



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
EPA REGION VIII
HEARING CLERK

SEP 07 2016

Ref: 8ENF-T

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Shad Shimic, Registered Agent
B.H. Investment, LLC
P.O. Box 537
Torrington, Wyoming 82240

Re: Buckinghorse Steak House and Lounge Public Water System
Administrative Order Violations, Docket No. SDWA-08-2012-0003

Dear Mr. Shimic:

On August 19, 2016, EPA sent you a letter, enclosed for reference, regarding violations of the above-referenced November 7, 2011, Administrative Order. In that correspondence, EPA offered assistance to help the System come into compliance and offered to enter into settlement negotiations regarding an appropriate penalty. The deadline for indicating your interest in discussing these matters, August 26, 2016, has passed and EPA has not heard from you. As a result, EPA is preparing to issue an Administrative Complaint for penalties. If you have any questions or concerns, please contact me immediately at (303) 312-6023. Thank you for your attention to this matter.

Sincerely,

Metea Wright
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Enclosure
EPA letter, dated August 19, 2016



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Ref: 8ENF-L

August 19, 2016

Via Email

Settlement Communication, Not Admissible

Subject to Federal Rule of Evidence 408 and 40 C.F.R. § 22.22(a)

Shad Shimic, Registered Agent
B.H. Investment, LLC
P.O. Box 537
Torrington, Wyoming 82240

Re: Buckingham Steak House and Lounge Public Water System

Dear Mr. Shimic:

The U.S. Environmental Protection Agency, Region 8 (EPA), is preparing to issue an administrative penalty complaint (Complaint) regarding the Buckingham Steak House and Lounge public water system (System). Pursuant to the Safe Drinking Water Act (SDWA) and the National Primary Drinking Water Regulations (Regulations), violation of an EPA administrative order, as applicable in this case and detailed below, could result in an administrative civil penalty of up to \$37,500.00 per day of violation. 42 U.S.C. § 300g-3; 40 C.F.R. part 19. The purpose of this letter is to communicate EPA's plans and offer the possibility of settlement negotiations as an alternative to EPA's filing of the Complaint.

On November 7, 2011, EPA issued an administrative order (Order) to B.H. Investment, LLC (BH), owner and/or operator of the System, for violations of the SDWA and its Regulations. Among other violations, BH exceeded the total coliform maximum contaminant level (MCL), failed to monitor total coliform and failed to provide notice to the public and the EPA of the violations, as required by the Regulations. BH has continued to incur related violations, and, therefore, has failed to comply with the Order. EPA has provided BH notice of its Order violations, as follows.

On February 11, 2014, EPA sent BH an administrative order violation (AOV) letter. In that letter, EPA provided notice that BH had violated the Order by failing to monitor for total coliform during the 3rd and 4th quarters of 2013. BH incurred additional violations by neither reporting the noncompliance to EPA nor providing EPA with the required public notices for violations outlined in the Order.

EPA sent BH another AOV on April 18, 2016. This AOV cited Order violations including BH's failure to collect additional routine total coliform samples in September of 2015 after a positive result in August of 2015, and not notifying EPA of this violation. Additionally, because two or more samples collected during July and August of 2015 exceeded the total coliform MCL, BH was required to provide EPA with a compliance plan and schedule by August 21, 2015, to prevent future MCLs. EPA has not received the required plan and schedule. The plan and schedule was to address significant deficiencies that EPA identified in a sanitary survey issued on November 18, 2014. These significant deficiencies have not been corrected. Finally, EPA has not received a copy of completed public notice for either the violations cited in the Order or for subsequent violations.

EPA has attempted to resolve this matter with the System. On February 26, 2016, Metea Wright and Kathelene Brainich, EPA Technical Enforcement Specialists, called and spoke with you. In sum, we discussed attempts to find the cause of the total coliform positive July and August 2015 samples; discussed whether the System took the required September, 2015 sample; and discussed generally the System's noncompliance with the Order, including the MCL violations and the potential for resulting penalties.

Additionally, on April 29, 2016, Ms. Wright and Ms. Brainich attempted to reach you, leaving a voice mail request for you to call or email so that we could discuss how the System could address significant deficiencies and return to compliance. EPA has not received a response. As such, on May 5, 2016, Ms. Wright emailed you to inquire whether the System has addressed the significant deficiencies and to offer assistance with helping the System come back into compliance. To date, we have not heard from you.

EPA remains willing to settle this matter and, as the EPA attorney assigned to this case, I am prepared to recommend to EPA management a penalty settlement consisting of less than the \$37,500.00 amount listed above. Before any such discussions can take place, however, the System must be in compliance with the Order. The System must take the following actions to achieve compliance and before commencement of negotiations:

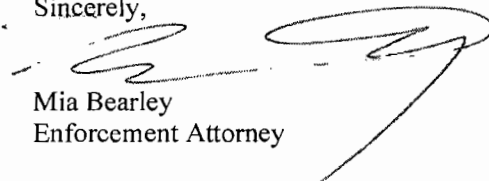
- provide EPA with a copy and certification of completed public notice, as required by the Regulations (public notice is required: for the violations in the Order; for the July and August of 2015 total coliform MCL violations; for the failures to monitor total coliform during the 3rd and 4th quarters of 2013 and during September of 2015; and for the failure to correct significant deficiencies); and
- correct the System's significant deficiencies (SDs). The SDs were identified in the above-referenced AOVs and sanitary survey. In sum, the System must: 1) construct the well pit or vault to have proper drainage, or, in the alternative, provide a permanent or portable pump; 2) protect the casing and/or well house from entrance by animals and have all droppings removed; and 3) provide an emergency response plan.

In the interest of protecting public health, the above-listed requirements must be completed within one month, no later than September 16, 2016. If you intend to complete these requirements and enter into settlement discussions, please provide written notice of this intent by August 26, 2016, to Metea Wright at the address above or at wright.metea@epa.gov. If you have any questions or concerns, or would like assistance regarding corrective actions, Ms. Wright is available at (303) 312-6023.

If, by August 26, 2016, Ms. Wright does not receive written notice of your intent to complete the above-listed requirements and to enter into settlement discussions, EPA will assume that the System is not interested in negotiating a settlement and will proceed to file the Complaint.

Thank you and we look forward to working with you to resolve this matter.

Sincerely,



Mia Bearley
Enforcement Attorney