

FILED

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

OCT 23 2012

In the Matter of the Notice of Violation)
and Order Issued to:)
Torrington Livestock Markets, LLC)
626 West Valley Road)
Torrington, WY 82240)

Jim Ruby, Executive Secretary
Environmental Quality Council

Docket No. 11-3204A

JOINT STIPULATION AND REQUEST TO EXTEND STAY

By letter dated April 13, 2011 (filed April 14, 2011), Petitioner Torrington Livestock Markets, LLC (TLM) requested a hearing before the Wyoming Environmental Quality Council (EQC) in the above-captioned matter to appeal Notice of Violation (NOV) & Order No. 4817-11 issued by Respondent Wyoming Department of Environmental Quality (DEQ), dated March 31, 2011, pertaining to TLM's livestock market facility located on West Valley Road, Torrington.

On September 22, 2011, TLM and DEQ, the only parties in this contested case, filed a *Joint Stipulation and Request for Stay* requesting that the EQC stay further proceedings in this case until July 31, 2012. During that stay, TLM, in consultation with DEQ, would work to prepare and implement a Nutrient Management Plan (NMP) for its facility to, among other things, ensure that stormwater runoff is diverted from the production area and practices are implemented to control runoff of pollutants to waters of the state, as called for in Chapter 2, Appendix G(i)(ii)(C) & (F) of the Wyoming Water Quality Rules. By *Order Approving Joint Stipulation and Request for Stay* dated October 5, 2011, the EQC granted the requested stay until July 31, 2012. The Parties have worked in good faith toward that objective.

By letter dated April 12, 2012 (**copy attached**), the U.S. Environmental Protection Agency (EPA) notified TLM that its Torrington facility "is subject to all requirements in the EPA's General Pretreatment regulations in 40 C.F.R. Part 403 that apply to Significant Industrial Users" (SIUs) and required TLM to report

the gallons per day of flow from its facility to the City of Torrington's wastewater treatment plant via all conveyances (including sewers and pipes). By letter dated April 3, 2012 (**copy attached**), EPA informed the City of Torrington that it would evaluate the SIUs in the service area and the City's ordinances and other control mechanisms "to determine how EPA can support the City in its responsibility to protect the [wastewater treatment plant]," including requiring the City "to develop an approvable Pretreatment program" pursuant to the General Pretreatment Regulations found at 40 C.F.R. Part 403.8. A pretreatment program must provide for control of SIU contributions to the City's wastewater treatment plant to ensure compliance with standards through permits, orders or other enforceable control mechanisms. 40 C.F.R. § 403.8(f)(1)(iii).

DEQ administers the WYPDES (NPDES) program regulating discharges of pollution to surface waters in Wyoming, including discharges *from* TLM's facility *to* the North Platte River via the Torrington storm sewer system and discharges *from* the City of Torrington's wastewater treatment plant *to* the North Platte River. EPA administers the pretreatment program that regulates waste streams *from* industrial users *to* publicly owned treatment works (POTWs) such as the City of Torrington's wastewater treatment plant. TLM's plan to ensure diversion of stormwater runoff from the production area and control of pollutant runoff to waters of the state could involve preventing surface flow at its facility from entering the storm sewer system. But compliance with yet-to-be-specified pretreatment requirements to restrict flow from its facility to the City of Torrington's wastewater treatment plant could involve diverting surface runoff to the storm sewer system instead.

In order to enable TLM to develop and implement a plan that complies with the EQC's October 5, 2011 *Order Approving Joint Stipulation and Request for Stay* without conflicting with yet-to-be-specified pretreatment requirements alluded to in EPA's April 12, 2012 and April 3, 2012 letters to TLM and to the City of Torrington respectively, TLM and DEQ stipulate and request as follows:

1. Chapter I, Section 10(b) of the DEQ Rules of Practice & Procedure provides that the EQC may grant continuances for good cause shown. Under the circumstances discussed above, the stay of further proceedings in this case granted in the EQC's *Order Approving Joint Stipulation and Request for Stay* dated October 5, 2011 (except as provided in ¶5 below) should be extended until ninety (90) days after the date on which the EPA and / or the City of Torrington notify TLM in writing whether or not TLM must satisfy specific pretreatment requirements pursuant to 40 C.F.R. § 403.8.

2. Not later than fifteen (15) days after the date on which the EPA and / or the City of Torrington notify TLM in writing whether or not TLM must satisfy specific pretreatment requirements pursuant to 40 C.F.R. § 403.8, TLM shall provide DEQ and the EQC with copies of such notice.

3. Not later than ninety (90) days after the date on which the EPA and / or the City of Torrington notify TLM in writing whether or not TLM must satisfy specific pretreatment requirements pursuant to 40 C.F.R. § 403.8, TLM and DEQ shall file a joint or separate statement(s) with the EQC proposing how to proceed with or dispose of this case and a proposed schedule for doing so.

4. During the stay TLM shall implement appropriate interim measures approved by DEQ *only as interim measures for purposes of this joint stipulation* reasonably expected to prevent runoff of from TLM's facility to waters of the state via the storm sewer system. In the event that runoff from TLM's facility does enter the storm sewer system despite TLM's implementation of interim measures approved by DEQ, DEQ shall refrain from taking a separate enforcement action for such discharge provided TLM proposes, DEQ approves, and TLM implements additional interim measures to address the problem in a timely manner.

5. The EQC retains jurisdiction to hear and resolve disputes, if any, between the Parties regarding DEQ disapproval of TLM's proposed interim measures or additional interim measures, or compliance with this Joint Stipulation during the stay.

6. This Joint Stipulation shall be binding upon the parties, and their successors and assigns.


7. Each party shall bear its own costs and attorney fees incurred through the entry of an Order by the EQC approving this Joint Stipulation.


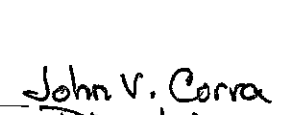
WHEREFORE the Parties respectfully request that the EQC enter an order approving, incorporating, and binding them to this Joint Stipulation and extending the stay of proceedings in this case as stipulated above.

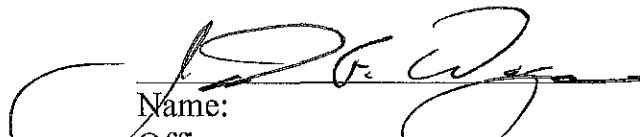
DATED this 23rd day of October, 2012.

FOR TLM:

FOR DEQ:


Name: PATRICK J. CRANK
Office: LAWYER

 
Name: Todd Parfitt John V. Corra
Office: Deputy Director Director


Name: _____
Office: WQD Administrator

Art Palomares



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
1586 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

APR 12 2012

Ref: 8ENF-W-NP

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Shawn G. Madden, Registered Agent
Torrington Livestock Markets, LLC
626 West Valley Road
Torrington, WY 82240

Re: Request for Information
Pursuant to § 308 of the
Clean Water Act, 33 U.S.C. § 1318

Dear Mr. Madden:

The Environmental Protection Agency (EPA) has reviewed the information provided by Torrington Livestock Markets, LLC (the Company) in response to the EPA's November 22, 2011, request for information. Based on the information the Company has provided, the EPA has determined that the Company's livestock facility on West Highway 626 in Torrington, Wyoming (the Facility) meets the definition of a Significant Industrial User, as defined in 40 C.F.R. § 403.3(v). The Facility is subject to all requirements in the EPA's General Pretreatment Regulations in 40 C.F.R. Part 403 that apply to Significant Industrial Users. This includes but is not limited to the reporting requirements in 40 C.F.R. § 403.12(f), (g), and (h).

As required by 40 C.F.R. § 403.12 (h), the Company is hereby required to report to the EPA every six months by July 31 and January 31. Each July 31 report shall include information from the preceding January through June, and each January 31 report shall include information from the preceding July through December. The first report must be submitted to the EPA by July 31, 2012. Each report shall include the following information:

1. Number of gallons per day, stated separately for each day, of flow from Facility to the City of Torrington's publicly owned treatment works (POTW) via all conveyances. All conveyances should be metered to reflect accurate flow measurements. Note: the term "POTW" encompasses not only the City of Torrington's wastewater treatment plant but also all sewers, pipes, and other means of conveyance to that treatment plant. Please see 40 C.F.R. § 403.3(e) for a more complete definition of the term "POTW."

2. Daily precipitation records (total precipitation in inches) obtained from a gauge at the Facility or from a weather station within five miles of the Facility.
3. Analysis of a minimum of one representative sample of the Facility's contribution of discharges to the POTW. Each sample should be collected during a rain or snow melt event and should be analyzed, at a minimum, for 5-day biochemical oxygen demand (BOD₅) and total suspended solids (TSS), with BOD₅ and TSS results to be reported in milligrams per liter. The first report samples shall be collected between the time you receive this letter and June 30, 2012. For subsequent reports, samples shall be collected between January 1 and June 30 and between July 1 and December 31, for inclusion in the July 31 and January 31 reports, respectively. All sampling and analysis shall be performed in accordance with 40 C.F.R. Part 136.
4. Results of any additional sampling of any discharge from the Facility to the POTW during the relevant reporting period.
5. The number and type of animals at the Facility the day each sample is collected.
6. A statement whether all flows from the Facility to the POTW during the relevant reporting period occurred during rain and snow melt events.

In addition to the semi-annual reports described above, the Company must notify the City immediately of any and all flows from the Facility that could cause problems to the POTW, including but not limited to any slug loading. With each semi-annual report referenced above, please also include a copy of any such notification provided to the City during the relevant reporting period.

Each report referenced above must be accompanied by a certificate that is signed and dated by a responsible corporate officer who is authorized by the Company to respond to the request. The term "responsible corporate officer" is defined in 40 C.F.R. § 122.2. A sample certification is included with this letter.

The Company may claim that the EPA should treat any of the requested information as confidential. To make such a claim, the Company will need to follow the procedures in 40 C.F.R. part 2, subpart B (as promulgated at 41 Fed. Reg. 36902 on Sept. 1, 1976, 43 Fed. Reg. 39997 on Sept. 8, 1978, and 50 Fed. Reg. 51654 on Dec. 18, 1985). If the Company makes a confidentiality claim, the EPA will disclose the information covered by the claim only as allowed by that subpart. Making a confidentiality claim does not guarantee that EPA will agree that the information is entitled to confidential treatment. If the Company does not make such a claim when it submits the information to the EPA, the EPA may make the information available to the public without notifying the Company. The Company is required to provide the requested information even if it claims that the information is confidential.

The EPA has authority to request this information pursuant to section 308 of the Clean Water Act, 33 U.S.C. § 1318. It is very important that the Company respond to this request for information, and your attention to this matter is greatly appreciated. Please note that the failure to provide required information may potentially result in civil penalties of up to \$37,500 per day

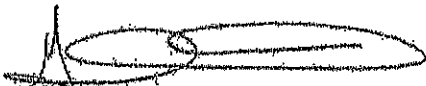
per violation, and that even harsher criminal consequences are possible in the case of deliberate false statements. (33 U.S.C. § 1319; see also 18 U.S.C. §1001.)

Please submit the reports described above to:

U.S. EPA Region 8 (SENF-W-NP)
NPDES Enforcement Unit
1595 Wynkoop Street
Denver, CO 80202-1129
Attn: Pretreatment Enforcement Coordinator

If you have any questions concerning this information request or the required semi-annual reports, please contact Monia Ben-Khaled, Environmental Engineer, at 303-312-6269. If you are represented by an attorney who has questions, please ask the attorney to contact Peggy Livingston, Enforcement Attorney, at 303-312-6858.

Sincerely,



Gwen Campbell, Acting Unit Chief
NPDES Enforcement Unit
Office of Enforcement, Compliance and
Environmental Justice



James H. Eppers, Supervisory Attorney
Regulatory Enforcement Unit
Office of Enforcement, Compliance and
Environmental Justice

Enclosures: Statement of Certification

Shawn G. Madden, Tarrington Livestock Markets, LLC

Request for Information Pursuant to § 308 of the Clean Water Act

Statement of Certification

I certify under penalty of law that the foregoing report was 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. The response and attachments contain all documents and information responsive to the Request that are known to me following a complete and thorough review of all information and sources available to me. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature

Date

Printed Name

Official Title





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

APR 03 2012

Ref: 8P-W-WW

Tom Troxel
City of Torrington
Water and Wastewater
P.O. Box 250
Torrington, Wyoming 82240

Re: Pretreatment Program Evaluation, National
Pollutant Discharge Elimination System
(NPDES) Permit Number: WY-0020231

Dear Mr. Troxel:

Based on information from an Environmental Protection Agency inspection of the City of Torrington's (City) Publicly Owned Treatment Works (POTW) in May 2011, it appears that the City's POTW may be receiving process wastewater from non-domestic industrial users in the service area that have a reasonable potential to contribute to upsets, interferences or pass through at the POTW or collections system. Part III.1 of the City's NPDES permit requires the City to "protect the POTW from pollutants which would inhibit, interfere, or otherwise be incompatible with operation of the treatment works including interference with the use or disposal of municipal sludge."

As a result, the EPA will perform an evaluation of the industrial user (IUs) and significant industrial users (SIUs) in the service area, discharge monitoring report data, and the City's regulatory control of SIUs, if applicable, to determine how the EPA can support the City in its responsibility to protect the POTW. The EPA support may be outreach, requirements to update the City's ordinance and intergovernmental agreements to provide the appropriate authority to deny or condition new industrial wastewater discharges, develop local limits or the requirement for the City to develop an approvable Pretreatment program. The EPA encourages the City to take the necessary steps to protect the POTW from industrial and other non-domestic discharges that may adversely impact the POTW and collection system.

The General Pretreatment Regulations, found at 40 CFR Part 403.8(a), specifically authorize the EPA to require POTWs that have a design flow of 5 mgd or less to develop a POTW Pretreatment Program if the nature or volume of the industrial influent, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, or other circumstances warrant in order to prevent interference with the POTW or Pass Through.

In addition, the NPDES regulations found in 40 CFR 122.44(j)(1) and incorporated in your NPDES permit at Part III.B.5 require you to notify the Wyoming Department of Environmental Quality (WYDEQ) and the EPA Region 8 of any SIUs discharging into the POTW subject to Pretreatment Standards under Section 307(b) of the Clean Water Act and the Pretreatment Regulations found in 40 CFR 403.

An SIU is defined in 40 CFR 403.3(v) as:

- All Industrial Users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR chapter I, subchapter N (40 CFR Parts 405 through 471), a list of industrial sectors affected by the Categorical Pretreatment Standards is enclosed;
- Industrial User that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater);

- Industrial Users that contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW Treatment plant; or,
- Industrial Users designated as such by the City on the basis that the Industrial User has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or requirement, in accordance with 40 CFR 403.8(f)(6).

Please submit an industrial user (IU) inventory of the City's service area that includes a significant industrial user (SIU) list to the EPA and the WYDEQ. The EPA recommends the City collaborate with internal municipal departments such as Engineering, Planning, Fire, and the Building Permits to identify and gather information regarding new and existing IUs in the service area. This information gathering will help develop the inventory, determine SIUs, and provide information on other related issues such as chemical storage, process spills that may impact the POTW or collection system. Other methods used to develop an IU inventory is to characterize industrial users such as retail shops, banks or restaurants by drive-by inspections; however, the City should not rely on this method for characterizing facilities other than banks, retail shops or restaurants. In addition, the City should send out a wastewater discharge survey to industrial users that cannot be characterized by drive-by inspections. The EPA recommends the IUs be given no more than 30 days to complete and submit the survey back to the City. Enclosed is an Industrial User Wastewater Discharge Survey.

The IU inventory that includes potential SIUs will meet the City's NPDES permit condition found in Part III.B.5(a) to "notify the state and Approval Authority (EPA) of any new introduction of pollutants into the POTW from an industrial user which would be subject to Sections 301, 306, and 307 of Act if it were directly discharging these pollutants".

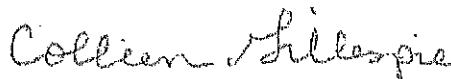
In addition to the IU inventory, to determine the regulatory control of SIUs in the service area, the EPA will need to evaluate the City's municipal ordinance, any permits, control mechanisms or best management practices the City currently issues, and the City's local limits, if the City has developed these POTW-specific limits.

Mr. Troxel, please submit the following to the WYDEQ and the EPA by July 31, 2012:

- Industrial User Inventory, including SIU list
- Municipal ordinance
- Local limits, if developed by the City for the service area,
- Any permits or control mechanisms, including Best Management Practices currently in place to control process wastewater discharges from IUs in the City's service area.

If you have any questions, please contact Al Garcia, the EPA Region 8 Pretreatment Coordinator at (303) 312-6382 or garcia.al@epa.gov.

Sincerely,



Colleen R.L. Gillespie, Chief
Wastewater Unit

Enclosures

1. Industrial Sectors Affected by EPA Categorical Pretreatment Regulations
2. Industrial User Wastewater Survey