

BEFORE THE ARKANSAS STATE BOARD OF HEALTH

ARKANSAS DEPARTMENT OF HEALTH

PETITIONER

VS.

SHADE TREE PARK – T0875,
JOHN MONROE and DEWEY BOSWELL

RESPONDENTS

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

Findings of Fact, Conclusions of Law

1. Respondent, Shade Tree Park, is a Transient Non-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). 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 Shade Tree Park located in Fulton County, Arkansas.

4. Shade Tree Park is supplied by a ground water under the direct influence of surface water (GWUDI) source.

5. Respondent is and was required by Section V of the Rules and Regulations Pertaining to Public Water Systems, and 40 CFR §141.63, to deliver water to the free flowing outlet of the ultimate user of the water system with concentrations of fecal coliform bacteria not to exceed the maximum contaminant level (MCL). The MCL for coliform bacteria is one positive sample per sampling period for water systems collecting fewer than forty (40) samples per sampling period. An acute MCL is when a system has a fecal positive repeat sample or any total coliform positive repeat sample following a fecal positive sample.

6. Respondent violated Section V of the Rules and Regulations Pertaining to Public Water Systems and 40 CFR §141.63, by delivering water that exceeded the maximum contaminant level for coliform bacteria during the month of April 2003.

7. Respondent is and was required, by Sections V and VII of the Regulations, and 40 CFR §141.21 to submit valid resamples if any of the regular (routine) drinking water samples are total coliform positive 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.

8. Respondent violated Sections V and VII of the Regulations and 40 CFR §141. 21, by failing to submit valid resamples if any of the regular (routine) drinking water samples are total coliform positive to demonstrate compliance with 40 CFR §141.63, the Maximum Contaminant Level for coliform bacteria during the month of July 2003.

9. Respondent is and was required to comply with 40 CFR §141.74 through 40 CFR §141.75 of the National Primary Drinking Water Regulations, (the surface water treatment rule) which requires the monthly monitoring and reporting, of turbidity, entry chlorine residual,

distribution chlorine residual, and CT parameters (flow, temperature, and pH) in the water system.

10. Respondent violated 40 CFR §141.74 through 40CFR §141.75 of the National Primary Drinking Water Regulations, (the surface water treatment rule) by failing to monitor entry chlorine residual in the water system during the months of April, May, June, July, August, September, October, and November of 2003.

11. Respondent is and was required by Sections V and VII of the Regulations, and 40 CFR §141.21, to have 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.

12. Respondent violated Sections V and Section VII of the Regulations by failing to submit water samples to the Arkansas Department of Health Laboratories for analysis for the month of May and September of 2003.

13. 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.

14. 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 April, June, August, and October of 2003.

15. Respondent is and was required by Sections V and VII of the Regulations, and 40 CFR §141.21, to submit five valid bacteriological samples in the month following a month in which a coliform positive sample is recorded 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.

16. Respondent violated Sections V and VII of the Regulations by failing to submit 5 valid bacteriological samples in the month following a total coliform positive sample as required for the months of May and August of 2003.

17. 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) 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.

18. 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 November 28, 1999. Therefore treatment technique violations have been issued for the months of September, October, and November of 2003.

19. 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.

20. 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.

21. On October 10, 2003, the Director, Division of Engineering, Arkansas Department of Health, issued Respondent an Administrative Order, Enforcement Action Number AO03100T0875, 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.

22. Respondent violated that Administrative Order and Sections V and VII of the Regulations and 40 CFR §141.63 by failing to submit any or all the required number of samples for testing of the Maximum Contaminant Level for coliform bacteria during the months of October 2003.

23. Respondent violated that Administrative Order and 40 CFR §141.74 through 40 CFR §141.75 of the National Primary Drinking Water Regulations, (the surface water treatment rule) by failing to monitor entry chlorine residual in the water system during the months of October, and November of 2003.

24. Respondent violated that Administrative Order and Sections IX and X of the Regulations, and 40 CFR §141.70 by failing to provide filtration for the water system during the months of October, and November of 2003.

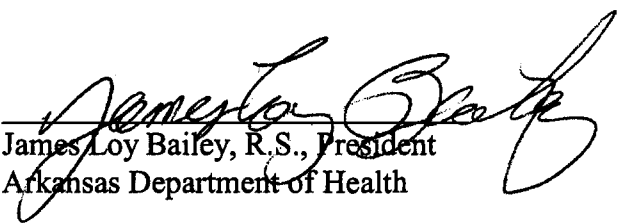
25. The Department conducted a hearing before officials of the Arkansas State Board of Health on February 19, 2004 at 1:30 P.M. in the 5th Floor Board Room of the Arkansas Department of Health, 4815 West Markham, Little Rock, Arkansas. The Respondents were notified of the hearing by Certified Mail, Return Receipt Requested. (pp. 11-12 of the transcript; pp. 49-50 of Board's Exhibit Number 1). The Respondents failed to appear at the hearing. David Quattlebaum, Arkansas Department of Health Enforcement Officer, and Angela Gray, Arkansas Department of Health transient engineer, testified concerning the violations of the Respondent. The Petitioner introduced evidence of the violations in Exhibit Number 1.

ORDER

The Board of Health finds that the Respondent is in violation of the Rules and Regulations. The recommendations of the Administrative Hearings Subcommittee are hereby adopted. The Board imposes the penalty of One Thousand, Eight Hundred Sixty Dollars

(\$1,860.00). However, the penalty is waived since it appears at this time that the business is closed, and the well is shut down. If the business is reopened and the well is still out of compliance, then the penalty will be due. The Respondent must comply with all applicable state and federal laws, rules, and regulations regarding safe drinking water.

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


James Loy Bailey, R.S., President
Arkansas Department of Health