UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
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2011 MAR -8 AM 10: 58

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EPA REGION VIII
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Ref: 8ENF-W-NP

MAR 08 2011

CERTIFIED MAIL: 7009 3410 0000 2593 8566
RETURN RECEIPT REQUESTED

Mr. Mike Gaviotis, Wastewater Superintendent
City of Rock Springs
212 D Street
Rock Springs, Wyoming 82901

Re: Order for Compliance under Section 309(a) of the Clean Water Act

Dear Mr. Gaviotis:

Enclosed is a United States Environmental Protection Agency Region 8 (EPA) Order for Compliance (Order) issued to the City of Rock Springs (City) for alleged violations of the City's Publicly Owned Treatment Works (POTW) Pretreatment Program. The Order specifies the nature of the violations under the Clean Water Act (Act), as amended, 33 U.S.C. § 1251, et seq. The authority for such action is provided to EPA under section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3).

The Order describes the actions necessary for the City to achieve compliance with the Act. Furthermore, the Order requires the City to notify EPA in writing within ten (10) days whether it intends to comply with the Order.

The Act requires the Administrator of EPA to take all appropriate enforcement actions necessary to secure prompt compliance with the statute and any orders issued thereunder. Section 309 of the Act provides a variety of possible enforcement actions, including the filing of a civil or criminal action (33 U.S.C. §§ 1319(b), (c), (d), and (g)). Please be advised that the issuance of this Order does not preclude the initiation of administrative penalty proceedings or civil or criminal action in U.S. District Court under sections 309(g), (b), (d) and (c) of the Act for the violations cited herein. Please review the Order carefully. Failure to comply with the requirements of the Order shall constitute a violation of the Order.

If you have any questions regarding this letter, the enclosed Order, or any other matters pertinent to the City's compliance with the CWA, the most knowledgeable people on my staff regarding these matters for legal and technical issues, respectively, are Amy Swanson, Enforcement Attorney, at (303) 312-6906, and Stephanie Gieck, NPDES Enforcement Unit, at (303) 312-6362.

Sincerely,

Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures

cc: Brian Lovett, WDEQ (w/encl.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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IN THE MATTER OF: The City of Rock Springs Rock Springs, WY NPDES Permit No. WY-0022357 Respondent	Docket No. CWA- CWA-08-2011-0003 FINDINGS OF VIOLATION AND ORDER FOR COMPLIANCE Proceeding under Sections 308 and 309 of the Clean Water Act, 33 U.S.C. §§ 1318 and 1319

STATUTORY AUTHORITY

The following Findings of Violation and Order for Compliance (Order) is issued pursuant to § 309(a)(3) of the Clean Water Act (Act), 33 U.S.C. § 1319(a)(3), which authorizes the Administrator of the United States Environmental Protection Agency (EPA) to issue an order requiring compliance by a person found to be in violation of, *inter alia*, §§ 307 or 402 of the Act, or in violation of any permit condition or limitation implementing any such sections of the Act. Section 307(b) of the Act, 33 U.S.C. § 1317(b), requires the Administrator to establish pretreatment standards regulating the introduction of pollutants into Publicly-Owned Treatment Works (POTWs). Section 402 of the Act, 33 U.S.C. § 1342(b), authorizes the Administrator to ensure compliance with permits issued pursuant to the National Pollutant Discharge Elimination System (NPDES). Section 308(a) of the Act, 33 U.S.C. § 1318(a), authorizes the Administrator to require reports necessary to determine compliance with any pretreatment standard or standard of performance established under §§ 307 and 402 of the Act. These authorities have been delegated to the undersigned official.

FINDINGS OF FACT

The City of Rock Springs POTW

1. The City of Rock Springs (Respondent) is a municipality as defined under § 502(4) of the Act, 33 U.S.C. § 1362(4).
2. A municipality is a "person" for purposes of federal enforcement under §§ 309 and 502(5) of the Act, 33 U.S.C. §§ 1319 and 1362(5).
3. Respondent owns and operates a wastewater treatment facility located at SE Section 5, T18N, R105W, Sweetwater County, Wyoming. This facility is a POTW as that term is defined under 40 C.F.R. § 403.3
4. Respondent's POTW discharges treated wastewater into Bitter Creek and has a design capacity of 4.2 million gallons per day for hydraulic flow (30-day average) and 9,808 lbs biochemical oxygen demand (BOD_5) per day for organic loading (30-day average).
5. Bitter Creek, a tributary of the Green River, is a "water of the United States" within the meaning of 40 C.F.R. § 122.2 and a "navigable water" within the meaning of § 502(7) of the Act, 33 U.S.C. § 1362(7).
6. The Act § 301, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except as in compliance with §§ 301, 302, 306, 307, 318, 402, and 404 of the Act, 33 U.S.C. §§ 1311, 1312, 1316, 1317, 1328, 1342, and 1344.
7. Wastewater is a "pollutant" within the meaning of § 502(6) of the Act, 33 U.S.C. § 1362(6).
8. The State of Wyoming issued NPDES Permit Number WY-0022357 (Permit), effective June 1, 2005, which authorizes the Respondent to discharge from the POTW into Bitter Creek in accordance with § 402 of the Act, 33 U.S.C. § 1342. The Permit expired on May 31, 2010, and was administratively extended on May 26, 2010.

9. The State of Wyoming is a "NPDES State," because EPA has approved the State of Wyoming's NPDES program pursuant to § 402(b) of the Act, 42 U.S.C. § 1342(b).

10. The State of Wyoming has not received EPA approval of its Pretreatment Program; therefore, at all times relevant to this Order, EPA is the "Approval Authority" within the meaning of 40 C.F.R. § 403.3(c).

11. EPA approved Respondent's Pretreatment Program on September 1, 1989, at which time Respondent became the "Control Authority" as defined under 40 C.F.R. § 403.3(f).

EPA Pretreatment Audit and Compliance Inspection

12. On August 9 through 12, 2010, EPA conducted a joint Pretreatment Audit (Audit) and Pretreatment Compliance Inspection (PCI) (Attachment 1).

13. The Respondent reported in the 2009 Annual Report that the Pretreatment program is staffed with a Full-time Equivalent (FTE) of 1.6.

14. During the Audit and PCI, EPA reviewed records of five (5) of the POTW's Industrial Users within the meaning of 40 C.F.R. § 403.3(j): Tri-Mac Transportation, Halliburton Energy Services, Sweetwater County Memorial Hospital, Weatherford USLP, and Terracon RS-3. Tri-Mac Transportation, Halliburton Energy Services, and Sweetwater County Memorial Hospital are also Significant Industrial Users (SIUs) within the meaning of 40 C.F.R. § 403.3(v).

15. EPA issued the Respondent an Information Request pursuant to § 308 of the Act on December 15, 2010, concerning Tri-Mac Transportation.

16. Respondent submitted its response to the Information Request on December 30, 2010.

17. 40 C.F.R. § 403.12(g)(2) requires "If sampling performed by an Industrial User indicates a violation, the User shall notify the Respondent within twenty four (24) hours of becoming aware of the violation. The Industrial User shall also repeat the sampling and analysis and submit the

results of the repeat analysis to the Respondent within 30 days after becoming aware of the violation."

Tri-Mac Transportation

18. The industrial wastewater permit Respondent issued to Tri-Mac Transportation effective November 2, 2009, expiring November 2, 2011, requires Tri-Mac Transportation to submit self-monitoring reports to Respondent by the 10th day of the month following a self-monitoring sampling event.
19. Tri-Mac Transportation submitted a self-monitoring report due December 10, 2009, on December 22, 2009.
20. The industrial wastewater permit requires that Tri-Mac Transportation sample for hexavalent chromium monthly.
21. Tri-Mac Transportation failed to sample for hexavalent chromium during the months of February, March, April, May, June, July, and August 2010. Self-monitoring reports submitted by Tri-Mac Transportation for sampling during these months indicate hexavalent chromium was not detected on the report form. However, there is no indication on the chain-of-custody forms or laboratory reports that hexavalent chromium was sampled or analyzed.
22. Tri-Mac Transportation's discharge exceeded the permit limit for cadmium on February 1, 2010; March 3, 2010; April 2, 2010; May 6, 2010; June 7, 2010; July 8, 2010; and July 14, 2010.
23. Tri-Mac Transportation's discharge exceeded the permit limit for zinc on July 8, 2010.
24. Tri-Mac Transportation's discharge was below the permit's lower pH limit on July 8 and July 14, 2010, respectively.
25. The industrial wastewater permit issued by Respondent to Tri-Mac Transportation requires Tri-Mac Transportation provide a written report to Respondent within five (5) days of becoming

aware of a violation.

26. Tri-Mac Transportation failed to provide Respondent a written report within five (5) days of becoming aware of the above-referenced permit violations.

27. Tri-Mac Transportation failed to provide Respondent 24-hour notice of the above-referenced permit violations and failed to submit to Respondent the results of a repeat analysis within 30 days after becoming aware of the above-referenced cadmium permit violations in March, April, and June as required by 40 C.F.R. § 403.12(g)(2).

Sweetwater County Memorial Hospital

28. The industrial wastewater permit Respondent issued to Sweetwater County Memorial Hospital effective May 19, 2008, expired on May 19, 2010.

29. Sweetwater County Memorial Hospital failed to re-apply for a new permit prior to the expiration date of May 19, 2010 and was discharging without a valid permit at the time of the Audit and PCI.

30. The industrial wastewater permit required that Sweetwater County Memorial Hospital sample for benzene, toluene, ethylbenzene, and xylenes (BTEX), oil and grease, and total petroleum hydrocarbons semi-annually.

31. Sweetwater County Memorial Hospital failed to sample for the permit parameters referenced in paragraph 30 above during the period January 1, 2009, to June 30, 2009; and June 30, 2009, to December 31, 2009.

32. The industrial wastewater permit issued to Sweetwater County Memorial Hospital requires that Sweetwater County Memorial Hospital to submit self-monitoring reports to Respondent by the 10th day of the month following a self-monitoring sampling event.

33. The industrial wastewater permit issued to Sweetwater County Memorial Hospital requires that Sweetwater County Memorial Hospital include a laboratory certification with each self-monitoring report.

34. Sweetwater County Memorial Hospital submitted a self-monitoring report due April 10, 2009, on April 13, 2009. Sweetwater County Memorial Hospital did not submit self-monitoring reports due January 10, 2010, and July 10, 2010.

35. Sweetwater County Memorial Hospital exceeded the permit limit for chloride on March 24, 2009.

36. Sweetwater County Memorial Hospital failed to provide 24-hour notice and submit the results of a repeat analysis within 30 days after becoming aware of the chloride violation as required by 40 C.F.R. § 403.12.(g)(2).

37. Sweetwater County Memorial Hospital failed to provide Respondent a written report within five (5) days of becoming aware of the chloride violation.

38. For the purposes of 40 C.F.R. § 403.8(f)(2)(viii), an SIU (or any Industrial User which violates (f)(2)(viii)(C), (D), or (H)) is in Significant Non-Compliance if its violation meets one or more of the following criteria including, but not limited to, (B) Technical Review Criteria (TRC) violations, defined as those in which 33% or more of all of the measurements taken for the same pollutant parameter during a 6-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement multiplied by the applicable TRC (1.2 for chloride).

39. Because Sweetwater County Memorial Hospital's March 24, 2009, chloride violation exceeded 1.2 X the permit limit, and there was only one other sample result for the period of October 1, 2008, through March 31, 2009, Sweetwater County Memorial Hospital was in Significant Non-Compliance for TRC in accordance with 40 C.F.R. § 403.8(f)(2)(viii)(B) for the

first quarter of 2009, requiring publication of a formal Public Notice of Violation in a local newspaper no later than April 2010.

Weatherford USLP

40. The industrial wastewater permit Respondent issued to Weatherford USLP effective May 7, 2009, expiring May 7, 2012, requires Weatherford USLP provide a written report to Respondent within five (5) days of becoming aware of a violation.

41. Weatherford USLP exceeded the permit limit for copper on June 3, 2009.

42. Weatherford USLP failed to provide Respondent a written report within five (5) days of becoming aware of the copper violation.

43. Weatherford USLP failed to provide Respondent 24-hour notice and submit the results of a repeat analysis within 30 days after becoming aware of the copper violation required by 40 C.F.R. § 403.12(g)(2).

Terracon RS-3

44. The industrial wastewater permit Respondent issued to Terracon RS-3 effective December 1, 2009, expiring December 1, 2011, requires Terracon RS-3 include a laboratory certification with each self-monitoring report.

45. Terracon RS-3 failed to provide laboratory certification in the self-monitoring reports dated January 9, 2010, and October 9, 2009.

FINDINGS OF VIOLATION

Count I
(Failure to Sample Each Significant Industrial User at Least Once per Year)

46. Paragraphs 1 – 45 are incorporated herein.

47. Pursuant to 40 C.F.R. § 403.8(f)(2)(v) and Permit Condition III.B.1.b, Respondent is required to sample each SIU at least once per calendar year.

48. Respondent failed to sample the following SIUs in 2008: Tri-Mac Transportation, Halliburton Energy Services, and Sweetwater County Memorial Hospital.

49. Respondent's failure to sample three SIUs in 2008 constitutes separate violations of 40 C.F.R. § 403.8(f)(2)(v) and Permit Condition III.B.1.b.

Count II
(Failure to Publish Industrial Users in Significant Non-Compliance)

50. Paragraphs 1 – 49 are incorporated herein.

51. Pursuant to 40 C.F.R. § 403.8(f)(2)(viii) and Permit Condition III.B.4, Respondent is required to annually publish in a newspaper(s) of general circulation that provides meaningful public notice within the jurisdiction served by the POTW a list of Industrial Users which, at any time during the previous 12 months, were in Significant Non-Compliance with applicable Pretreatment requirements.

52. Sweetwater County Memorial Hospital was in Significant Non-Compliance with the Pretreatment Standards and requirements for the first quarter of 2009.

53. Respondent failed to publish Sweetwater County Memorial Hospital's Significant Non-Compliance for the first quarter of 2009 until September 24, 2010.

54. Respondent's failure to publish Sweetwater County Memorial Hospital for Significant Non-Compliance within 12 months of the Significant Non-Compliance period constitutes a violation of 40 C.F.R. § 403.8(f)(2)(viii) and Permit Condition III.B.4.

Count III
(Failure to Control Significant Industrial User Through Individual Permit)

55. Paragraphs 1 – 54 are incorporated herein.

56. Pursuant to 40 C.F.R. § 403.8(f)(1)(iii) and Permit Condition III.B.1.f, Respondent is required to control the contribution to the POTW from SIUs through individual permits or equivalent individual control mechanisms issued to each such User.

57. Respondent's failure to adequately control the contribution to the POTW from the SIU Sweetwater County Memorial Hospital by issuing it an individual permit or equivalent individual control mechanism constitutes a violation of 40 C.F.R. § 403.8(f)(1)(iii) and Permit Condition III.B.1.f.

Count IV
(Failure to Implement Procedures to Investigate Instances of Noncompliance)

58. Paragraphs 1 – 57 are incorporated herein.

59. Pursuant to 40 C.F.R. § 403.8(f)(1) and Permit Condition III.B.1.d, Respondent is required to develop and implement procedures to investigate instances of noncompliance with Pretreatment Standards and Requirements, as indicated in the reports and notices required under 40 C.F.R. § 403.12, or indicated by analysis, inspection, and surveillance activities.

60. Respondent's failure to implement procedures to investigate instances of noncompliance with Pretreatment Standards and Requirements constitutes a violation of 40 C.F.R. § 403.8(f)(1) and Permit Condition III.B.1.d.

Count V
(Failure to Enforce According the POTW's Enforcement Response Plan)

61. Paragraphs 1 – 60 are incorporated herein.

62. Pursuant to 40 C.F.R. § 403.8(f)(5) and Permit Conditions IIY.B.1.e. and i, Respondent is required to develop and implement an enforcement response plan to adequately enforce all applicable pretreatment requirements and standards.

63. Respondent has an enforcement response plan titled, "City of Rock Springs Enforcement Guide Plan and Procedures" (ERP), dated January 31, 1994.

64. Respondent's ERP states on page 4, "The City of Rock Springs intends to use two response levels to any violation, an informal response or a formal response. At no time shall no response be adequate."

65. Respondent's ERP provides that initial enforcement responses will occur within fifteen (15) days of violation detection and follow-up actions for continuing or recurring violations shall be taken within 60 days of the initial enforcement response.

66. Respondent failed to initiate any enforcement response to the Industrial User and SIU violations described above in accordance with the ERP. Respondent only commenced enforcement responses following the Audit and PCI. Specifically, Respondent issued Notices of Violation to Tri-Mac Transportation and Sweetwater County Memorial Hospital on September 22, 2010. A Notice of Violation was issued to Terracon RS-3 on November 10, 2010. A Letter of Notification was issued to Weatherford on September 30, 2010.

67. Respondent's failure to properly implement the ERP constitutes a violation of 40 C.F.R. § 403.8(f)(5) and Permit Conditions III.B.1.e. and i.

ORDER

68. Based upon the foregoing FINDINGS OF VIOLATION, and pursuant to the authority vested in the Administrator of EPA pursuant to §§ 308 and 309 of the Act, 33 U.S.C. § 1318 and 1319, as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance, and Environmental Justice, it is hereby ORDERED:

69. Upon receipt of this Order, Respondent shall immediately comply with all requirements of its Permit and take all actions necessary to properly implement and enforce its approved Pretreatment Program.

70. Within ten (10) days of the receipt of this Order, Respondent shall give written notice to EPA of its intent to comply with the requirements of this Order.

71. Within thirty (30) days of the receipt of this Order, Respondent shall submit to EPA an analysis of their resources to run their Pretreatment Program. The analysis shall include at a minimum:

    a. A list of each employee, name and title, who has FTEs allocated to the Pretreatment Program;

    b. The number of FTEs for the Pretreatment Program allocated to each employee listed in paragraph 71(a);

    c. A list of pretreatment duties performed by each employee listed in paragraph 71(a) above, including an estimate of the percentage of their time is spent conducting all pretreatment activities; and

    d. A list of non-pretreatment duties performed by each employee listed in paragraph 71(a) above, including an estimate of the percentage of their time spent conducting all non-pretreatment activities.

72. Within thirty (30) days of the receipt of this Order, Respondent shall provide EPA with a copy of all valid individual permits or equivalent individual control mechanisms for Sweetwater County Hospital that have been issued since the previous permit expired.

73. Within thirty (30) days of the receipt of this Order, Respondent shall review all SIU and permitted Industrial User files from January 2008 to present, and shall take appropriate

enforcement action in all instances where Respondent failed previously to take enforcement action according to the ERP.

74. Within thirty (60) days of the receipt of this Order, Respondent shall provide EPA with documentation of all enforcement actions taken against Industrial Users for noncompliance with any Pretreatment Standards and requirements identified in paragraph 73.

75. Within thirty (30) days after the end of each calendar quarter, Respondent shall submit to EPA a report on Respondent's activities to implement its approved Pretreatment Program. This reporting requirement shall continue until EPA provides written notice that it may cease. The report shall include:

    a. Any sample results collected by the Respondent during the previous quarter at any SIUs and permitted Industrial Users. If no samples were collected by Respondent, indicate this in the report.

    b. Copies of all reports from the previous quarter required to be submitted by SIUs and permitted Industrial Users along with an identification of any violation and documentation that the appropriate enforcement action according to the enforcement response plan was taken. If no violations occurred, indicate this in the report.

    c. With the 4th quarter report due January 30 of each year, include documentation showing evaluation for significant noncompliance of each SIU and permitted Industrial User for the previous calendar year.

76. Respondent shall submit the annual report due March 28 of each year as required by Permit Condition III.B.4.

77. Upon written notice by EPA, the Respondent shall submit an itemized list of all costs incurred to implement the actions specified in paragraphs 69-76.

78. All notices and reports required by the Order to be given to EPA shall be sent to:

Stephanie Gieck
U.S. EPA Region 8
1595 Wynkoop Street
8ENF-W-NP
Denver, CO 80202
gieck.stephanie@epa.gov
Fax: 303-312-7202
Phone: 303-312-6362

79. All reports and information required by this Order shall include the following certification statement, signed and dated by an individual meeting the definition in 40 C.F.R. § 122.22(a)(3) of a principal executive officer or ranking elected official:

> I hereby 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 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 or imprisonment for knowing violations.

80. Any failure to comply with the requirements of this Order shall constitute a violation of this Order and may subject Respondent to penalties as provided under § 309 of the Act, 33 U.S.C. § 1319.

81. This Order does not constitute a waiver or modification of the terms and conditions of Respondent's NPDES Permit which remains in full force and effect.

82. This Order does not constitute a waiver or election by EPA to forego any civil or criminal action to seek penalties, fines, or other relief as it may deem appropriate under the Act. Section 309(d) of the Act, 33 U.S.C. § 1319(d), authorizes the assessment of civil penalties of up to $37,500 per day for each violation of the Act, while § 309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the Act.

83. Compliance with the terms and conditions of this Order shall not be construed to relieve Respondent of its obligation to comply with any applicable federal, state, or local law or regulation.

84. This Order shall be effective upon receipt by Respondent.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8,
Complainant.

Date: March 8, 2011

Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance, and Environmental Justice

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the attached FINDINGS OF VIOLATION AND ORDER FOR COMPLIANCE was hand delivered to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop St., Denver, Colorado, and that a true copy of the same was sent via Certified Mail to the following:

Mr. Mike Gaviotis, Wastewater Superintendent
City of Rock Springs
212 D Street
Rock Springs, Wyoming 82901

March 8, 2011
DATE

Eric Maxwell
SIGNATURE