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PHOENIX, ARIZONA 85016-2129

28

ORIGINAL

RICHARD L. SALLQUIST

January 23, 2002

PHONE (602) 224-9222  
FACSIMILE (602) 224-9366  
E-MAIL dick@sd-law.com

HAND-DELIVERED

WS-02987A-00-0618

WS-02987A-99-0583

Patrick Williams  
Arizona Corporation Commission  
1200 W. Washington  
Phoenix, AZ 85007

RECEIVED  
JAN 23 P 3:11  
ARIZONA CORPORATION COMMISSION

Re: Johnson Utilities Company Compliance with Decision No. 63960, dated September 4, 2001, as Amended by Decision No. 64062, dated October 4, 2001.

Dear Mr. Williams:

Regarding your January 18, 2002 letter to George Johnson, the Company believes it has "cure(d) any major or minor violation cited by ADEQ within 90 days from the date of notice..." as required in Decision No. 64062 (the "Decision"), and is in compliance with all matters as of the date of your letter. We do acknowledge that there are other compliance items due under the Decision at future dates.

Your letter indicated that you had requested a notice of compliance by January 14, 2002 regarding the October 16, 2001 Notice of Violation ("NOV") issued by the Arizona Department of Environmental Quality ("ADEQ"). Although the compliance items and dates were clearly set forth in the Decision, neither the Company, nor any of its consultants or lawyers received your letter. Your letter was not disregarded; it was just not received. The Company's substantive response would have been as indicated in this letter. The Company is of the opinion that they complied with the Decision in a timely fashion, before January 14, 2002. If the Company failed at all, it was not in notifying you of its compliance with ADEQ, although the Decision did not require such a notification to Staff.

The October 16, 2001, NOV, a copy of which is attached for your ready reference, itemizes four violations and we shall address those issues serially. It must be noted that in none of the "violations" was there a question of on going public health or safety. The Company recognizes the importance of the regulatory compliance with the mandated paperwork, but as discussed below, ADEQ only issued this NOV in an effort to document the alleged violations and to support the penalties ADEQ wishes to impose upon the Company through a consent order. Please note there has not been a "Cease and Desist Order" issued by ADEQ regarding these or any alleged health or safety violation, since the violations are not on going.

Arizona Corporation Commission  
DOCKETED

JAN 23 2002

51030-00000.1085

DOCKETED BY [Signature]

Item 1A of the NOV is regarding the required approvals associated with the new well at Sun Valley Farms, Unit Five. The Company obtained the Approval of Construction ("AOC") on April 10, 2001 (See attached). Incidentally, this new well is part of the Company's continuing effort to bring that system into compliance. You may recall that at the hearing on the Company's Certificate Application it was established that the prior owner's of that system had been in violation of ADEQ Regulation for over 15 years, with criminal violations in over half of those years. After acquiring the troubled system, the Company has spent over \$300,000 on that system in an attempt to bring it within compliance. This violation was noted by ADEQ after a meeting, which Johnson Utilities initiated, to advise ADEQ that its consulting engineer had failed to properly document the new well, and had commenced pumping that well prior to receiving the required approvals. At that time the Company ceased pumping the well, and did not resume pumping until after receipt of approval from ADEQ.

Regarding Item 1 B and C of the October 16, 2001 NOV, both relate to the new "Ricke Well". Those Items allege failure to obtain the ATC and AOC for that new well. Again, a communications problem with the Company's former engineering consultant resulted in the failure to obtain the ATC prior to construction and the operation of the well, which was operated for a period of two days without an AOC. The ATC was obtained on October 19, 2001, and "cured" that violation. (Please see attached copy). The AOC Application has not been filed with ADEQ because construction has not been completed. Since the well is not being operated, there is no current on going violation.

As to Item I D, during the one month in 2000 that the only operating well able to serve Sun Valley Farms was out of service, the Company did haul water from other wells to serve those customers. On August 23, 2001, the required "logs" were filed with ADEQ for 28 days, but inexplicably the data for the last six days was not available. (Please see attached). As with the other "violations", there were no water quality issues, only a filing omission. Again, the Company does not dismiss the importance of the compliance filing issues, but the NOV was merely the vehicle necessary to set up ADEQ's legal entry into the Consent Order.

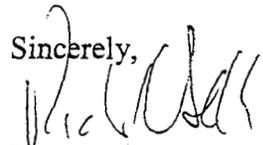
Your letter states that no Consent Order has been entered into by Johnson Utilities. Although this is correct, it is not due to delays by Johnson Utilities. The Company's stipulated form of that Consent Order has been "in process" at ADEQ for several months. However, we do not believe that the Consent itself is a "cure [of] any major or minor violation cited by ADEQ" as ordered by the Decision. The "cure" of all items has been provided to ADEQ in a timely fashion, and no major or minor violations exist today. ADEQ has agreed with the Company that no on-going violations exist under this NOV.

Based upon the above, we believe your letter is incorrect in concluding that the Company has not complied with Decision No. 64062, and further believe that the Certificate of Convenience and Necessity is in full force and effect. We would appreciate your written confirmation to that effect. In the event this explanation does not resolve

your concerns and you do not concur with our position, please let me know as soon as possible.

The Company is very concerned with its regulatory reputation, and although there have been typical issues with regulatory agencies during the Company's startup period, the Company has worked diligently to correct all outstanding issues and legal requirements in a timely fashion. As indicated above, certain of the Company's problems came about due to consultants (who are no longer working with the Company) failing to file the appropriate documents, improperly advising the Company, and in some instances, outright lying to the Company and the regulators about certain matters. The Company believes it now has reorganized its team of consultants so that these incidents will not occur in the future. To that end, I will contact you and other Staff members in the near future to request a meeting so that the Company can "clear the air" by explaining its actions as well as seeking your input as to how the Company's actions and communications can be improved for this long-term relationship. In the event you have any questions regarding any of these matters, please do not hesitate to call.

Sincerely,



Richard L. Sallquist  
For the Firm

cc: Docket Control  
George Johnson  
Paul Gardner  
Mike Denby  
Brian Tompsett



Jane Dee Hull  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

3033 North Central Avenue • Phoenix, Arizona 85012-2809  
(602) 207-2300 • www.adeq.state.az.us



Jacqueline E. Schafer  
Director

DW-02-098  
October 16, 2001

CERTIFIED MAIL  
Return Receipt Requested  
7099-3400-0016-2571-6260

Mr. George Johnson, President  
Johnson Utilities, LLC  
5230 East Shea Boulevard  
Scottsdale, Arizona 85254

Subject: Sun Valley Farms Unit V, Public Water System (PWS) PWS ID #11-116

## NOTICE OF VIOLATION

The Arizona Department of Environmental Quality (ADEQ), Water Quality Division, Water Quality Compliance Section, Drinking Water Compliance and Enforcement Unit has reason to believe that Mr. George Johnson, President, Johnson Utilities Co. as the owner and operator of PWS ID # 11-116, Sun Valley farms Unit V (Water Supplier), located near the City of Queen Creek in Pinal County, Arizona, has violated the Arizona Revised Statutes (A.R.S.) § 49-101 *et seq.* or the applicable rules found in the Arizona Administrative Code (A.A.C.). ADEQ discovered the violations alleged below during review of the facility's file completed on October 5, 2001.

### I. LEGAL AUTHORITY and NATURE OF ALLEGED VIOLATION(S)

<u>Legal Authority</u>	<u>Nature of Violation</u>
A. A.A.C. R18-4-507.	Failure of the Water Supplier to receive an Approval of Construction (AOC) from ADEQ, prior to operating a newly constructed facility.

No documentation exists in the public record at ADEQ that proves the required AOC (project # 20000368) was received by the water supplier prior to March 2, 2001. Johnson Utilities placed a newly constructed facility into service on October 3, 2000, and continued serving water to the Sun Valley Farms Unit V drinking water distribution system until March 27, 2001, a total of 178 days of operation.

Northern Regional Office  
1515 East Cedar Avenue • Suite F • Flagstaff, AZ 86004  
(520) 779-0313

Southern Regional Office  
400 West Congress Street • Suite 433 • Tucson, AZ 85701  
(520) 628-6733

## Notice of Violation

PWS ID# 11-116, Sun Valley Farms Unit V water system

October 16, 2001

- B. A.A.C. R18-4-505. Failure of the water supplier to receive an Approval to Construct (ATC) from ADEQ, prior to starting construction of a modification to an existing facility.

No documentation exists in the public record that proves the required ATC was received by the water supplier prior to the construction of the "Rickie well", (ADWR # 55-570372) the associated line extension and connection to the Sun Valley Farms Unit V distribution system PWS ID # 11-116. Johnson Utilities began construction of the "Rickie well", the associated pipe line (Copper Road water transmission main) and the connection to PWS ID # 11-116, on December 2, 1998 and completed the construction on March 31, 1999, a total of 120 days.

- C. A.A.C. R18-4-507 Failure of the Water Supplier to receive an Approval of Construction (AOC) from ADEQ, prior to operating a newly constructed facility.

No documentation exists in the public record at ADEQ that proves the required AOC (Rickie Well/Cooper Road water transmission main project) was received by the water supplier from ADEQ, prior to March 12, 2001. Johnson Utilities placed a newly constructed facility into service on March 12, 2001, and continued serving water to the Sun Valley Farms Unit V distribution system until March 27, 2001, a total of 15 days of operation.

- D. A.A.C. R18-4-125.F Failure of the water hauler to maintain a log of all on-loading, chlorine disinfectant additions and residual-free chlorine measurements.

Johnson Utilities reported that water was hauled from September 1, 2000, until October 3, 2000. The log provided to ADEQ by Johnson Utilities indicates water hauling was discontinued on September 28, 2000. Therefore, the required log was not maintained for 6 days when water was being hauled to the Sun Valley Farms Unit V water system.

## **II. DOCUMENTING COMPLIANCE**

- A. ~~Within 7 days of the effective date of this notice~~, Johnson Utilities Co., as owner and operator of PWS # 11-116, Sun Valley Farms Unit V water system, shall provide information as follows:

A report relating to the current status of the Ricki Well and the associated pipe line which will connect the Ricki well to the Sun Valley Farms Unit V distribution system. The status report should include a written description of the current status in obtaining, from ADEQ, the required Approval to Construct (ATC) and the Approval of Construction (AOC).

## **III. SUBMITTING COMPLIANCE DOCUMENTATION**

Please send all compliance documentation and any other written correspondence regarding this Notice to ADEQ at the following address:

Bill DePaul, Case Manager  
Arizona Department of Environmental Quality  
Drinking Water Compliance & Enforcement Unit  
3033 North Central Avenue M0501B  
Phoenix, Arizona 85012-2809

## **IV. STATEMENT OF CONSEQUENCES**

- A. The time frames within this Notice for achieving and documenting compliance are firm limits. Failure to achieve or document compliance within the time frames established in this Notice will result in an administrative order or civil action requiring compliance within a reasonable time frame and/or substantial civil penalties. ADEQ will agree to extend the time frames only in a compliance schedule negotiated in the context of an administrative consent order or civil consent judgment.
- B. Achieving compliance does not preclude ADEQ from seeking civil penalties for the violations alleged in this Notice as allowed by law.

DW-02-098  
Notice of Violation  
PWS ID# 11-116, Sun Valley Farms Unit V water system  
October 16, 2001

Page 4

V. **OFFER TO MEET**

ADEQ is willing to meet regarding this Notice. To obtain additional information about this Notice or to schedule a meeting to discuss this Notice, please contact Bill DePaul at 1-800-234-5677, ext 4652 or (602) 207-4652.

  
John Calkins, Manager

Drinking Water Compliance & Enforcement Unit



Bill DePaul, Enforcement Coordinator

Drinking Water Compliance & Enforcement Unit

JAC:WAD:mf3

cc: DWCEU Reading File  
Facility File PWS 11-116  
Bill DePaul, Case Manager

**Certified Mail Return Receipt**

7099-3400-0016-2571-6277

Delator Corporation, Statutory Agent  
Johnson Utilities, L.P.C.  
7201 E. Camelback Road, # 330  
Scottsdale, AZ 85251

**Regular U.S. Mail**

Karen Berry, Field Inspector  
Arizona Department of Environmental Quality  
Water Quality Compliance Section  
Drinking Water Compliance Enforcement Unit  
3033 N. Central, M0501B  
Phoenix, AZ 85012-2809

Reg Glos, Director of Environmental Health  
Pinal County Health Department  
P.O. Box 2517  
Florence, AZ 85232

Steve Olea, Assistant Director  
Arizona Corporation Commission  
Utilities Division  
1200 West Washington  
Phoenix, Arizona 85007



ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY  
CERTIFICATE OF APPROVAL TO CONSTRUCT  
DRINKING WATER WELL FACILITIES

Page 1 Of 2

ADEQ File No: 20010431	
System Name: Ricke Well Dvimp	System Number: 11116
Project Owner: Johnson Utility Company	
Address: 5230 E. Shea Blvd., #200, Scottsdale, AZ 85254	
Project Location: Queen Creek	County: Pinal
Description: INSTALL A NEW WELL (REGISTRATION NO. 55-570372) AND RELATED PIPING AT THE RICKE WELL SITE.	

Approval to construct the above-described facilities as represented in the approved documents on file with the Arizona Department of Environmental Quality is hereby given subject to provisions 1 through 4 contained on page 2 through 2

1. Notice shall be given to the Central Regional office located in Phoenix when construction of the project begins to allow for inspection during construction per A.R.S. §49-104.B.10.
2. The project owner shall retain a professional engineer as soon as possible to provide detailed construction inspections of this project. Upon completion of construction, the engineer shall fill out the Engineer's Certificate of Completion (attached), and forward it to the Regional Office. If all requirements have been completed the Regional Office will issue a Certificate of Approval of Construction.
3. Operation of a newly constructed facility shall not begin until a Certificate of Approval of Construction has been issued by the Department.

The State law, A.R.S. §49-104.B.10, requires that construction of the project must be in accordance with rules and regulations of the Arizona Department of Environmental Quality. This certificate will be void if construction has not started within one year of the approval date. Upon request a written time extension may be granted by the Department.

Reviewed by KNS

By: Aolad Hossein 10/19/01  
Aolad Hossein, P.E., Manager Date  
Technical Engineering Unit  
Water Quality Division

File No: 20010431  
Regional Office: Central  
Owner: Johnson Utility Company  
County Health Department: Pinal  
Engineer: Coon Engineering  
Planning and Zoning/Az Com. Commission  
Engineering Review Database - 88022

**CERTIFICATE OF APPROVAL  
WELL  
ADEQ FILE NO. 20010431  
PAGE 2 OF 2: PROVISION**

4. The fence gates shall be of lockable type.



Jane Dee Hull  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

3033 North Central Avenue • Phoenix, Arizona 85012-2809  
(602) 207-2300 • www.adeq.state.az.us



APR 13 2001  
Jacqueline E. Schafer  
Director

## APPROVAL OF CONSTRUCTION

Project Description: Construct Reverse Osmosis (R/O) Unit water treatment system to remove nitrates and construct new well (DWR #55-380641) to replace collapsed well for Sun Valley Farms water system and

**NOTE:** Approval is contingent upon the operation of the R/O Unit according to the Blending Plan contained in the Approval of Construction issued on July 19, 2000 (ADEQ Project #20000368).

Location: Sun Valley Farms V

Project Owner: Johnson Utilities Co  
Address: 5230 East Shea Blvd  
Scottsdale, Arizona 85254

The Arizona Department of Environmental Quality (ADEQ) hereby issues an Approval of Construction for the above-described facility based on the following provisions of Arizona Administrative Code (A.A.C.) R18-4-307 et seq.

On May 25, 2000 and July 19, 2000, ADEQ issued a Certificate of Approval to Construct for the referenced project.

On March 5, 2001, S. Daniel Cohn, P.E., certified the following:

- a final construction inspection was conducted on March 3, 2001;
- the referenced project was constructed according to the as-built plans and specifications and ADEQ's Certificate of Approval to Construct;

A microbiological sample was collected on June 25, 2000, and analyzed on June 27, 2000, by Aquatic Consulting & Testing Inc., ADHS License No. AZ0003. The sample result was negative for total coliform.

This Approval of Construction authorizes the owner to begin operating the above-described facilities as represented in the approved plan on file with the ADEQ. Be advised that A.A.C. R18-4-124 requires the owner of a public water system to maintain and operate all water production, treatment and distribution facilities in accordance with ADEQ Safe Drinking Water Rules.

WHS:sak

PWS No.: 11-116

ADEQ Projects No.: 20000227 and 20000368  
LIF No.: 22672

  
William E. Schafer, P.E., Manager  
Technical Engineering Unit  
Drinking Water Section

4/10/01  
Date Approved

c: DWCEU Facility File  
TEU Construction File  
CRO Approval of Construction File  
Pinal County Health Department  
Pinal County Planning & Zoning Department  
AZ Corporation Commission  
Engineer

Northern Regional Office  
1515 East Cedar Avenue • Suite F • Flagstaff, AZ 86004  
(520) 779-0313

Southern Regional Office  
400 West Congress Street • Suite 433 • Tucson, AZ 85701  
(520) 626-6733

**LEWIS  
AND  
ROCA**  
LLP  
LAWYERS

Phoenix Office  
40 North Central Avenue  
Phoenix, Arizona 85004-4429  
Facsimile (602) 262-5747  
Telephone (602) 262-5311

Tucson Office  
One South Church Avenue  
Suite 700  
Tucson, Arizona 85701-1611  
Facsimile (520) 622-3088  
Telephone (520) 622-2090

Las Vegas Office  
3993 Howard Hughes Parkway  
Suite 600  
Las Vegas, Nevada 89109  
Facsimile (702) 949-8398  
Telephone (702) 949-8200

Michael L. Denby  
Direct Dial: (602) 262-5383  
Direct Fax: (602) 734-3755  
Internet: MDenby@lrllaw.com  
Admitted in Arizona

**FILE COPY**  
File Number 20123-00001

April 23, 2001

**VIA FACSIMILE**

William DePaul  
Arizona Department of Environmental Quality  
3033 N. Central Avenue  
Phoenix, Arizona 85012-2809

Re: Chlorination Records for Water Hauled to the Sun Valley Farms  
System

Dear Mr. DePaul:

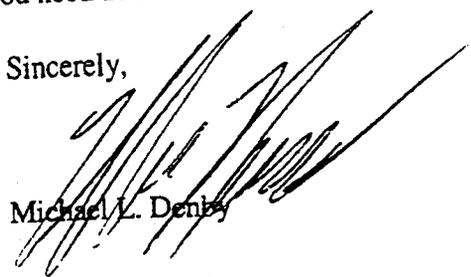
Pursuant to our discussion yesterday afternoon, I asked Johnson Utilities to locate the chlorination records for any water hauled to the Sun Valley Farms Unit V system. Johnson Utilities was able to locate chlorination records for the water shipments and those records are enclosed.

The chlorination records appear to end on September 27, 2000. Although the records appear to end prior to the October 3, 2000 date, there are several reasons why this information may be missing. First, it is my understanding that, although the samples were taken on time, the information was not always input into the log on a daily basis. It is presumed that the employee at the time had taken the samples for the missing six days, but had failed to enter them into the log. Second, if the water shipments ceased shortly after September 27, 2000, the employee may have seen no reason to enter the last few days of samples into the log. Finally, Johnson Utilities has recently moved offices and the person responsible for the water shipments is no longer with the company. Therefore, it is possible that records exist for the final six days, but that they have been misplaced. Johnson Utilities will continue to search for these records and will let ADEQ know as soon as they find something.

Due to the proximity of September 27, 2000 to the October 3, 2000 inspection date, Johnson Utilities remains confident that water was hauled to the Sun Valley system up until the time of the ADEQ inspection.

Please feel free to contact me if you need additional information.

Sincerely,



Michael L. Denby

MLD/mld  
Attachments

**SUN VALLEY  
FARMS 5  
WATER HAUL  
REPORT**

DATE	# OF LOADS	CHLORINE RESIDUAL				
1-Sep		0.56	0.71	0.77	0.70	0.72
2-Sep		0.81	0.68	0.65	0.73	0.58
3-Sep		0.66	0.77	0.64	0.71	0.73
4-Sep		0.58	0.60	0.53	0.58	0.55
5-Sep		0.55	0.61	0.55	0.63	0.58
6-Sep		0.77	0.73	0.75	0.68	0.68
7-Sep		0.47	0.58	0.55	0.69	0.67
8-Sep		0.66	0.51	0.59	0.81	0.79
9-Sep		0.84	0.88	0.77	0.78	
10-Sep		0.48	0.52	0.49	0.61	0.69
11-Sep		0.58	0.63	0.92	0.53	0.52
12-Sep		0.72	0.68	0.79	0.56	
13-Sep		0.42	0.58	0.53	0.69	
14-Sep		0.70	0.77	0.80	0.76	0.79
15-Sep		0.67	0.71	0.71	0.54	
16-Sep		0.91	0.86	0.81	0.88	0.80
17-Sep		0.66	0.66	0.83	0.71	0.77
18-Sep		0.71	0.71	0.78	0.74	0.73
19-Sep		0.61	0.68	0.48	0.55	
20-Sep		0.87	0.79	0.83	0.64	
21-Sep		0.53	0.81	0.73	0.67	
22-Sep		0.90	0.83	0.89	0.79	0.68
23-Sep		0.71	0.57	0.59	0.86	0.73
24-Sep		0.69	0.66	0.59	0.74	0.75
25-Sep		0.50	0.69	0.53	0.74	
26-Sep		0.44	0.61	0.49	0.71	0.55
27-Sep		0.73	0.69	0.54	0.63	0.51
28-Sep						
29-Sep						
30-Sep						

5-7-70 10:45 AM