



BEFORE THE DIRECTOR OF THE ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:
Payson Water Company, Inc. - East Verde Estates System in Payson, Gila County, Arizona
Public Water System Number: AZ0404026

CONSENT ORDER

Docket No. DW-04-24

I. RECITALS

The following Recitals are hereby made and agree to as a substantive part of this Agreement.

- A. Payson Water Co., Inc. ("PWC") is the owner of the East Verde Estates water system located NW of Nellie Drive and Eleanor Drive, Payson, Gila County, Arizona ("EVE System").
B. On or about September 12, 2023, the EVE System was producing water that exceeded the current nitrate Maximum Contaminant Level ("MCL") of 10 mg/L.
C. The Director of Arizona Department of Environmental Quality ("ADEQ") has jurisdiction of this action's subject matter and is authorized to issue this Consent Order pursuant to the Arizona Revised Statutes ("A.R.S.") [§ 49-261, 49-334, 49-354, 49-461, 49-781, 49-812, 49-862, 49-923, 49-964, or 49-1013], § 41-1004, and § 41-1092.07(F)(5).
D. It is frequently difficult to pinpoint the specific sources of nitrate in drinking water supplies because there are many potential sources of contamination. High levels of nitrate in water supplies can result from runoff or leakage from fertilized soil, wastewater, landfills, animal feedlots, urban drainage or leaking septic systems. PWC had already begun preliminary plans for treatment for nitrate and possibly PFAS when the incident giving rise to this Consent Order occurred. ADEQ has not seen any evidence that the recent exceedance for nitrates in the EVE System is due in whole or in part to any acts or omissions of PWC.

Initials JW

- E. This Consent Order contains the full terms of the agreement between PWC and ADEQ related to the exceedance of the nitrate MCL on September 12, 2023.

II. AGENCY DETERMINATIONS AND FINDINGS

The Director makes the following Agency Determinations and Findings that PWC has violated a requirement of A.R.S., the Arizona Administrative Code (“A.A.C.”), or an ADEQ issued permit, as described below:

A. **40 CFR § 141.62/A.A.C. R14-4-109**

Distribution of water in excess of the MCL for nitrate.

According to ADEQ records, analytical results submitted by EVE System indicated an exceedance of the nitrate MCL of 10 mg/L. The sample results submitted for EPDS001 and EPDS002 indicated exceedances on the following dates:

1. A 9/12/2023 sample indicated a nitrate level of 12.1 mg/L for EPDS001.
2. A 9/12/2023 sample indicated a nitrate level of 12.5 mg/L for EPDS002.

The MCL for nitrate is 10 mg/L.

B. **A.A.C. R18-4-211(B)(7)**

Failure of a public water system to notify ADEQ by telephone or facsimile within 24 hours after the occurrence of an emergency.

EVE System was notified by Legend Technical Services, Inc. on 9/19/2023 about the nitrate exceedance via an excursion alert; however, the exceedance was not reported to ADEQ until 10/10/2023.

C. **CFR 141.202 (A)(2) incorporated by reference in A.A.C. R18-4-119**

Failure to issue a Tier 1 Public Notice for a nitrate MCL exceedance within 24 hours.

EVE System was notified by Legend Technical Services, Inc. on 9/19/2023 about the nitrate exceedance via an excursion alert; however, it was not public noticed until 10/10/2023.

III. COMPLIANCE SCHEDULE

ADEQ has established the compliance requirements. ADEQ and PWC have agreed on the completion deadlines. PWC agrees to comply with the provisions of this Consent Order as follows:

- A. Within forty-five (45) calendar days from the effective date of this Order, PWC will inform ADEQ of the Best Available Technology (“BAT”) chosen for implementation to achieve compliance with the nitrate MCL.
- B. If an application has not yet been submitted, within ninety (90) calendar days from the effective date of this Consent Order, PWC shall attend a pre-application meeting to discuss the upcoming submittal of an Approval to Construct (“ATC”). To schedule the pre-application meeting, email the Water Quality Division Drinking Water Engineering Review Unit at WQD_DWSER@azdeq.gov and the Drinking Water Inspections and Compliance Unit case manager at Anene.Emeka@azdeq.gov. To facilitate scheduling the meeting in a timely manner, please include "Consent Order Pre-Application Meeting" in the subject line. Please bring all final application components outlined in the ATC.
- C. Within one hundred twenty (120) calendar days from effective date of this Consent Order, PWC shall submit a complete application package with applicable fees for an ATC, required by A.A.C. R18-5-505, for the BAT identified in section III paragraph A of this order, ADEQ will review the ATC application and shall provide written comments, deficiencies noted in review, or notification of approval to PWC. PWC shall respond to any deficiencies in the ATC application noted by ADEQ in the timeframes prescribed by ADEQ.
- D. Within three hundred (300) calendar days after ADEQ issues the ATC, PWC shall complete construction and submit an administratively complete application for an Approval of Construction (“AOC”) for the BAT identified in section III paragraph A of this Order, required by A.A.C. R18-5-507. ADEQ will review the AOC application and shall provide written comments, deficiencies noted in review, or notification of approval to PWC. PWC shall respond to any deficiencies in the AOC application noted by ADEQ in the timeframes prescribed by ADEQ.
- E. Within thirty (30) calendar days from the time ADEQ approves the AOC, PWC shall submit start up analytical results demonstrating that the BAT to address the

nitrate MCL is working effectively, and that PWC is serving water below the MCL for nitrate.

- F. Within thirty (30) calendar days from the effective date of this Order, PWC will submit water quality data for its EVE System online via the Compliance Monitoring Data Portal (CMDP) to ensure that compliance data is provided to ADEQ in a timely fashion. Participating laboratories include the following: Legend Technical Serv of AZ Phx Lab (AZ0004) and Eurofins Eaton Analytical Inc (AZ0778).
- G. Within ninety (90) calendar days from the effective date of this Order, nitrate sampling shall be conducted quarterly. PWC shall remain under order until quarterly monitoring results for nitrates demonstrate that the nitrate concentration is below the 10 mg/L MCL, for two consecutive quarters, in accordance with 40 CFR § 141.62. PWC must ensure that the Tier 1 Public Notice for a nitrate maximum contaminant level is issued within 24 hours of laboratory notification.
- H. Within thirty (30) calendar days from the effective date of this Order, PWC shall submit to ADEQ a plan to provide all customers of EVE System with an alternative source of safe drinking water. An alternate source of water is a source of water that meets drinking water standards and is not the typical source of water that a drinking water system delivers to its customers. This can take many forms, including: bottled water, a water dispensing kiosk (often with treatment), water delivery service or hauling, and interconnect with an adjacent Public Water System. See Attachment A: Alternate Source of Water for a Public Water System Reference Guide. ADEQ will review the alternate source plan and shall provide written comments, deficiencies noted in review, or notification of approval to PWC. PWC shall correct any deficiencies in the alternate source plan noted by ADEQ in the timeframes prescribed by ADEQ.
- I. Within fourteen (14) calendar days from ADEQ's approval of the alternate source plan, PWC shall implement the approved plan and shall submit notification to ADEQ.

IV. STATUS REPORTS

- A. In the event PWC has not completed construction within 180 calendar days of ADEQ's issuance of the ATC as contemplated in Section III herein, PWC agrees to submit a written status report to ADEQ, and to continue to submit such reports every 60 calendar days thereafter until this Consent Order terminates. Each written status report must:
1. Describe what measures have been taken under Section III of this Consent Order;
 2. Include notification of any event that occurs that may delay the performance of any work under this Consent Order. Any notification shall include a written explanation and description of the reasons for the delay in performance; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; and the additional reasonable amount of time necessary to complete the obligations in the Consent Order. A request for a Consent Order Amendment must be clearly identified in any communication with ADEQ. If ADEQ agrees that additional time is necessary and acceptable, ADEQ will contact PWC to discuss amending this Consent Order.
 3. Certify when compliance with the requirements of Section III of this Order are expected to be achieved;
 4. Be accompanied by evidence showing compliance, as appropriate. Evidence showing compliance can include documents, photographs, or copies of any other supporting information that PWC deems necessary.
- B. PWC agrees to verbal updates at a minimum of every 30 days.
- C. ADEQ will review the status reports and inform PWC in writing of any disputes. PWC must incorporate all required modifications, changes or other alterations that ADEQ requests within a reasonable time specified by ADEQ.

V. COMPLIANCE WITH OTHER LAWS

- A. This Consent Order does not include issues regarding releases, contamination, sources, operations, facilities or processes not expressly stated by the terms of this Consent Order and does not interfere with the rights that the State of Arizona or PWC have under any federal or Arizona environmental statutes and rules regarding such issues.
- B. This Consent Order is not a permit of any kind, does not modify any permit of any kind, nor is it an agreement to issue a permit of any kind under federal, state or local law.
- C. This Consent Order does not alter, modify or revoke federal, state, or local law.
- D. This Consent Order is not a defense to any action to enforce any such permits or laws.
- E. PWC has an obligation to:
 - 1. Apply for, obtain, and comply with all applicable permits.
 - 2. Comply with federal, state or local law.
 - 3. Comply with the terms of this Consent Order.

VI. SITE ACCESS

Upon presenting credentials to authorized personnel on duty, ADEQ may at any time enter the premises at the EVE System Facility in order to observe and monitor compliance with the provisions of this Consent Order. This right of entry is in addition to ADEQ's rights under applicable law.

VII. CORRESPONDENCE

- A. PWC shall send all correspondence by email, mail, or hand delivery, such as documents, materials, plans, notices, or other items under this Consent Order, to:

Arizona Department of Environmental Quality
Water Quality Division
Attention: Emeka Anene, Case Manager
1110 West Washington Street
Phoenix, Arizona 85007-2935
Telephone: (602) 771-4227
Email: Anene.Emeka@azdeq.gov

- B. Any submission to ADEQ is treated as submitted when ADEQ receives it.

- C. ADEQ shall send all correspondence by email, mail, or hand delivery under this Consent Order to:

Jason Williamson
c/o JW Water Holdings LLC
7581 E Academy Blvd Suite 229
Denver, CO 80230
Email: jw@jwwater.net

VIII. RESERVATIONS OF RIGHTS, IMPACT OF CONSENT; WAIVER OF APPEAL.

- A. ADEQ agrees to this Consent Order based solely upon currently available information. If additional information is discovered, which indicates that the actions under this Consent Order are or will be inadequate to protect human health, safety, or the environment, or to conform with applicable federal or state laws, ADEQ has the right to require further action, including, without limitation:
1. Seek civil penalties for any and all violations of A.R.S. Title 49 or the applicable rules, occurring before the effective date of this Consent Order;
 2. Disapprove PWC 's work that fails to comply with this Consent Order;
 3. Take enforcement action for any and all violations of this Consent Order; and,
 4. Take enforcement action for any and all violations of A.R.S. Title 49 or the applicable rules, occurring after the effective date of this Consent Order.
- B. PWC voluntarily agrees to this Consent Order based only on the terms contained in the Consent Order and PWC understands that agreeing to this Consent Order does not resolve any liability that it may have for civil penalties for a violation of any state or federal environmental law. Both parties acknowledge and agree that agreeing to this Consent Order does not mean PWC agrees with the validity of any Agency Determinations and Findings set forth herein, admits to any civil or criminal liability, or waives any right or assertion of any defense available under applicable law. PWC also agrees not to dispute the validity or terms of this Consent Order in any future proceeding to enforce the terms of this Consent Order, provided,

however, PWC retains the right to dispute the validity of any Agency Determinations and Findings contained in this Consent Order in any proceeding other than a proceeding to enforce the terms of this Consent Order.

- C. As to this Consent Order, PWC waives all rights to appeal this Order under A.R.S. Title 41, pursuant to the ability to waive this right based on A.R.S. § 41-1004.

IX. VIOLATIONS OF ORDER

If PWC fails to comply with this Consent Order, PWC can be liable for other administrative or judicial sanctions, including civil penalties under A.R.S. § 49-354, the same as if for a violation of any State or Federal environmental law.

X. SEVERABILITY

If a court of law declares that any provision of this Consent Order is invalid or unenforceable, all other provisions of this Consent Order remain in full force and effect.

XI. AMENDMENTS

Any amendments to this Consent Order must be in writing and PWC and ADEQ both must approve the amendments. Upon a showing that an event has occurred that may reasonably delay performance of any work under this Consent Order, ADEQ may amend the deadlines in this Consent Order.

XII. EFFECTIVE DATE

The effective date of this Consent Order is the date this Consent Order is signed by ADEQ and PWC. If ADEQ and PWC sign on different dates, the later date is the effective date of this Consent Order.

XIII. PARTIES BOUND

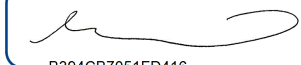
Jason Williamson is a representative of PWC and certifies that he is fully authorized to execute this Consent Order on behalf of PWC and to legally bind PWC to this Consent Order. PWC is responsible, and will remain responsible, for carrying out all activities required under this Consent Order, regardless of change in ownership, corporate status, or partnership status, or transfer of assets or real or personal property relating to the subject of this Consent Order, unless:

- A. The Party to whom the right, title, or interest has been sold, transferred, or assigned agrees in writing to fulfill the obligations of this Consent Order; and,
- B. ADEQ approves the provisions transferring the obligation.

XIV. TERMINATION

- A. ADEQ will notify PWC in writing that this Consent Order is ended when ADEQ determines that PWC has demonstrated that all of the terms of this Consent Order have been completed or satisfied.
- B. If ADEQ denies PWC 's request for termination, ADEQ will notify PWC in writing and describe which terms of the Consent Order have not been completed to ADEQ's satisfaction.
- C. ADEQ reserves the right to terminate this Consent Order unilaterally at any time for any reason but will notify PWC in writing as to the reason(s) for termination.

Signed on 2/20/2024.

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Randall Matas, Deputy Director
Water Quality Division
Arizona Department of Environmental Quality

CONSENT TO ORDER

Jason Williamson, on behalf of Payson Water Co., Inc. acknowledges that he has read all of the Consent Order. Payson Water Co., Inc. agrees:

- A. With the statements made,
- B. To this Consent Order with the Arizona Department of Environmental Quality, and,
- C. That Payson Water Co., Inc. will comply with Consent Order and waive any right to appeal.

Signed on Feb. 20, 2024.



Jason Williamson
President, Payson Water Co., Inc.

I HEREBY CERTIFY that on 2/20/2024, the **ORIGINAL** was filed in the facility file located at:

Arizona Department of Environmental Quality
1110 W Washington St
Phoenix, AZ 85007-2935

I HEREBY CERTIFY that on 2/20/2024, a true and correct copy was emailed, if provided, or sent via USPS regular mail to:

Payson Water Co., Inc.
Attention: Jason Williamson, President
c/o JW Water Holdings, LLC 7581 E. Academy Blvd. Suite 229
Denver, CO 80230
(720) 949-1384
jw@jwwater.net

I HEREBY CERTIFY that on Feb. 20, 2024, a true and correct copy was emailed, if provided, or sent via USPS regular mail to:

Arizona Department of Environmental Quality
Office of Administrative Counsel

Curtis Cox, Chief Counsel, Environmental Enforcement Section, Office of the Attorney General
Karen Shanafelt, Unit Manager, Drinking Water Inspections and Compliance Unit
Emeka Anene, Case Manager, Drinking Water Inspections and Compliance Unit

Gila County Health & Emergency Services
Health & Emergency Management
Attention: Josh Beck, Director
5515 S. Apache Ave., Suite 100
Globe AZ. 85501
Email: envhealth@gilacountyaz.gov

Christopher Chen
Enforcement Division - SDWA/FIFRA Section
U.S. EPA Region 9
75 Hawthorne St
San Francisco, CA 94105
Phone: (415) 972-3442
Email: chen.christopher@epa.gov

DocuSigned by:

Veronica Cabral

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Hearing Administrator

ATTACHMENT A:

Alternate Source of Water for a Public Water System

What is an alternate source of water?

An alternate source of water is a source of water that meets drinking water standards and is not the typical source of water that a drinking water system delivers to its customers. This can take many forms, including:

- Bottled water
- A water dispensing kiosk (often with treatment)
- Water delivery service or hauling
- Interconnect with an adjacent Public Water System

Why is an alternate source of water appropriate?

The Safe Drinking Water Act sets health-based standards for contaminants that pose a risk to human health. Public Water Systems (PWS) that are serving drinking water exceeding any standard are risking the health of their customers. Providing an alternate source of water allows the water system to continue serving water to their customers without putting public health at risk.

When is providing an alternate source appropriate?

To avoid health impacts, PWSs that are exceeding drinking water standards and are not able to resolve the exceedance within 90 days (30 days for the nitrate/nitrite standards or other acute contaminants) should provide an alternate drinking water source to its customers. If a contaminant level is more than twice the standard, shorter timelines may be needed. These timelines may be adjusted based on contamination levels, community type, or threat to human health.

What is expected to meet the alternate source requirement?

Option Description	Additional Sampling Required	Gallons Per Person Recommended *depending on contaminant	ADEQ Permit Required
Bottled water delivery	No A.A.C. R18-4-223	7-15 per week*	No
Voucher system to purchase water from a retail store	No	7-15 per week*	No
Water dispensing kiosk with treatment	Yes A.A.C. R18-4-216	7-15 per week*	No
Hauled water vending machine	Yes A.A.C. R18-4-214 and A.A.C. R18-4-216	7-15 per week*	No
Hauling water to storage tank	residual chlorine only A.A.C. R18-4-214	100 per day or historic average daily flow	No

Hauling water with blending plan	Yes A.A.C. R18-4-214	100 per day or historic average daily flow	Yes A.A.C. R18-5-505
Emergency interconnecting to another PWS	No	7-15 per week*	Yes A.A.C. R18-5-505

How will these expectations be documented?

ADEQ expects the alternate source requirements will be developed during the negotiation of a bilateral agreement called a Consent Order, where both ADEQ and the PWS negotiate the terms or may be prescribed if an agreement cannot be reached.

What legal authority is applicable to this action?

When the Department believes that a person or PWS is creating an actual or potential endangerment to the public health because of violations of drinking water standards, it has the authority to work with the Attorney General’s Office to request a preliminary or permanent injunction from a court providing relief necessary to protect the public health, which could include an order that requires a PWS to provide an alternate source of water when the water being served is exceeding MCLs. A.R.S. § 49-354(J).