



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA EMAIL AND FIRST CLASS MAIL

Charles R. Spies, Esq.
Derek H. Ross, Esq.
Sloane S. Carlough, Esq.
Clark Hill PLC
1001 Pennsylvania Avenue, N.W.
Suite 1300 South
Washington, D.C. 20004
cspies@clarkhill.com

JUL 31 2019

RE: MUR 7491
American Ethane Co., LLC
John Houghtaling

Dear Messrs. Spies and Ross and Ms. Carlough:

On September 7, 2018, the Federal Election Commission notified your clients, American Ethane Co., LLC and John Houghtaling, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon review of the allegations contained in the complaint and information supplied by you, the Commission, on July 23, 2019, found that there is reason to believe American Ethane Co., LLC and John Houghtaling violated 52 U.S.C. §§ 30121(a)(1)(A) by making foreign national contributions; or in the alternative that American Ethane Co., LLC and John Houghtaling violated 52 U.S.C. § 30118(a) by making prohibited corporate contributions. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the Office of the General Counsel along with answers to the enclosed questions within 30 days of receipt of this notification. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. *See* 52 USC § 30109(a)(4).

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

Messrs. Spies and Ross and Ms. Carlough
MUR 7491 (American Ethane)
Page 2

If you are interested in pursuing pre-probable cause conciliation, you should make such a request by letter to the Office of the General Counsel. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into in order to complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been delivered to the respondent(s). Requests for extensions of time are not routinely granted. Requests must be made in writing at least five days prior to the due date of the response and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

This matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Elena Paoli, the attorney assigned to this matter, at (202) 694-1548 or epaoli@fec.gov.

On behalf of the Commission,



Ellen Weintraub
Chair

Enclosures
Factual and Legal Analysis

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

MUR 7491 (American Ethane Co., LLC, et al.)
Factual and Legal Analysis
Page 2 of 7

1 Houghtaling is its President and CEO.³ At the time of the contributions in question, according to
2 American Ethane's Lobbying Disclosure Act reports, three Russian nationals owned 88% of the
3 company.⁴ Currently, two Russian nationals own about 87% of American Ethane, including
4 Nikolaev, a 30% owner, as disclosed in American Ethane's most recent lobbying disclosure
5 form.⁵ American Ethane and Houghtaling state that Houghtaling is a part owner of the
6 company.⁶

7 Houghtaling is also the sole owner of H Ventures LLC, a Louisiana corporation that
8 Houghtaling founded in 2006 and operated under the name Houghtaling Enterprises until 2016.⁷
9 The available information does not establish whether H Ventures elected to be taxed as a
10 corporation.

11 The Complaint relies on an August 2018 news article that discusses American Ethane's
12 Russian ownership in connection with the company's alleged failure for more than three years to
13 disclose its foreign ownership on federal lobbying forms, as required by the Lobbying Disclosure
14 Act of 1995.⁸ The article also describes American Ethane's 2018 political contributions to

³ American Ethane and Houghtaling Response (Oct. 30, 2018) ("American Ethane Resp."), Attach., Declaration of John Houghtaling ¶ 5 (Oct. 29, 2018).

⁴ See AEC Lobbying Disclosure Form (July 20, 2018), available at <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=3DCA47BB-284A-4DD0-A9F0-2B2F65104999&filingTypeID=2>.

⁵ See AEC Lobbying Disclosure Form (Jan. 9, 2019), available at <http://disclosures.house.gov/ld/ldxmlrelease/2019/RR/301020474.xml>.

⁶ American Ethane Resp. at 2.

⁷ American Ethane Resp. at 4 (Oct. 30, 2018) and Declaration of John Houghtaling ¶ 6 (Oct. 29, 2018). See State of Louisiana, Secretary of State, H Ventures LLC, available at https://coraweb.sos.la.gov/commercialsearch/CommercialSearchDetails.aspx?CharterID=738564_E6B5E57F9A.

⁸ See Compl. at 9; see also 2 U.S.C. § 1601.

1 Louisiana candidates and committees, which form the basis for the Complaint's allegations that
2 these were prohibited foreign national contributions.

3 Specifically, on April 16, 2018, American Ethane made a \$15,000 contribution to
4 Conservative Louisiana, an independent-expenditure-only political committee ("IEOPC").⁹ On
5 April 25, 2018, American Ethane made three contributions to Mike Johnson for Louisiana
6 ("Johnson Committee"), the 2018 authorized committee for Mike Johnson's election to the
7 House: two for \$2,700 and one for \$700, for a total of \$6,100.¹⁰ The Complaint alleges, and the
8 Commission's records reflect, that American Ethane reportedly also made other political
9 contributions: \$5,000 on April 30, 2018, to Pelican PAC, a Leadership PAC associated with
10 Senator John Kennedy of Louisiana,¹¹ and \$5,400 on May 10, 2018, to Garret Graves, a
11 Louisiana candidate for the 2018 House.¹²

12 In their Response and in a declaration by Houghtaling, American Ethane and
13 Houghtaling assert that American Ethane is a domestic company and that the funds for the
14 contributions were domestic, "derived through a loan secured by Houghtaling Enterprises, now
15 referred to as H Ventures, a corporate entity in which Mr. Houghtaling has a 100% ownership

⁹ See Conservative Louisiana July 2018 Quarterly Report at 6, available at <http://docquery.fec.gov/pdf/860/201807139115433860/201807139115433860.pdf>.

¹⁰ See Johnson Committee 2018 July Quarterly Report at 20, available at <http://docquery.fec.gov/pdf/746/201807099115254746/201807099115254746.pdf>. The Committee refunded the contributions on August 7, 2018. See Committee 2018 Amended October Quarterly Report at 103, available at <http://docquery.fec.gov/pdf/583/201903129145678583/201903129145678583.pdf>.

¹¹ See Pelican PAC 2018 July Quarterly Report at 6, available at <http://docquery.fec.gov/pdf/365/201807139115402365/201807139115402365.pdf>. Pelican PAC and the Committee have the same treasurer.

¹² See Garret Graves for Congress 2018 Amended Pre-Primary Report at 5 (also indicating that the contribution was refunded on June 1, 2018), available at <http://docquery.fec.gov/pdf/365/201807139115402365/201807139115402365.pdf>.

1 interest.”¹³ They also state that “all decisions regarding AEC’s political contributions, including
2 amount and recipient, are made solely by Mr. Houghtaling.”¹⁴ American Ethane does not further
3 explain the circumstances of the loan or any of its terms or whether it has repaid the loan to H
4 Ventures.

5 **III. LEGAL ANALYSIS**

6 The Act provides that a contribution includes “any gift, subscription, loan, advance, or
7 deposit of money or anything of value made by any person for the purpose of influencing any
8 election for Federal office.”¹⁵ The term “person” for purposes of the Act and Commission
9 regulations includes partnerships, corporations, and “any other organization or group of
10 persons.”¹⁶

11 Contributions by an LLC that does not elect to be treated as a corporation by the Internal
12 Revenue Service and does not have a single natural-person member are treated as partnership
13 contributions, which must be attributed to both the entity and to each of its members.¹⁷
14 Furthermore, when such an LLC makes a contribution, it must affirm to the recipient, at the time

¹³ American Ethane Resp. at 4 (Oct. 30, 2018) and Declaration of John Houghtaling ¶ 6 (Oct. 29, 2018). To the extent that the Response indicates that Houghtaling or H Ventures LLC provided the funds used by American Ethane to make its contributions, the contributions may also violate 52 U.S.C. § 30122, which prohibits contributions in the name of another. The Commission, however, has taken no action at this time with respect to 52 U.S.C. § 30122.

¹⁴ American Ethane Resp. at 2.

¹⁵ 52 U.S.C. § 30101(8)(A).

¹⁶ *Id.* § 30101(11); 11 C.F.R. § 100.10.

¹⁷ 11 C.F.R. §§ 110.1(e), (g). American Ethane is not a publicly traded corporation under 11 C.F.R. § 110.1(g)(3) and is not an LLC with a single natural-person member under 11 C.F.R. § 110.1(g)(4).

1 the LLC makes the contribution, that the LLC is eligible to make a contribution and indicate how
2 the contribution is to be attributed.¹⁸

3 The Commission's regulations concerning the attribution of LLC contributions apply on
4 their face to all LLC contributions, irrespective of recipient.¹⁹ The Commission has recognized
5 that because LLCs are a product of state law and many states have very minimal LLC disclosure
6 requirements, LLCs must affirmatively provide attribution information when making political
7 contributions so that the recipient committees can accurately disclose those contributions to the
8 public.²⁰

9 An LLC that elects to be treated as a corporation by the Internal Revenue Service or an
10 LLC with publicly traded shares is subject to the prohibition on contributions from corporations.
11 The Act and Commission regulations prohibit corporations from making contributions to
12 political committees other than IEOPCs in connection with a Federal election, and it prohibits
13 political committees other than IEOPCs from knowingly accepting or receiving such
14 contributions.²¹

15 The Act and Commission regulations prohibit any "foreign national" from directly or
16 indirectly making a contribution or donation of money or other thing of value, or an expenditure,

¹⁸ 11 C.F.R. § 110.1(g)(5).

¹⁹ See 52 U.S.C. §§ 30116(a)(1), 30118(a); Treatment of Limited Liability Companies Under the Federal Election Campaign Act, 64 Fed. Reg. 37,397, 37,398 – 37,399 (July 12, 1999) ("LLC E&J") (discussing role of LLC attribution rules in identifying prohibited contributions from foreign national or government contractor sources, concerns that apply to all LLC contributions, including contributions to IEOPCs).

²⁰ LLC E&J at 37,399 ("The Commission further notes that the recipient committee would have no way of knowing how to attribute a contribution made by an eligible multi-member or single member LLC, unless that information was provided.").

²¹ 52 U.S.C. § 30118; 11 C.F.R. § 114.2(b), (d). Advisory Op. 2010-11 (Commonsense Ten) at 2-3.

1 independent expenditure, or disbursement, in connection with a federal, state, or local election.²²
2 The Act’s definition of “foreign national” includes an individual who is not a citizen or national
3 of the United States and who is not lawfully admitted for permanent residence, as well as a
4 “foreign principal” as defined at 22 U.S.C. § 611(b), which, in turn, includes a “partnership,
5 association, corporation, organization, or other combination of persons organized under the laws
6 of or having its principal place of business in a foreign country.”²³

7 Commission regulations implementing the Act’s foreign national prohibition provide:

8 A foreign national shall not direct, dictate, control, or directly or indirectly
9 participate in the decision-making process of any person, such as a
10 corporation . . . with regard to such person’s Federal or non-Federal election-
11 related activities, such as decisions concerning the making of contributions,
12 donations, expenditures, or disbursements. . . .²⁴
13

14 In April and May 2018, American Ethane, an LLC with majority foreign national
15 ownership, made \$31,500 in federal political contributions. Under Commission regulations,
16 because American Ethane is not an LLC with a single natural member, the contributions from
17 American Ethane are considered either contributions from a corporation (if it elects treatment as
18 a corporation), or contributions by a partnership. Further, these regulations direct that a

²² 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(b), (c), (e), (f). Courts have consistently upheld the provisions of the Act prohibiting foreign national contributions on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over the activities and processes that are integral to democratic self-government, which include making political contributions and express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff’d* 132 S. Ct. 1087 (2012); *United States v. Singh*, 924 F.3d 1030, 1040-44 (9th Cir. 2019).

²³ 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3).

²⁴ 11 C.F.R. § 110.20(i). The Commission has explained that this provision also bars foreign nationals from “involvement in the management of a political committee.” Contributions Limits and Prohibitions, 67 Fed. Reg. 69,928, 69,946 (Nov. 19, 2002); *see also* Advisory Op. 2004-26 at 2-3 (Weller) (noting that foreign national prohibition at section 110.20(i) is broad and concluding that, while a foreign national fiancé of the candidate could participate in committees’ activities as a volunteer without making a prohibited contribution, she “must not participate in [the candidate’s] decisions regarding his campaign activities” and “must refrain from managing or participating in the decisions of the Committees.”).

1 contribution with no attribution designations is considered a contribution by the partnership and
2 all partners in proportion to their shares.²⁵ Thus, if American Ethane elected treatment as a
3 partnership, or it did not elect treatment as either a partnership or a corporation, then American
4 Ethane and president John Houghtaling, through American Ethane's foreign partners made
5 prohibited foreign national contributions to Conservative Louisiana, Mike Johnson for Louisiana,
6 Pelican PAC, and Garret Graves for Congress in violation of 52 U.S.C. § 30121(a)(1)(A).

7 In the alternative, if American Ethane elected treatment as a corporation, it and
8 Houghtaling made \$16,500 in prohibited corporate contributions to the candidate committees and
9 leadership PAC.

10 Therefore, the Commission finds reason to believe that American Ethane Co., LLC, and
11 John Houghtaling violated 52 U.S.C. § 30121(a)(1)(A) by making prohibited foreign national
12 contributions or violated 52 U.S.C. § 30118(a) by making prohibited corporate contributions.

²⁵ See 11 C.F.R. § 110.1(e), (g).