent shall provide EPA a revised Sampling Plan, for EPA's review and approval, that is

designed to address specific data gaps or deficiencies identified by EPA that must be addressed to accurately determine the loadings and characteristics of the discharges from the Respondent's facility to the Iola POTW.

33. Approval of Deliverables.

a. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree, EPA shall in writing: a) approve the submission; b) approve the submission upon specified conditions; c) approve part of the submission and disapprove the remainder; or d) disapprove the submission.

b. If the submission is approved, Russell Stover shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved.

c. If the submission is conditionally approved or approved only in part, Russell Stover shall, upon written direction from EPA, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject to Russell Stover's right to dispute only the specified conditions or the disapproved portions, under Section VI (Dispute Resolution).

d. If the submission is disapproved in whole or in part, Russell Stover shall, within 30 days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding subparagraphs. If the resubmission is approved in whole or in part, Russell Stover shall proceed in accordance with the preceding subparagraph.

e. Any stipulated penalties applicable to the original submission, as provided in Section IV (Stipulated Penalties), shall accrue during the 30-day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Russell Stover's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

f. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require Russell Stover to correct any deficiencies, in accordance with the preceding subparagraphs, or may itself correct any deficiencies, subject to Russell Stover's right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties.

34. Permits. Where any obligation under this Consent Decree requires Russell Stover to obtain a federal, state, or local permit or approval, Russell Stover shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Russell Stover may seek relief under the provisions of Section V (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Russell Stover has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

35. Quarterly Reports. Within 30 days after the end of each calendar-year quarter (*i.e.*, by April 30, July 30, October 30, and January 30) after the Date of Lodging, until

termination of this Decree, Russell Stover shall submit a report for the preceding quarter to the United States in accordance with Paragraph 11 (Notices). Each report shall include, at a minimum, (a) a table clearly showing the results of sampling conducted pursuant to Paragraph 30 (Sampling), date taken and wastewater flow; (b) copies of the analytical results for all samples required pursuant to Paragraph 30 (Sampling); (c) a written summary of all other activities undertaken pursuant to this Consent Decree; and (d) a written summary of any discharges to the Iola POTW that had the potential to cause the pass through of pollutants and/or interference with the Iola POTW's wastewater treatment processes and operations. The report shall also include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation.

36. Non-Compliance Reporting. If Russell Stover violates, or has reason to believe that it may violate, any requirement of this Consent Decree and/or effective pretreatment permits issued by the City of Iola, Russell Stover shall notify the United States in accordance with Paragraph 11 (Notices) within ten working days of the day Russell Stover first becomes aware of the violation. Each such notification shall describe each violation and its likely duration and each violation's likely cause and the remedial steps taken, or to be taken, to prevent or minimize each violation. If the cause of a violation cannot be fully explained at the time the report is due, Russell Stover shall so state in the report. Russell Stover shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 days of the day Russell Stover becomes aware of the cause of

the violation. Nothing in this Paragraph relieves Russell Stover of its obligation to provide the notice required by Section V (Force Majeure).

37. Additional Reporting. Whenever any violation of this Consent Decree or of any applicable permits or any other event affecting Russell Stover's performance under this Decree, or the performance of its Facility, may pose an immediate threat to the public health or welfare or the environment, Russell Stover shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Russell Stover first knew of the violation or event. This procedure is in addition to the requirements set forth in Paragraph 36 (Non-Compliance Reporting). Nothing in this Paragraph relieves Russell Stover of its obligation to provide the notice required by Section V (Force Majeure).

38. Certification of Reports. Each report submitted by Russell Stover under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

39. Effect on Other Reporting Requirements. The reporting requirements of this Consent Decree do not relieve Russell Stover of any reporting obligations required by the Clean Water Act or its implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

40. Use of Reports. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

IV. STIPULATED PENALTIES

41. Stipulated Penalties. Russell Stover shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section V (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Consent Decree and within the specified time schedules established by or approved under this Decree.

42. Late Payment of Civil Penalty. If Russell Stover fails to pay the civil penalty required to be paid under Section II (Civil Penalty) when due, Russell Stover shall pay a stipulated penalty of \$1,000 per day for each day that the payment is late.

43. Compliance Milestones.

a. The following stipulated penalties shall accrue per violation per day for each violation of the requirements identified in Paragraph 29 (Cessation of Low pH discharges):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$750	1-5 violations in 30 days
\$1,500	6-15 violations in 30 days
\$2,000	15-30 violations in 30 days

b. The following stipulated penalties shall accrue per violation per day for each violation of the requirements identified in Paragraphs 30 (Sampling); 31 (Phase II Compliance); 32 (Sampling Plan); 33 (Approval of Deliverables); and 34 (Permits):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$750	1st through 14th day
\$1,500	15th through 30th day
\$2,000	31st day and beyond

44. Reporting Requirements. The following stipulated penalties shall accrue per violation per day for each violation of the requirements identified in Paragraphs 35 (Quarterly Reports); 36 (Non-Compliance Reporting); 37 (Additional Reporting); and 38 (Certification of Reports):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th day
\$750	15th through 30th day
\$1000	31st day and beyond

45. Accrual of Stipulated Penalties. Stipulated penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

46. Payment of Stipulated Penalties. Russell Stover shall pay any stipulated penalty within thirty days of receiving the United States' written demand. Russell Stover shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 26 (Payment of Civil Penalty), except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

47. Effect of Dispute Resolution. Stipulated penalties shall continue to accrue as provided in Paragraph 45 (Accrual of Stipulated Penalties), during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Russell Stover shall pay accrued penalties determined to be owing, together with interest, to the United States within thirty days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Russell Stover shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty days of receiving the Court's decision or order, except as provided in subparagraph c.

c. If any Party appeals the District Court's decision, Russell Stover shall pay all accrued penalties determined to be owing, together with interest, within 15 days of receiving the final appellate court decision.

48. Interest of Unpaid Stipulated Penalties. If Russell Stover fails to pay stipulated penalties according to the terms of this Consent Decree, Russell Stover shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Russell Stover's failure to pay any stipulated penalties.

49. Reservation of Other Remedies. Subject to the provisions of Section VII (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for

Russell Stover's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of statutory or regulatory requirements, Russell Stover shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

V. FORCE MAJEURE

50. Definition of Force Majeure. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Russell Stover, of any entity controlled by Russell Stover, or of Russell Stover's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Russell Stover's best efforts to fulfill the obligation. The requirement that Russell Stover exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Russell Stover's financial inability to perform any obligation under this Consent Decree.

51. Notification Requirements. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Russell Stover shall provide notice orally or by electronic or facsimile transmission to EPA's contacts identified in Paragraph 11 (Notices), within seventy-two hours of when Russell Stover first knew that the event might cause a delay. Within seven days thereafter, Russell Stover shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or

minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Russell Stover's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Russell Stover, such event may cause or contribute to an endangerment to public health, welfare or the environment. Russell Stover shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Russell Stover from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Russell Stover shall be deemed to know of any circumstance of which Russell Stover, any entity controlled by Russell Stover, or Russell Stover's contractors knew or should have known.

52. Effect of Force Majeure.

a. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Russell Stover in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

b. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Russell Stover in writing of its decision.

53. Invocation of Dispute Resolution. If Russell Stover elects to invoke the dispute resolution procedures set forth in Section VI (Dispute Resolution), it shall do so no later than fifteen days after receipt of EPA's notice. In any such proceeding, Russell Stover shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Russell Stover complied with the requirements of Paragraphs 50 (Definition of Force Majeure) and 51 (Notification Requirements). If Russell Stover carries this burden, the delay at issue shall be deemed not to be a violation by Russell Stover of the affected obligation of this Consent Decree identified to EPA and the Court.

VI. DISPUTE RESOLUTION

54. Exclusivity of Procedure. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. The procedures set forth in this Section shall not apply to actions by any Plaintiff to enforce obligations that have not been disputed in accordance with this Section. Russell Stover's failure to seek resolution of a dispute under this Section shall preclude Russell Stover from raising any such issue as a defense to an action by the United States to enforce any obligation of Russell Stover arising under this Decree.

55. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Russell Stover sends the United States a written Notice of

Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within five days after the conclusion of the informal negotiation period, Russell Stover invokes formal dispute resolution procedures as set forth below.

56. Formal Dispute Resolution.

a. Russell Stover shall invoke formal dispute resolution procedures, within the time period provided in Paragraph 55 (Informal Dispute Resolution), by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Russell Stover's position and any supporting documentation relied upon by Russell Stover.

b. The United States shall serve its Statement of Position within forty-five days of receipt of Russell Stover's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Russell Stover, unless Russell Stover files a motion for judicial review of the dispute in accordance with the following Paragraph.

57. Judicial Review

a. Russell Stover may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Paragraph 11 (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within ten days of receipt

of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Russell Stover's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

b. The United States shall respond to Russell Stover's motion within the time period allowed by the Local Rules of this Court. Russell Stover may file a reply memorandum, to the extent permitted by the Local Rules.

58. Standard of Review

a. Except as otherwise provided in this Consent Decree, in any dispute brought under this Section pertaining to EPA's determination pursuant to Paragraph 31 (Phase II Compliance) or the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Russell Stover shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Except as otherwise provided in this Consent Decree, in any other dispute brought under this Section, Russell Stover shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

59. Effect of Dispute Resolution on Deadlines. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Russell Stover under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 47 (Effect of Dispute Resolution). If Russell Stover does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

VII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

60. Effect of Settlement. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action for the Violation Period (of December 15, 2005 through March 1, 2009).

61. Reservation of Rights. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 60 (Effect of Settlement). This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Clean Water Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 60 (Effect of Settlement). The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Russell Stover's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

62. Waiver of Certain Defenses. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Facility, Russell Stover shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 60 (Effect of Settlement).

63. Limitations on Effect of Decree.

a. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Russell Stover is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Russell Stover's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Russell Stover's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Clean Water Act, 33 U.S.C. §§ 1319 *et seq.*, or with any other provisions of federal, State, or local laws, regulations, or permits.

b. This Consent Decree does not limit or affect the rights of Russell Stover or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Russell Stover, except as otherwise provided by law.

c. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

Dated and entered this ____ day of _____, _____.

UNITED STATES DISTRICT JUDGE
District of Kansas

WE HEREBY CONSENT to the entry of the Consent Decree in United States v. Russell Stover Candies, Inc., subject to the public comment requirements of 28 C.F.R. § 50.7.

FOR THE UNITED STATES OF AMERICA

6/11/12
Date

ELLEN M. MAHAN
Deputy Section Chief
Environment & Natural Resources Division
Environmental Enforcement Section
U.S. Department of Justice
Washington, D.C. 20530

6/11/12
Date

DAVID L. DAIN
United States Department of Justice
Environment & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
Telephone: (202) 514-3644
Fax: (202) 514-4180

BARRY R. GRISSOM
United States Attorney
District of Kansas

6/11/12
Date

EMILY METZGER
Assistant United States Attorney
District of Kansas
1200 Epic Center
301 North Main St.
Wichita, KS 67212
(316) 269-6481

Kansas Supreme Court Number 10750

WE HEREBY CONSENT to the entry of the Consent Decree in United States v. Russell Stover Candies, Inc., subject to the public comment requirements of 28 C.F.R. § 50.7.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

6/7/12
Date

KARL BROOKS
Regional Administrator
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101

5/6/12
Date

DAVID COZAD
Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101

5/31/12
Date

HOWARD C. BUNCH
Special Assistant United States Attorney
by appointment
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101
(913) 551-7879

Member of the Michigan Bar

WE HEREBY CONSENT to the entry of the Consent Decree in United States v. Russell Stover Candies, Inc.

FOR RUSSELL STOVER:

June 1, 2012

Date

Signature

Name: David Shapland

Title: CFO

Address: 4900 Oak Street

Kansas City, MO 64112

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Robert Lambrechts, Esq.
Lathrop and Gage, LLP
10851 Mastin Boulevard, Building 82, Suite 1000
Overland Park, KS 66210-1669
(913) 451-5126

ATTACHMENT 1

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**RUSSELL STOVER/WHITMAN CANDIES
IOLA, KANSAS
SANITATION PROCEDURES**

GENERAL CLEANING PROCEDURE:	Procedure Number: _____ Revision Date: July 1, 2011 Approval: Quality _____ Date: _____ Corporate Safety _____ Date: _____ Replaces: Revision Date _____										
LARGE AGITATOR POTS (CARAMEL POTS)	<p align="center">Put on Safety Equipment before starting operation. If Lock Out is required, Machine Specific Procedures must be followed.</p>										
<table border="1"> <thead> <tr> <th><u>PRODUCT</u></th> <th><u>CONCENTRATION</u></th> </tr> </thead> <tbody> <tr> <td>SG-2900 S (Caustic)</td> <td>1.5-3% by volume</td> </tr> <tr> <td>Enhance O2 (Peroxide)</td> <td>0.05 -0.10% by volume</td> </tr> <tr> <td>HDA-1500 (Acid)</td> <td>0.5 gallons</td> </tr> </tbody> </table>	<u>PRODUCT</u>	<u>CONCENTRATION</u>	SG-2900 S (Caustic)	1.5-3% by volume	Enhance O2 (Peroxide)	0.05 -0.10% by volume	HDA-1500 (Acid)	0.5 gallons	<ol style="list-style-type: none"> Pre-rinse pot with hot water hose, and turn on vent hood. Fill pot with sufficient water to cover the agitators. This is about 50 gals of water. Do not overfill: DO NOT SPLASH contents of pot during agitator start up. If any high or low pH material is splashed or spilled. DO NOT allow material to reach drain. Turn on steam and begin heating to 190-195°F <ol style="list-style-type: none"> While heating add (Use Measuring Device Provided going forward) 1 gallon of SG-2900 S (1.5-2 gallons for heavily burned pots) 0.50 gallons of Enhance O2 The Enhance O2 must be added after the SG-2900 S and these products should not be mixed until put into the pot. 		
<u>PRODUCT</u>	<u>CONCENTRATION</u>										
SG-2900 S (Caustic)	1.5-3% by volume										
Enhance O2 (Peroxide)	0.05 -0.10% by volume										
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<table border="1"> <thead> <tr> <th colspan="2"><u>SAFETY EQUIPMENT REQUIRED</u></th> </tr> </thead> <tbody> <tr> <td>Rubber Apron</td> <td align="right">X</td> </tr> <tr> <td>Rubber Boots</td> <td align="right">X</td> </tr> <tr> <td>Ansell Sol Vex Gloves</td> <td align="right">X</td> </tr> <tr> <td>Safety Glasses with a Face Shield</td> <td align="right">X</td> </tr> </tbody> </table>	<u>SAFETY EQUIPMENT REQUIRED</u>		Rubber Apron	X	Rubber Boots	X	Ansell Sol Vex Gloves	X	Safety Glasses with a Face Shield	X	<ol style="list-style-type: none"> Turn on the agitators. Once temperature has reached the 190-195°F turn off steam. Allow to agitate for 10-15 minutes. If pot is extremely burned 20-25 minutes may be needed.
<u>SAFETY EQUIPMENT REQUIRED</u>											
Rubber Apron	X										
Rubber Boots	X										
Ansell Sol Vex Gloves	X										
Safety Glasses with a Face Shield	X										
<p align="center"><u>CLEANING FREQUENCY</u></p> <p align="center">Daily or as needed</p>	<ol style="list-style-type: none"> Turn off on lockout agitators. Begin to brush clean the top and outside of the pot. Make sure high or low pH material is not allowed to go down the drain. 										
<p align="center"><u>CLEANED BY</u></p> Sanitation team member	<ol style="list-style-type: none"> Before discharge of solution to the drain (either in pot or dump tank) slowly add 0.50 gallons of HDA-2500, agitate then test pH. <ol style="list-style-type: none"> If pH is above 8.0 slowly add an additional 0.25 gallons or less of HDA-2500, mix and then read pH. Repeat this procedure by adding 0.25 gallons or less of HDA-2500 at a time until the desired pH level of 6.0-8.0 is achieved. Verify this range and record on pH Log Sheets. 										
<p align="center"><u>SPECIAL PRECAUTIONS</u></p> MSDS sheets are located by Health & Safety. Never add water to chemical; always add chemical to water. Place plastic bag on any electrical motor, plug, Do not spray water or cleaning compounds into electrical components or bearings.	<ol style="list-style-type: none"> Carefully drain pot, any soils left on the inside should be easily removed with the brush. If needed leave 5 gallons of solution in the bottom of the pot to assist in final soil removal. Drain and remove the rest of the cleaning solution. Rinse pot with the plant water hose, this will also cool the pot prior to using HDA-1500. Normally, this takes 2-3 minutes. 										
<p align="center"><u>TOOLS AND EQUIPMENT</u></p> Color Coded Brush/Bucket for Processing Equipment. Meter to measure pH. Log Sheets.	<p>When following with acid wash follow steps 13-14, otherwise skip to step 15.</p> <ol style="list-style-type: none"> Place 0.25 to 0.50 gallons of HDA-1500 in a bucket. Use this bucket to brush clean the interior and exterior of the pot. The acid may be poured into the pot as part of the interior cleaning. Return the acid solution (HDA-1500) to the acid bucket. The acid solution may be used to clean multiple pots. <ol style="list-style-type: none"> Once all pots have been cleaned with the acid solution place 2 gallons of water into another bucket and then add the captured acid to the bucket containing the water. If pH is below 6.0 slowly add 0.25 gallons or less of SG-2900 S, mix and then read pH. Repeat this procedure by adding 0.25 gallons or less of SG-2900 S at a time until the desired pH level of 6.0-8.0 is achieved. Verify this range and record on pH Log Sheets. Discharge to the drain. 										
Report all injuries immediately to supervision.	<ol style="list-style-type: none"> Rinse the top, sides, cover, and inside of the pot with the water hose. 										
Report all low or high pH immediately to supervision.	<ol style="list-style-type: none"> Range for pH discharge is 6- 8 and will be recorded and verified on the pH log sheet at time of neutralization. 										
All containers must be labeled with contents	<p>NOTE: The employee must be trained on each specific chemical and hazards associated with the chemical, PRIOR to being allowed to come in contact with chemicals or report for on the job training.</p>										

Iola Sampling Plan

Russell Stover Candies, Inc.

Iola, Kansas

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Iola Sampling Plan

Introduction

On August 4, 2009 Russell Stover Candies, Inc. received a Findings of Violation and Order for Compliance (Docket Number CWA-07-2009-0099) from US EPA Region 7 issued under the authority of Section 309(a)(3) of the Clean Water Act. The Iola Sampling Plan has been developed to address the issues raised in the Order for Compliance, the facility's Wastewater Treatment Discharge Permit and the Consent Decree issued by the EPA addressing the resolution of this matter.

Wastewater Discharge Limits and Sampling Requirements for pH

The Russell Stover Candies manufacturing plant located in Iola, Kansas operates under the City of Iola Wastewater Treatment Discharge Permit Number 004 (Permit) (See Appendix A). The current Permit is in effect from January 1, 2012 through December 31, 2013. The Permit establishes pH discharge limits of 5.0 – 10.0 based on a grab sample pulled daily at the facility's Outfall #1 located at the southeast corner of the facility property.

According to the Permit, analysis of pollutants shall be taken from Standard Methods of EPA's Methods for Chemical Analysis of Water and Wastes in accordance with techniques prescribed in 40 CFR, Part 136 as amended or by a laboratory certified by the Kansas Department of Health and Environment. Samples shall be taken in compliance with the monitoring requirements specified and shall be taken at the required location at a time in which the sample will be representative of the permittee's wastewater discharge, as it enters the city sewer system, during normal operating hours.

The Russell Stover Candies facility is certified as a Kansas Field Certified Laboratory for the measurement of pH. The certification was obtained on September 10, 2009 and is effective until January 31, 2013 under Certificate No. E-92652.

The Permit also requires samples for BOD and TSS to be taken on seven (7) consecutive days twice yearly on dates determined by the City of Iola. The facility makes arrangements for pulling these samples and sending the samples to Pace Analytical Services, Inc., 9608 Loiret Blvd., Lenexa, KS 66219. The TSS and BOD samples are 24-hour composite samples collected by an automatic sampler.

In addition to the TSS and BOD samples required by the Permit, the facility has been required by the August 4, 2009 Findings of Violation and Order for Compliance to collect and submit for analysis a weekly TSS and BOD sample collected as a 24-hour composite sample. The sample is collected on a different day each week. The sample is sent to Pace Analytical Services, Inc. for analysis.

The data gathered above, along with daily wastewater flowrates, are submitted monthly to the City of Iola and quarterly to the EPA as required.

Operating Process and Procedures

The Russell Stover Candies facility manufactures a variety of chocolate covered and/or solid chocolate candy products sold under the brand names of Russell Stover Candies, Whitman's Candies and Pangburn's Chocolates. The facility's normal operating schedule consists of 24-hour a day operation Monday through Thursday. Seasonal production demands usually results in additional production required on additional days between August and January. The facility was built in 1997 with separate sanitary and process sewer systems. The two sewer systems enter and combine in the main lift station (LS-1) located on the Russell Stover Candies' property. The combined sewers leave the property at the southeast corner of the property.

The majority of the wastewater generated by the facility is the result of sanitary sewer discharges associated with an employer of 300-400 people. Process wastewater would be generated by production related activities and cleaning activities related to product change-overs and associated cleaning activities required for food manufacturing. Routine cleaning operations include equipment washing, production line cleaning and the washing of candy handling equipment.

The cleaning of the kitchen kettles, pots and associated equipment requires the use of acidic and caustic cleaning chemicals to aid in removal of chocolate, caramels, butters, creams and other candy-related materials.

Wastewater generated by operations at the facility discharge to the City of Iola sewer system. The facility does not have a wastewater pre-treatment facility at the site.

Prior to the discharge of wash water from the kitchen kettles and pots, the wash water is checked for pH. If pH readings obtained are below 5 or above 10, the pH of the wash water is adjusted by adding the appropriate chemical necessary to bring the pH to between 5 and 10. The wash water is then discharged to the sewer system.

The facility does not discharge wastewater in a continuous flow. Wastewater flows from the facility to the main lift station. Wastewater is released to the city sewer by pumps located in the main lift station in a batch basis. The lift station holds approximately 1,165 gallons. When the wastewater reaches a pre-determined level in the lift station, pumps automatically turn on and pump approximately 530 gallons of wastewater to the city. Pumping at a rate of approximately 750 gallons per minute, it takes approximately 45 seconds for the pumps to lower the level in the lift station. The number of cycles per day and the frequency of pumping cycles vary with production activity in the facility.

Sampling Procedures

pH Sampling

Daily pH grab samples are pulled from the Palmer-Bowles flume located near Outfall #1. Russell Stover shall take samples on the frequency and at the locations specified in Table 1. A copy of our Effluent pH

Sampling and Testing Procedure has been included in Appendix B. The lola facility is a certified field laboratory for pH measurement. A copy of our certification has been included in Appendix C.

Table 1

Russell Stove pH Sampling Schedule			
Days with		Min Number of Samples	
Production	Discharge	Total	Sanitation Shift
1	2	2	0
2	3	3	1
3	4	4	1
4	5	5	2
5	6	6	3
6	7	7	3
7	7	7	3

No sampling is required on days when there is no discharge associated with the production from the previous day.

Past efforts to use a continuous, in-line pH measuring probe to measure pH of the facility's wastewater have failed to provide accurate readings. The probe would quickly become coated with materials and the pH readings became inaccurate. The wastewater contains sugars and ingredients such as caramel which tend to coat the probe. Additionally, the high organic load from easily biodegradable materials promote rapid bacterial growth which also coat the pH probe. The fluctuating flow of wastewater from the facility further complicate the problems associated with an in-line pH measuring device.

Graphs showing the daily pH readings taken between August 6, 2009 and March 31, 2012 are included for informational purposes in Appendix E. The facility has been in compliance with pH discharge limits since August 18, 2009.

TSS and BOD Sampling

One day each week, a TSS and BOD sample is collected as currently required by the EPA. Twice a year, daily TSS and BOD samples are collected for seven consecutive days in accordance with our Permit requirements. The samples are collected using an ISCO Model 4700 refrigerated sampler. The sampler collects a 24-hour composite sample by drawing a sample of the wastewater being discharged in the sewer each time the lift station pumps wastewater to the city. The samples are sent to Pace Analytical Services, Inc. for analysis. The results are reported to the City each month and to the EPA in each quarterly report.

Daily Flowrate

Daily flowrate data is collected by an ISCO Model 4210 ultrasonic flow meter. The volume of wastewater discharged daily is reported to the City each month and the EPA in each quarterly report.

As required by our Permit, the calibration of the flow meter is checked twice a year and the calibration records are forwarded to the City of Iola.

Reporting Requirements for Collected Data

Our Permit requires Russell Stover Candies, Inc. to report to the City each month the daily flow of wastewater released by the facility, the pH from daily grab samples and bi-yearly 24-hour composite samples for TSS and BOD from samples collected on seven consecutive days.

The City reports are sent to:

Iola Wastewater Treatment Facility
Toby Ross
P.O. Box 308
Iola, KS 66749

The data is submitted to the City of Iola on a Pretreatment Monitoring Report Form, as requested. Also submitted each month is a signed 180-Day Pretreatment Monitoring Report Form for Non-Categorical Industries documenting compliance with discharge permit conditions. A copy of the monthly report submitted to the City of Iola for the month of February 2012 is included in Appendix D as a sample document.

The EPA is currently requiring weekly TSS and BOD samples be collected as 24-hour composite samples collected on a different day each week. The EPA requires quarterly reports containing the information noted in this section.

The EPA reports are sent to:

Paul Marshall
Pretreatment Coordinator
Water Enforcement Branch
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, KS 66101