

BEFORE THE ARKANSAS STATE BOARD OF HEALTH

ARKANSAS DEPARTMENT OF HEALTH

PETITIONER

V.

S. D. M. WATER ASSOCIATION

RESPONDENT

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER**

Findings of Fact, Conclusions of Law

1. Respondent, S. D. M. Water Association, is a community public water system within the meaning of the Rules and Regulations Pertaining to Public Water Systems (Regulations). As a result of this classification under Arkansas regulations, Respondent is required to comply with the federal Safe Drinking Water Act (SDWA), and the National Primary Drinking Water Regulations (NPDWR).
2. In accordance with Sections III, V, VII, XII, and XVII of the Rules and Regulations, Respondent is required to comply with the National Primary Drinking Water Regulations, 40 CFR § 141, et seq.
3. Respondent owns and/or operates the S. D. M. Water Association located in Searcy County, Arkansas.
4. S. D. M. Water Association is supplied by a ground water source.
5. Respondent is and was required to comply with Section V of the Regulations and 40 CFR § 141.15 to supply water that does not exceed the maximum contaminant level (MCL) for Radium 226 and 228.

6. Respondent violated Section V of the Regulations and 40 CFR § 141.15 by exceeding the maximum contaminant level (MCL) for combined radium during the quarters of January-March 1991; April – June 1991; July – September 1991; October-December 1991; January-March 1992; April-June 1992; July-September 1992; October-December 1992; January-March 1993; April-June 1993; July-September 1993; October-December 1993; January-March 1994; April-June 1994; July-September 1994; October-December 1994; January-March 1995; April-June 1995; July-September 1995; October-December 1995; January-March 1996; April-June 1996; July-September 1996; October-December 1996; January – March 1997; April-June 1997; October-December 1997; January-March 1998; October-December 1998; January-March 1999; April-June 1999; October-December 1999; January-March 2000; April-June 2000; July-September 2000; October-December 2000; April-June 2001; and July-September 2001.

7. On January 18, 2002, the Director, Division of Engineering, Arkansas Department of Health, issued Respondent an Administrative Order, Enforcement Action Number AO020100758, under the authority of A.C.A. § 20-7-101, et seq., and the Regulations. That Order addressed the above enumerated violations of the Regulations and its implementing regulations, and required the Respondent to comply with all the requirements of the Regulations, 40 CFR § 141 et seq., and of the Safe Drinking Water Act, and Respondent was ordered to comply with Section V of the Regulations, and 40 CFR § 141.15 by providing treatment such that the average combined level of Radium 226 and 228 in representative samples of the system's water is less than 5 Pico curies per liter, or by providing a new source of water approved by the Arkansas Department of Health, Division of Engineering by January 31, 2004.

8. S. D. M. Water Association violated the Administrative Order and Section V of the Regulations and 40 CFR § 141.15 by failing to provide treatment such that the average

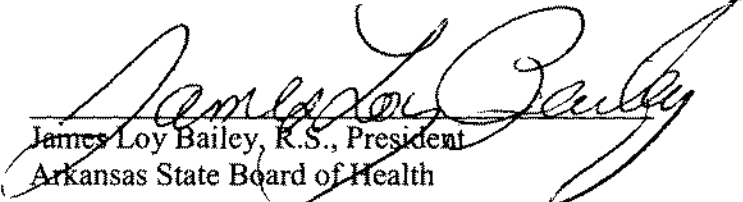
combined level of Radium 226 and 228 in representative samples of the system's water is less than 5 Pico curies per liter, or by providing a new source of water during the quarters of October – December 2001, January – March 2002, April – June 2002, July – September 2002, October – December 2002, January - March 2003, July - September 2003, October – December 2003, January - March 2004, and April – June 2004.

9. A hearing was held before officials of the Arkansas State Board of Health pursuant to Ark. Code Ann. §§ 20-7-101, et seq., 20-57-201, et seq., and the administrative procedures of the Arkansas State Board of Health on September 30, 2004 at 10:15 A.M. in the 5th Floor Board Room of the Arkansas Department of Health, 4815 West Markham, Little Rock, Arkansas. Kenny Campbell appeared on behalf of the Respondent, SDM Water Association.

ORDER

After due deliberation, the State Board of Health adopted the Administrative Hearings Subcommittee's recommendations that the hearing be suspended, that the record remain open, and that the Respondent come back in May 2005 with a progress report. The Respondent must present the subcommittee a preliminary engineering report in May 2005. The report must outline the proposed long-term solution for a water supply as well as milestones and completion of the project. The Respondent is ordered to pursue short-term solutions to its radium problem. The Respondent must maintain compliance with all applicable rules and regulations pertaining to safe drinking water.

IT IS SO ORDERED this 28th day of October 2004.


James Loy Bailey, R.S., President
Arkansas State Board of Health