



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2010 APR 22 AM 11:19

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: SDWA-08-2010-0038

IN THE MATTER OF:

BBQ – 5, LLC.

Owner of Q Roadhouse
2550 Moose Wilson Road
Jackson, Wyoming

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 22nd DAY OF April, 2010.

Elyana R. Sutin
Regional Judicial Officer

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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| In the Matter of: |) | CONSENT AGREEMENT |
| |) | |
| BBQ - 5, LLC |) | Docket No. SDWA-08-2010-0038 |
| Owner of: Q Roadhouse |) | |
| 2550 Moose Wilson Rd. |) | |
| Jackson, Wyoming |) | Simultaneous Commencement and |
| |) | Conclusion of a Proceeding Pursuant to |
| |) | Section 1414(g)(3) of the Safe Drinking |
| |) | Water Act and 40 C.F.R. § 22.13(b) |

Complainant, United States Environmental Protection Agency, Region 8 (“EPA” or “Complainant”), and BBQ - 5, a Wyoming Limited Liability Company, (“Respondent”) by their undersigned representatives, hereby consent and agree as follows:

PRELIMINARY STATEMENT

1. EPA has jurisdiction over this matter pursuant to section 1414(g)(3) of the Safe Drinking Water Act (“Act”), as amended, 42 U.S.C. § 300g-3(g)(3). The National Primary Drinking Water Regulations (“NPDWRs”) authorized by the statute are set out in 40 C.F.R. part 141, and violations of the statute, regulations, and/or EPA Administrative Orders constitute violations of the Act.
2. The rules for this proceeding are the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits (“Rules of Practice”),” 40 C.F.R. part 22, a copy of which has been provided to Respondent.
3. This Consent Agreement is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b) and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
4. Respondent admits the jurisdictional allegations and neither admits nor denies the factual allegations contained in this Consent Agreement.
5. Respondent waives its rights to a hearing or appeal before any tribunal, to contest any issue of law or fact set forth in this Consent Agreement.
6. Complainant asserts that settlement of this matter is in the public interest, and the parties agree that entry of this Consent Agreement without further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter at the least cost and expense to Respondent and the EPA.

7. This Consent Agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this agreement.
8. This Consent Agreement contains all terms of the settlement agreed to by the parties.

ALLEGATIONS

9. BBQ - 5 is a Wyoming Limited Liability Company and therefore a "person" within the meaning of § 1401(12) of the Act, 42 U.S.C. § 300f(12) and 40 C.F.R. § 141.2. Respondent's mailing address is P.O. Box 1908, Wilson, Wyoming 83014.
10. Respondent owns and/or operates the Q Roadhouse Water System ("the system") located at 2550 Moose Wilson Rd., Jackson (Teton County), Wyoming which provides piped water to the public for human consumption.
11. The system has 1 service connection and/or regularly serves at least 400 individuals daily at least 60 days out of the year. Therefore, the system is a "public water system" as defined in § 1401(4) of the Act, 42 U.S.C. § 300f(4), and 40 C.F.R. § 141.2. The system is also a "transient, non-community water system" as defined in 40 C.F.R. § 141.2.
12. Respondent is a "supplier of water" within the meaning of § 1401(5) of the Act, 42 U.S.C. § 300f(5) and 40 C.F.R. § 141.2.
13. Respondent is subject to Part B of the Act ("Public Water Systems") and the NPDWRs.
14. EPA issued an Administrative Order to Respondent (docket no. SDWA-08-2008-0014) on January 29, 2008 ("the January 29, 2008 Order") requiring, inter alia, compliance with the quarterly monitoring for total coliform as required by 40 C.F.R. § 141.21(a), the reporting of the analytical results to EPA as required by 40 C.F.R. § 141.31(a), and reporting to EPA any failure to comply with the NPDWRs as required by 40 C.F.R. § 141.21(g)(2).
15. Respondent failed to monitor for total coliform during the second quarter of 2008, third quarter of 2009, and fourth quarter of 2009, in violation of the January 29, 2008 Order and 40 C.F.R. § 141.21(a).
16. Respondent failed to report to EPA the failure to monitor for total coliform violations listed above, in violation of the January 29, 2008 Order and 40 C.F.R. § 141.21(g)(2).

TERMS AND CONDITIONS

17. Respondent consents and agrees to pay a civil penalty in the amount of **\$2,500** in the manner described below in this paragraph:
- a. Payment is due within 30 calendar days from the date written on the final order, issued by the Regional Judicial Officer that adopts this consent agreement. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by Mellon Bank described below. Payments received by 11:00 A.M. EST are processed on the same day, those received after 11:00 A.M. are processed on the next business day.
 - b. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case; for the amount, payable to "Treasurer, United States of America," to:

Regular Mail:

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

Federal Express, Airborne, or other commercial carrier:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
314-418-4087

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street

New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 – checking
Environmental Protection Agency
Account 310006
CTX Format

On-line payment:

There is now an On Line Payment Option, available through the Dept. of Treasury.
This payment option can be accessed from the information below:

WWW.PAY.GOV
Enter sfo 1.1 in the search field

Open form and complete required fields.

A copy of the payment shall be sent simultaneously to:

Shawn McCaffrey
Environmental Protection Specialist
U.S. EPA Region 8 (ENF-W)
1595 Wynkoop Street
Denver, CO 80202-1129

and:

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

- c. In the event payment is not received by the specified due date, interest accrues from

- the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (i.e., on the 1st late day, 30 days of interest accrues).
- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the final consent order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121st day from the date the final consent order is signed). Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
 - e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or tax credit.
18. Nothing in this Consent Agreement shall relieve Respondent of its duty to comply with the Act, the NPDWRs, and the January 29, 2008 Order.
 19. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.
 20. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.
 21. The undersigned representative of Respondent certify that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind the party he/she represents to the terms and conditions of this Consent Agreement.
 22. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.
 23. Each party shall bear its own costs and attorney fees in connection with this matter.
 24. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged herein.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**
Complainant

Date: 4-20-10

By: Sharon L Keucher
for Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

**BBQ - 5, LLC, a Wyoming Limited Liability
Company, Respondent**

Date: 4-7-10

By: [Signature]
Gavin Fine

Title: Owner

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **BBQ – 5, LLC.; DOCKET NO.: SDWA-08-2010-0038** was filed with the Regional Hearing Clerk on April 22, 2010.


Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Thomas Sitz, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on April 22, 2010, to:

Gavin Fine
Owner of Q Roadhouse
BBQ – 5, LLC.
2550 Moose Wilson Road
Jackson, WY 83001

And

Elizabeth Whitsel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

April 22, 2010


Tina Artemis
Paralegal/Regional Hearing Clerk

