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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

FILED  
EPA REGION VIII  
HEARING CLERK

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IN THE MATTER OF	)	
	)	
Tamarack II LLC,	)	
	)	Docket No. SDWA-08-2011-0022
	)	
Respondent	)	<b>MOTION FOR</b>
	)	<b>LEAVE TO AMEND COMPLAINT</b>
	)	<b>AND FOR EXTENSION OF</b>
	)	<b>DEADLINES</b>
Proceeding under § 1414(g)	)	
of the Safe Drinking Water Act,	)	
42 U.S.C. § 300g-3(g)	)	

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The United States Environmental Protection Agency (EPA) requests that the Regional Judicial Officer (RJO) (1) grant the EPA leave to amend its complaint in this matter and (2) extend the upcoming deadlines for filing dispositive motions and contacting the Regional Hearing Clerk to establish a date and time for a pre-hearing conference.

The purpose of amending the complaint would be to add two new counts: (1) failure to monitor the drinking water at the Fazooli's Family Italian Water System for coliform, in violation of Administrative Order No. SDWA-08-2010-0072, which EPA issued to the Respondent Tamarack II, LLC on September 7, 2010, and (2) failure to notify the State of Montana and the EPA of the failure to monitor for coliform, also in violation of Administrative Order No. SDWA-08-2010-0072.

A copy of the proposed amended complaint is being filed with this motion.

In order to allow for the Respondent to answer the amended complaint, the EPA also requests that the deadlines for filing dispositive motions and for the parties to contact the Regional Hearing Clerk to establish a date and time for a pre-hearing conference be extended to no later than 60 days and 75 days, respectively, after the EPA files its amended complaint.

Dated this 10th day of August, 2011.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,

Complainant

Margaret J. (Peggy) Livingston

Margaret J. (Peggy) Livingston  
Enforcement Attorney  
Office of Enforcement, Compliance  
and Environmental Justice  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202  
Telephone Number: (303) 312-6858  
Facsimile Number: (303) 312-7202

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and a copy of the foregoing Motion for Leave to File Amended Complaint and for Extension of Deadlines (with the proposed amended complaint and proposed order granting the motion) were hand-carried to the Regional Hearing Clerk, EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado, that one copy of the same was hand carried to the Regional Judicial Officer, EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado, and that one copy of the same was sent to the each of following by CERTIFIED MAIL/RETURN RECEIPT REQUESTED:

CT Corporation System  
Registered Agent for Tamarack II LLC  
P.O. Box 7054  
Ste 1650  
Billings, MT 59103-7054  
Certified Mail # 7009-3410-0000-2597-6230

Josh Townsley, Operator  
Fazooli's Family Italian  
105 Blacktail Road  
Lakeside, MT 59922  
Certified Mail # 7009-3410-0000-2597-6247

Date: 8/10/2011

By: Judith M. McTernan  
Judith McTernan

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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IN THE MATTER OF	)
	)
Tamarack II LLC,	)
	) Docket No. SDWA-08-2011-0022
	)
Respondent	) <b>FIRST AMENDED COMPLAINT</b>
	) <b>AND NOTICE OF</b>
	) <b>OPPORTUNITY FOR HEARING</b>
Proceeding under § 1414(g)	)
of the Safe Drinking Water Act,	)
42 U.S.C. § 300g-3(g)	)

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**FIRST AMENDED COMPLAINT**

This civil administrative First Amended Complaint and Notice of Opportunity for Hearing (amended complaint) is issued under the authority vested in the United States Environmental Protection Agency (EPA) by § 1414(g)(3) of the Safe Drinking Water Act (SDWA or Act), 42 U.S.C. § 300g-3(g)(3). Section 1414(g)(3) of the SDWA authorizes EPA to assess an administrative civil penalty against any person who violates, or fails or refuses to comply with, an order issued under § 1414(g)(1) of the SDWA.

The complainant in this action is the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, who has been duly authorized to institute this action. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22 (Consolidated Rules of Practice), a copy of which was attached to the original complaint in this matter as Complainant's Exhibit 1.

## GENERAL ALLEGATIONS

The following general allegations apply to each count of this amended complaint:

1. Tamarack II LLC (Respondent) is a Montana corporation and a “person” as defined in § 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.
2. Respondent owns and/or operates a system, the Fazooli’s Family Italian Water System (the System), located in Flathead County, Montana, for the provision to the public of piped water for human consumption.
3. The source of the System’s water is ground water consisting of one well. The System serves an average of approximately 100 individuals daily at least 60 days out of the year.
4. Because the System serves at least 25 individuals daily, it is a “public water system” as defined in § 1401(4) of the SDWA, 42 U.S.C. § 300f(4), and 40 C.F.R. § 141.2. It is also a “transient, non-community water system” as defined in 40 C.F.R. § 141.2.
5. As an owner and/or operator of a public water system, Respondent is a “supplier of water” as defined in § 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. Respondent is therefore subject to the requirements of part B of the SDWA, 42 U.S.C. § 300g et seq., and 40 C.F.R. part 141 (also known as the National Primary Drinking Water Regulations or NPDWRs).

6. The Montana Department of Environmental Quality (MDEQ or State) has primary enforcement authority for the public water supply protection provisions of the SDWA in Montana.
7. As part of an applicable state program that EPA has approved pursuant to § 1413 of the Act, 42 U.S.C. § 300g-2, § 17.38.215 of the Administrative Rules of Montana (ARM) is an “applicable requirement” as defined in § 1414(i) of the Act, 42 U.S.C. § 300g-3(i).
8. As regulations that EPA promulgated under § 1412 of the SDWA, 42 U.S.C. § 300g-1, the NPDWRs are “applicable requirements” as defined in § 1414(i) of the SDWA, 42 U.S.C. § 300g-3(i).
9. On October 22, 2009, EPA issued a Notice of Violation (NOV) pursuant to § 1414(a) of the SDWA, 42 U.S.C. § 300g-3(a), to MDEQ regarding violations of the NPDWRs and the ARM at the System. MDEQ elected not to commence an enforcement action concerning the violations cited in the NOV within the thirty-day time-frame set forth in § 1414(a) of the SDWA, 42 U.S.C. § 300g-3(a).
10. On November 19, 2009, in accordance with § 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), EPA issued Administrative Order Docket No. SDWA-08-2010-0003 (the First Order) to Bear Harbour Limited Partnership (Bear Harbour), then owner and/or operator of the system, citing various violations of the NPDWRs, including, but not limited to
  - exceeding the maximum contaminant level (MCL) for nitrate, in violation of 40 C.F.R. § 141.62(b);

- failing to monitor quarterly for nitrate, in violation of 40 C.F.R. § 141.23(g);
  - failing to conduct confirmation samples for nitrate, in violation of 40 C.F.R. § 141.23(f)(2);
  - failing to monitor for total coliform bacteria, in violation of ARM § 17.38.215(1)(b);
  - failing to notify the public of various violations of the previously mentioned regulations, in violation of 40 C.F.R. § 141.201; and
  - failing to notify the MDEQ of the violations cited in the Order, in violation of 40 C.F.R. §§ 141.21(g)(2) and 141.31(b).
11. The First Order directed Bear Harbour, among other things,
- to provide EPA within 30 days with a compliance plan and schedule for the system to come into compliance with the nitrate MCL at 40 C.F.R. § 141.62(b);
  - to comply with all confirmation sampling requirements in 40 C.F.R. § 141.23(f)(2); and
  - to notify the public within 30 days of certain violations, as required by 40 C.F.R. part 141, subpart Q.
12. By letter dated January 27, 2010, EPA notified Bear Harbour that it had violated the Order by failing to submit a compliance plan and schedule for bringing the system into compliance with the nitrate MCL and by failing to provide public notice of certain violations cited in the First Order.

13. By letter dated May 11, 2010, EPA notified Bear Harbour that it had violated the First Order by not having submitted a compliance plan and schedule for bringing the system into compliance with the nitrate MCL (notwithstanding a March 4, 2010, conversation between EPA and the system's operator about this requirement), by not having taken confirmation samples for nitrate, and by not having notified the public of its violations.
14. On September 7, 2010, EPA issued Administrative Order No. SDWA-08-2010-0072 (the Second Order) to Respondent. The cover letter accompanying the Second Order stated that on August 19, 2010, EPA had become aware that Respondent had assumed ownership of the system, and that despite multiple notifications to the system and its registered agent, EPA had not been notified of the change in ownership. The Second Order directed Respondent to take the same actions that the First Order had directed Bear Harbour to take. The only difference was that the deadlines for submitting the compliance plan and schedule and for providing public notice were 14 days, not 30 days, after Respondent's receipt.
15. Respondent received the Second Order on September 9, 2010.
16. A copy of the Second Order was attached to the original complaint in this matter as Complainant's Exhibit 2.
17. By letter dated November 3, 2010, EPA notified Respondent that it had failed to comply with the requirements of the Second Order by failing to have submitted a plan and schedule for compliance that met the requirements of the Second Order

and failing to have provided EPA with a copy of the public notice that the Second Order had directed Respondent to provide.

18. A copy of EPA's November 3, 2010, letter was attached to the original complaint in this matter as Complainant's Exhibit 3.
19. On November 19, 2010, the MDEQ notified Respondent that a plan that Respondent had submitted to MDEQ in response to the Second Order was incomplete.

### **COUNTS OF VIOLATION**

#### **Count I**

#### **Failure to Submit Compliance Plan and Schedule**

1. Paragraph 15 of the Second Order directed Respondent to provide EPA with a compliance plan and schedule for the system to come into compliance with the nitrate MCL at 40 C.F.R. § 141.62(b). The plan was to have been submitted within 14 days of Respondent's receipt of the Second Order. The plan was to have included proposed system modifications, estimated costs of modifications, and a schedule for completion of the project and compliance with the MCL. The proposed schedule was to have included specific milestone dates and a final compliance date, which was to have been within 6 months from the EPA's approval of the plan.
2. Respondent violated the Second Order because it did not submit a compliance plan and schedule meeting the requirements of that order. Although Respondent did submit a plan to EPA, it did not include an estimated cost for system

modifications, and a schedule with milestone dates and a final date for project completion. It was also submitted on October 1, 2010, after the deadline of September 23, 2010.

**Count II**  
**Failure to Provide Public Notice of Violations**

1. Paragraph 22 of the Second Order directed Respondent to provide public notice within fourteen days of receiving the Second Order (i.e., by September 23, 2010) of the violations cited in Paragraphs 8-11 of the Second Order.
2. Respondents violated the Second Order by failing to provide public notice of the violations mentioned above at any time after receiving the Second Order.

**Count III**  
**Failure to Monitor for Coliform**

1. Paragraph 21 of the Second Order directed Respondent to monitor the System's water monthly for total coliform bacteria.
2. Respondent violated the Second Order by failing to monitor the System's water for total coliform bacteria during May of 2011.

**Count IV**  
**Failure to Report Coliform Monitoring Violation**

1. Paragraph 21 of the Second Order directed Respondent to report any violation of total coliform monitoring requirements to EPA and the State within ten days of discovery.

2. Respondent violated the Second Order by failing to report to EPA and the State by June 10, 2011, that it had failed monitor the System's water for total coliform bacteria during May of 2011.

### **PROPOSED ADMINISTRATIVE CIVIL PENALTY**

This amended complaint proposes that EPA assess an administrative penalty against Respondent. EPA is authorized to assess an administrative penalty according to § 1414(g)(3) of the SDWA, 42 U.S.C. § 300g-3(g)(3), for violation of an administrative order issued under § 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g). As adjusted for inflation by 40 C.F.R. part 19, the amount may be up to \$27,500 for violations occurring after March 15, 2004 through January 12, 2009, and \$32,500 for violations occurring after January 12, 2009.

EPA has determined the proposed penalty amount in accordance with § 1414 of the SDWA, 42 U.S.C. § 300g-3. Taking into account the seriousness of the violations, the population at risk, and other appropriate factors, including Respondent's degree of willfulness and/or negligence, history of noncompliance, if any, and ability to pay, as known to EPA at this time, EPA proposes to assess an administrative civil penalty of \$5,000 against Respondent for its violations of the Second Order.

### **OPPORTUNITY TO REQUEST A HEARING**

As provided in § 1414(g)(3)(B) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(B), Respondent has the right to request a public hearing on this matter.

If Respondent wishes to request a hearing, to contest any material fact alleged in this amended complaint, to contest the appropriateness of the proposed penalty, and/or to assert that it is entitled to judgment as a matter of law, Respondent must file a written answer in accordance

with 40 C.F.R. §§ 22.14(a), 22.15, and 22.42 within twenty (20) calendar days after this amended complaint is served. If this complaint is served by mail, Respondent has an additional five (5) calendar days, pursuant to 40 C.F.R. § 22.7(c), in which to file its answer.

If Respondent requests a hearing in its answer, the procedures provided in 40 C.F.R. part 22, subpart I, will apply to the proceedings, and the Regional Judicial Officer will preside. However, Respondent has the right under the SDWA to elect a hearing on the record in accordance with § 554 of the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq. (APA). To exercise this right, the answer must include a specific request for a hearing on the record in accordance with 5 U.S.C. § 554. Upon such request, the Regional Hearing Clerk will re-title the pleadings and documents in the record as necessary. (See 40 C.F.R. § 22.42.) Pursuant to such a request, subpart I will not apply to the proceedings and an Administrative Law Judge from Washington, D.C., will preside.

The answer must be in writing. An original and one copy of the answer must be sent to the following:

Tina Artemis  
Region 8 Hearing Clerk (8RC)  
U.S. Environmental Protection Agency  
1595 Wynkoop Street  
Denver, CO 80202

A copy of the answer must also be sent to the Enforcement Attorney named at the end of this amended complaint.

**FAILURE TO FILE AN ANSWER**

**If Respondent does not file a written answer with the Regional Hearing Clerk at the address above within twenty (20) days of receipt of this amended complaint, Respondent**

**may be subject to a default order requiring payment of the full penalty proposed in this amended complaint.** EPA may obtain a default order according to 40 C.F.R. § 22.17.

#### **REQUIREMENTS FOR ANSWER**

The answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this amended complaint with regard to which Respondent has any knowledge. The answer must state (1) any circumstances or arguments which Respondent alleges to constitute grounds of defense, (2) any facts Respondent disputes, (3) whether and on what basis Respondent opposes the proposed penalty, and (4) whether Respondent request a hearing. **Failure to admit, deny, or explain any material factual allegation contained in this amended complaint shall constitute an admission of that allegation.**

#### **QUICK RESOLUTION**

Respondent may resolve this action by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. If such payment is made within twenty (20) calendar days of receipt of this amended complaint, Respondent need not file an answer. Alternatively, as allowed by 40 C.F.R. § 22.18(a)(2), Respondent may file a statement with the Regional Hearing Clerk within thirty (30) days of receipt of the amended complaint agreeing to pay the full assessed penalty and may make the penalty payment within sixty (60) days of receiving the amended complaint.

If made by check, the payment shall be made by remitting a cashier's or certified check, including the name and docket number of the case, referencing the Docket Number given on the first page of this complaint and payable to the Environmental Protection Agency.

**The check shall be sent to EPA in one of the following ways:**

**By first class  
US postal service mail:** US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

**By Federal Express, Airborne,  
or other commercial carrier:** US Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

The payment may also be made by wire transfer or on-line via the internet, as follows:

**Wire transfers:** Federal Reserve Bank of New York  
ABA = 021030004, Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read  
“D68010727 Environmental Protection Agency “

**On-Line Payment:** WWW.PAY.GOV  
Enter sfo 1.1 in the search field  
Open form and complete required fields.

A copy of the check, wire transfer, or record of on-line payment shall be simultaneously sent to:

Kimberly Pardue Welch (8ENF-W)  
Technical Enforcement Program  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

Payment of the penalty in this manner does not relieve Respondent of its obligation to comply with the requirements of the SDWA and its implementing regulations. Payment of the penalty pursuant to 40 C.F.R. § 22.18 shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent’s right to a hearing on this matter.

## SETTLEMENT NEGOTIATIONS

EPA encourages exploring settlement possibilities through informal settlement negotiations. Even if Respondent requests, schedules, or participates in settlement discussions, it must still file an answer by the deadline above to avoid a default order. The parties may simultaneously pursue settlement and proceed with administrative litigation. If a settlement is reached, its terms shall be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Presiding Officer. Any request for settlement negotiations should be directed to the Enforcement Attorney named below.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2011.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,

Complainant

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Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

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Margaret J. (Peggy) Livingston  
Enforcement Attorney  
Office of Enforcement, Compliance  
and Environmental Justice  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202  
Telephone Number: (303) 312-6858  
Facsimile Number: (303) 312-7202

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and a copy of the FIRST AMENDED COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING with all Exhibits were hand-carried to the Regional Hearing Clerk, EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was sent to the following by CERTIFIED MAIL/RETURN RECEIPT REQUESTED:

CT Corporation System  
Registered Agent for Tamarack II LLC  
P.O. Box 7054  
Ste 1650  
Billings, MT 59103-7054  
Certified Mail # \_\_\_\_\_

Josh Townsley, Operator  
Fazooli's Family Italian  
105 Blacktail Road  
Lakeside, MT 59922  
Certified Mail # \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Judith McTernan

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

IN THE MATTER OF	)	
	)	
Tamarack II LLC,	)	
	)	Docket No. SDWA-08-2011-0022
	)	
Respondent	)	<b>ORDER GRANTING</b>
	)	<b>LEAVE TO AMEND COMPLAINT</b>
	)	<b>AND EXTENDING</b>
	)	<b>DEADLINES</b>
Proceeding under § 1414(g)	)	
of the Safe Drinking Water Act,	)	
42 U.S.C. § 300g-3(g)	)	

The United States Environmental Protection Agency (EPA) has requested that the Regional Judicial Officer (RJO) (1) grant EPA leave to amend its complaint in this matter and (2) extend the upcoming deadlines for filing dispositive motions and contacting the Regional Hearing Clerk to establish a date and time for a pre-hearing conference.

Having considered the grounds for this motion, the court hereby grants it. The EPA may file an amended complaint within 30 days of the date of this order. The deadline for the parties to file dispositive motions is 60 days after EPA files its amended complaint. The deadline for the parties to contact the Regional Hearing Clerk to establish a date and time for a pre-hearing conference is 75 days after EPA files its amended complaint.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Hon. Elyana R. Sutin  
Regional Judicial Officer

CERTIFICATE OF SERVICE

The undersigned hereby copies of the foregoing order were sent to the parties as follows on the date below:

CT Corporation System  
Registered Agent for Tamarack II LLC  
P.O. Box 7054  
Ste 1650  
Billings, MT 59103-7054  
By First Class Mail \_\_\_\_\_

Josh Townsley, Operator  
Fazooli's Family Italian  
105 Blacktail Road  
Lakeside, MT 59922  
By First Class Mail

Margaret J. (Peggy) Livingston, 8ENF-L  
Legal Enforcement Program  
Office of Enforcement, Compliance,  
and Environmental Justice  
U.S. EPA  
1595 Wynkoop St.  
Denver, CO 80202  
By email to [livingston.peggy@epa.gov](mailto:livingston.peggy@epa.gov)

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Tina Artemis  
Regional Hearing Clerk