

BEFORE THE ARKANSAS STATE BOARD OF HEALTH

ARKANSAS DEPARTMENT OF HEALTH

PETITIONER

V.

THE LAKEHOUSE – T0208

RESPONDENT

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

Findings of Fact, Conclusions of Law

1. Respondent, The Lakehouse, is a Transient Non-Community public water system, within the meaning of The Rules & 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). Respondent is therefore subject to the requirements of these regulations.

2. In accordance with Section V., Paragraph A., Section VII, and Section XVII of the Regulations, Respondent is required to comply with the National Primary Drinking Water Regulations, 40 CFR § 141, et seq.

3. Respondent owns and operates The Lakehouse Restaurant, located in Baxter County, Arkansas.

4. The Lakehouse is supplied by a ground water under the direct influence of surface water (GWUDI) source.

5. Respondent is and was required by Sections V and VII of the Regulations, and 40 CFR § 141.21 to have a minimum number of routine drinking water samples analyzed for coliform bacteria to demonstrate compliance with 40 CFR § 141.63, the Maximum Contaminant

Level for coliform bacteria. Furthermore Section VII of the Regulations requires that before mentioned samples be submitted to the Department's Laboratory unless otherwise approved by the Department.

6. Respondent violated Sections V and Section VII of the Regulations by failing to submit the minimum number of water samples to the Arkansas Department of Health Laboratories for analysis for the months of December 2002, January, February, March, April, May, July and November of 2003.

7 Respondent is and was required to comply with Sections VII and IX of the Regulations, and 40 CFR § 141.74 which states that "The residual disinfectant concentration of the water entering the distribution system must be monitored continuously, and the lowest value must be recorded each day of plant operation."

8. Respondent violated Sections V, VII and IX of the Regulations and 40 CFR § 141.74 by failing to monitor disinfectant residual adequately in water entering the distribution system during the months of September, October, November, and December of 2002, January, February, March, April, and May of 2003, and February of 2004.

9. Respondent is and was required to comply with Sections IX and X of the Regulations, and 40 CFR § 141.70 in which filtration "*is required as a treatment technique for public water systems supplied by a surface water source and public water systems supplied by a ground water source under the direct influence of surface water. In addition, these regulations establish treatment technique requirements in lieu of maximum contaminant levels for the following contaminants: Giardia lamblia, viruses, heterotrophic plate count bacteria, Legionella, and turbidity. Each public water system with a surface water source or a ground water source under the direct influence of surface water must provide treatment of that source*

water that complies with these treatment technique requirements. The treatment technique requirements consist of installing and properly operating water treatment processes which reliably achieve:

(a) (1) At least 99.9 percent (3-log) removal and/or inactivation of Giardia lamblia cysts between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer; and (2) At least 99.99 percent (4-log) removal and/or inactivation of viruses between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer.

(b) A public water system using a surface water source or a ground water source under the direct influence of surface water is considered to be in compliance with the requirements of paragraph (a) of this section if it meets the filtration requirements in Sec. 141.73 and the disinfection requirements in Sec. 141.72(b)."

(c) Each public water system using a surface water source or a ground water source under the direct influence of surface water must be operated by qualified personnel who meet the requirements specified by the State.

10. Respondent violated Sections IX and X of the Regulations and 40 CFR § 141.70 by failing to have filtration installed within eighteen months of notification that the Respondent's water source is and was ground water under the direct influence of surface water. The required date for installation of filtration was June 16, 2003. Therefore treatment technique violations have been issued for the months of July, August, September, October, November, December of 2003, January and February of 2004.

11. Based on Respondent's violations of Sections V and VII of the Regulations and 40 CFR § 141.21, and based on the available remedies for those violations, Respondent can be expected to achieve compliance.

12. Pursuant to Section 1413 (a) of the Safe Drinking Water Act, the State of Arkansas, acting through the Arkansas Department of Health, has primary enforcement responsibility, to ensure that suppliers of water within the State comply with this act.

13. On August 2, 2002, the Director, Division of Engineering, Arkansas Department of Health, issued Respondent an Administrative Order, Enforcement Action Number AO08020T0208, 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 by requiring Respondent to comply with the Regulations and 40 CFR § 141.

14. Respondent violated that Administrative Order and Section V and VII of the Regulations and 40 CFR § 141.63 by failing to submit all the required number of samples for testing of the Maximum Contaminant Level for coliform bacteria during the months of August, September, November, and December of 2002 and January, February, March, April, May, July, and November of 2003.

15. Respondent violated that Administrative Order and Sections V, VII and IX of the Regulations and 40 CFR Section 141.74 by failing to monitor disinfectant residual adequately in water entering the distribution system during the months of July, August, September, October, November and December of 2002, and January, February, March, April, and May 2003, and February of 2004.

16. Respondent violated that Administrative Order and Sections IX and X of the Regulations and 40 CFR § 141.70 by failing to have filtration installed within eighteen months of

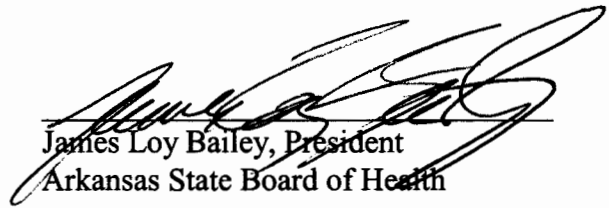
notification that the Respondent's water source is and was ground water under the direct influence of surface water. The required date for installation of filtration was June 16, 2003. Therefore treatment technique violations have been issued for the months of, July, August, September, October, November, December of 2003, January and February of 2004.

17. A hearing 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 was conducted on May 13, 2004 at 10:00 a.m. in the 5th Floor Board Room of the Arkansas Department of Health, 4815 West Markham, Little Rock, Arkansas. Mike Beck appeared on behalf of the Respondent after due notice. David Quattlebaum, Compliance and Enforcement Officer for the Arkansas Department of Health, and Angela Gray, the Transient Water Quality Engineer for ADH, testified and presented evidence.

ORDER

After due deliberation, the Board of Health adopted the recommendation of the Administrative Hearings Subcommittee to assess a reduced penalty of twenty-five thousand dollars (\$25,000.00). The Respondent is committed to making expenditures to drill a new well. The cost of drilling the new well and to bring the system into compliance will be deducted from the \$25,000.00 imposed penalty. If there are amounts remaining available after the above deduction, then those proceeds will be transmitted to the Arkansas Department of Health. The improvements must be done within sixty (60) days of this Order. If compliance is not met within the above-mentioned time frame, then the original penalty of ninety-four thousand dollars (\$94,000.00) will be due and payable. The Respondent must maintain compliance with all applicable rules and regulations.

IT IS SO ORDERED this 22nd day of July 2004.



James Loy Bailey, President
Arkansas State Board of Health