



State of Ohio Environmental Protection Agency

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MAILING ADDRESS:

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Columbus, OH 43216-1049

December 7, 2009

Mr. Richard B. Thompson  
P.O. Box 389  
Kinsman, Ohio 44428

Re: Times Square Restaurant  
Proposed Director's Final Findings and Orders

Dear Mr. Thompson:

On September 30, 2009, I sent you revised proposed Director's Final Findings and Orders ("Orders") to address the violations of Ohio Revised Code Chapter 6111 by the Times Square Restaurant ("Restaurant"). These proposed Orders are a compromise and require significantly less of the Restaurant than Ohio EPA originally proposed. Proposed Orders sent on July 2, 2008 required installation and operation of a sewerage system and wastewater treatment works for the Restaurant. Because Trumbull County is planning to construct sewers in Kinsman in the next few years, enabling the Restaurant to connect to the public sanitary sewer, Ohio EPA has agreed not to require construction of the sewerage system and wastewater treatment works. However, because it will be a few years before the Restaurant will be able to connect to the public sanitary sewer, and because Ohio EPA cannot allow the discharge of inadequately treated sewage to waters of the state to continue during that time period, we have proposed to allow the Restaurant to install an in-ground holding tank, designed and operated in compliance with Ohio EPA's regulations.

On November 5, 2009, you and I spoke on the telephone concerning the holding tank requirement and your assertion that the Restaurant already has an underground tank which is being pumped out, with documentation of the pumping being sent to Trumbull County. During our conversation, I asked the following questions:

- When was the holding tank installed?
- Is it the tank that is part of the septic system at the Restaurant or a different tank?
- What is the volume of the holding tank?
- Does the holding tank have a discharge?
- Does the holding tank have a level alarm?
- Does the holding tank have odor control?

Ted Strickland, Governor  
Lee Fisher, Lieutenant Governor  
Chris Korleski, Director

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- Was approval to install the holding tank obtained? If so, from whom and when?
- How often is the holding tank pumped?
- Who pumps it?
- What records are kept of the pumping?
- To whom are the pumping records sent and how often?

As you did not know the answers to most of these questions, you stated that you would find out and get back to me. On November 16, 2009, I called you to see if you had found any answers, and left a message for you with the woman who answered the phone. I have not received any return call or answers to any of the questions from you.

Because the tank at the Restaurant is apparently part of the inadequate septic system, it is unlikely that it meets the requirements for holding tanks in Ohio EPA's current regulations. A copy of those regulations is enclosed for your convenience. Also enclosed is another copy of the revised proposed Orders. Please refer to the proposed Orders to see which provisions of the regulations must be met by a holding tank at the Times Square Restaurant.

I am required to resolve this case by the end of the year. Resolution can be by agreement on the terms of Director's Final Findings and Orders, or by referral of the case to the Attorney General's Office for the filing of a complaint in court for injunctive relief and civil penalties of up to \$10,000 per day for each violation. It is not our preference to refer this matter to the Attorney General's Office, but we will be left with no choice unless you either sign the enclosed proposed Orders or make a reasonable counteroffer that provides a basis for negotiations.

Please either sign the Orders and return them to me or provide me with a counteroffer as soon as possible but no later than December 21, 2009. If your counteroffer includes the use of the tank you have said exists at the Times Square Restaurant, you must also provide answers to the questions about the tank set out above, and a description of how the existing tank meets the requirements in Ohio EPA's holding tank rules.

Thank you for your attention to this matter. I look forward to hearing from you soon.

Sincerely,

  
Martha E. Horvitz  
Staff Attorney

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Enclosures

cc: Rachel DeMuth, DSW  
Mike Stevens, DSW, NEDO