

matter.

2. Plaintiffs state: “Even more remarkable, the federal defendants have stated that they are prepared to comply with RNM’s demands and provide inspection services to the horse slaughter facility on or before September 23, 2013, thus allowing RNM horse slaughter operations to commence.” ECF No. 156 at 2 (citing ECF No. 154 at 2-3). Plaintiffs do not deny that Rains meets the requirements for a grant of inspection under the Federal Meat Inspection Act (“FMIA”), 21 U.S.C. § 601-625. And, pursuant to the FMIA, the U.S. Department of Agriculture (“USDA”) “*shall* cause to be made, by inspectors appointed for that purpose, an examination and inspection of all amenable species before they shall be allowed to enter into any slaughtering, packing, meat-canning, rendering, or similar establishment, in which they are to be slaughtered and the meat and meat food products thereof are to be used in commerce,” and that “when so slaughtered the carcasses of said amenable species *shall* be subject to a careful examination and inspection. . . .” 21 U.S.C. § 603(a) (emphasis added). There is nothing “remarkable” about USDA complying with its nondiscretionary statutory mandate, as it plainly must do. Federal Defendants provided the Court and Plaintiffs good faith advance notice of this situation.

3. Plaintiffs state: “There is no question that the federal defendants’ provision of inspection services to RNM at this time violates the spirit, if not the letter, of this Court’s Temporary Restraining Order.” ECF No. 156 at 2. The temporary restraining order plainly and expressly applies only to activities at the Valley Meat and Responsible Transportation facilities. *See* ECF No. 125 at 7. The Court appropriately did not enjoin USDA from granting inspections for any other facilities qualifying for inspections in the future, rejecting Plaintiffs’ request that the Court do so. *See, e.g.*, ECF No. 16-1 at 37 (“Plaintiffs request that the Court issue a TRO

enjoining Defendants from authorizing horse slaughter at a domestic horse slaughter facility pending consideration of the merits of Plaintiffs' claims."'). Until Federal Defendants took a "final agency action" pursuant to the Administrative Procedure Act, 5 U.S.C. § 704, with respect to the Rains facility, activities at that facility were not properly before the Court. *See* ECF No. 66 at 4, 10, 23-25. The Court therefore appropriately rejected Plaintiffs' request for more expansive injunctive relief. Federal Defendants are unaware of any legal authority (and Plaintiffs cite none) allowing a federal agency to ignore a mandatory statutory duty without an *actual* temporary restraining order barring the contested action. With the Notice, Federal Defendants provided Plaintiffs a fair opportunity to seek their requested relief.¹

4. In its response to Plaintiffs' motion, Defendant-Intervenor Rains states: "What might be considered remarkable or curious, however, is that USDA did not issue the Grant to RAINS when it issued the [grants of inspection to Valley Meat and Responsible Transportation]." ECF No. 161 at 2-3. One of the legal requirements for obtaining a grant of inspection under the FMIA is that the applicant certify that it has met the requirements Section 401 of the Clean Water Act for any discharges into navigable waters as defined by that Act, or that it attest that no such discharges will occur. *See* 9 C.F.R. § 304.2(c)(1). Rains did not provide such a certification or attestation to USDA until September 3, 2013. *See* Exhibit A. Thus, prior to that date, Rains was not qualified for a grant of inspection, and USDA could not

¹ Federal Defendants' suggestion that the Court should consider expanding the coverage of the temporary restraining order to include activities at Rains should not be taken as a concession that the underlying temporary restraining order was appropriately entered in the first instance. Federal Defendants position continues to be that USDA has fully complied with its obligations under the National Environmental Policy Act with regard to the federal activities relating to the Valley Meat, Responsible Transportation, and Rains facilities. As a matter of comity, Federal Defendants filed its Notice to avoid wasting the Court's and the Parties' efforts on substantial briefing (or re-briefing) on the issues already addressed in the temporary restraining order while the Parties are under an expedited briefing schedule on the merits.

have granted its inspection until a reasonable time after that attestation to confirm that Rains had met all requirements for a grant of inspection under the FMIA.

Respectfully submitted this 20th day of September, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2013, I filed through the United States District Court ECF System the foregoing document to be served by CM/ECF electronic filing on all counsel of record.

/s/ Andrew A. Smith
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U.S. Department of Justice