



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

1595 Wynkoop Street  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

SEP 7 2010

Ref: 8ENF-W

CERTIFIED MAIL LETTER  
RETURN RECEIPT REQUESTED

CT Corporation System, Registered Agent  
Tamarack II, LLC  
P.O. Box 7054  
STE 1650  
Billings, MT 59103-7054

Re: Administrative Order  
Fazooli's Family Italian  
Public Water System  
Docket No. **SDWA-08-2010-0072**  
PWS ID #MT0000889

To Whom It May Concern:

Enclosed is an Administrative Order (Order) issued by the Environmental Protection Agency (EPA) under the authority of the Safe Drinking Water Act (the Act), 42 U.S.C. § 300f *et seq.* Among other things, the Order alleges that Tamarack II, LLC, (the company) has violated the National Primary Drinking Water Regulations (drinking water regulations).

On November 19, 2009, EPA issued an Administrative Order to Bear Harbour Limited Partnership which was listed with the Montana Secretary of State and the Montana Department of Environmental Quality (MDEQ) as the owner of Fazooli's Family Italian. On January 27, 2010, EPA issued a violation letter to Bear Harbour Limited Partnership for violations of the November 19, 2009 Order. On May 11, 2010, EPA issued a second violation letter for ongoing noncompliance with the November 19, 2009 Order. On August 19, 2010, EPA became aware that Tamarack II, LLC assumed ownership of Fazooli's Family Italian on June 16, 2009. Despite multiple notifications to Joshua Townsley, co-owner and financial contact for Fazooli's Family Italian, and CT Corporation System, Registered Agent, EPA was never notified of the change in ownership. Fazooli's Family Italian has ongoing drinking water violations, including three nitrate maximum contaminant level violations. Therefore, EPA is issuing this Order to Tamarack II, LLC with abbreviated compliance deadlines.

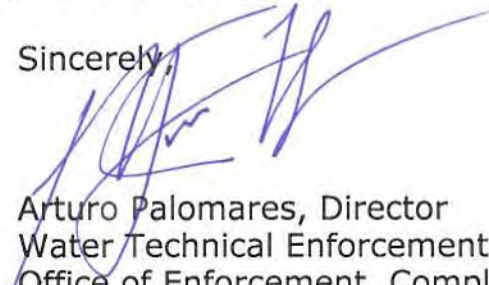
The Order is effective upon the date received. Please review the Order and within 10 days provide EPA with any information you believe EPA may not have. If Tamarack II, LLC complies with the Order, EPA may close the Order without further action. Failure to comply with the Order may lead to substantial civil penalties and/or a Federal court injunction ordering compliance.

The Order requires the company to notify the public of having violated the drinking water regulations. EPA has provided paper copies of forms and instructions for providing public notice as an attachment to this document. The requirement to complete future public notices can easily be accomplished with the assistance of the automated system available at the [www.pniwriter.org](http://www.pniwriter.org) website.

To submit information or request an informal conference with EPA, please contact Kimberly Pardue Welch at the above address (with the mailcode 8ENF-W) or by phone at (800) 227-8917, extension 6983 or (303) 312-6983. Any questions from the company's attorney should be directed to David Janik, Enforcement Attorney, who may be reached at the above address (with the mailcode 8ENF-L) or by phone at (800) 227-8917, extension 6917 or (303) 312-6917.

We urge your prompt attention to this matter.

Sincerely,



Arturo Palomares, Director  
Water Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosures  
Order  
Public notice samples/templates

cc:  
John Arrigo, MT DEQ  
Shelley Nolan, MT DEQ  
Josh Townsley, Tamarack II, LLC.  
Tina Artemis, EPA Region Hearing Clerk



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2010 SEP -7 AM 8:33

IN THE MATTER OF: )  
 )  
Tamarack II LLC, )  
 )  
Respondent. )

Docket No. SDWA-08-2010-0072

FILED  
EPA REGION VIII  
HEARING CLERK

ADMINISTRATIVE ORDER

1. This Order is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.* (the Act), as properly delegated to the undersigned officials.

2. Tamarack II LLC (Respondent) is a Montana corporation that owns and/or operates the Fazooli's Family Italian Water System (the system), which provides piped water to the public in Flathead County, Montana, for human consumption.

3. The system is supplied by a groundwater source consisting of one well.

4. The system has approximately 2 service connections and/or regularly serves at least 100 individuals daily at least 60 days out of the year. Therefore, the system is a "public water system" as defined in § 1401(4) of the Act, 42 U.S.C. § 300f (4), and 40 C.F.R. § 141.2. The system is also a "transient, non-community water system" as defined in 40 C.F.R. § 141.2.

5. Respondent is subject to the Act and the National Primary Drinking Water Regulations (drinking water regulations) at 40 C.F.R. part 141. The drinking water regulations are "applicable requirements" as defined in § 1414(i) of the Act, 42 U.S.C. § 300g-3(i).

6. The drinking water regulations include monitoring requirements. The Montana Department of Environmental Quality (MDEQ or the State) has sent Respondent annual notifications of the specific monitoring requirements that apply to the system.

7. The MDEQ has primary enforcement authority for the public water system supervision provisions of the Act in the State of Montana. EPA issued a notice of the system's violations to the State on October 22, 2009. The State elected not to commence an enforcement action against Respondent for the violations listed in the notice of violation within the

thirty-day time frame set forth in § 1414(a) of the Act, 42 U.S.C. § 300g-3(a). EPA has provided a copy of this Order to the State and has provided the State the opportunity to confer with EPA regarding this Order. EPA is issuing this Order requiring the system to comply with the "applicable requirements" it violated. An "applicable requirement" includes requirements of an applicable approved State program, such as Montana's "Public Water Supply Requirements" at Administrative Rules of Montana (ARM) 17.38.101 through 703. 42 U.S.C. § 300g-3(i).

### **VIOLATIONS**

8. The maximum contaminant level (MCL) for nitrate is 10 milligrams per liter (mg/L). 40 C.F.R. § 141.62(b). For samples collected on March 27, 2006, May 13, 2009 and March 29, 2010, the system's water exceeded the MCL for nitrate, and, therefore, Respondent violated this requirement.

9. Respondent was required by the State to monitor quarterly for nitrate following the March 27, 2006 nitrate MCL exceedance. 40 C.F.R. § 141.23(g) and ARM 17.38.219. Respondent failed to monitor the system's water for nitrate during the 1<sup>st</sup> quarter of 2008 and the 1<sup>st</sup> quarter of 2009 and, therefore, violated this requirement.

10. If nitrate in the system's water exceeds the nitrate MCL, Respondent is required to either 1) take a confirmation sample within 24 hours of notification of the analytical results or, if that is not possible, 2) immediately notify the consumers served by the system and take a confirmation sample within two weeks of notification of the analytical results of the first sample. 40 C.F.R. § 141.23(f)(2). Respondent failed to take a confirmation sample following the March 27, 2006, May 13, 2009 and March 29, 2010 nitrate MCL exceedances and, therefore, violated this requirement.

11. Respondent is required to monitor the system's water monthly for total coliform bacteria. ARM 17.38.215(1)(b). Respondent failed to monitor the system's water for total coliform bacteria during the months of August 2005, August 2006, July 2007, March 2008, October 2008, November 2008, March 2009, April 2009, October 2009 and July 2010 and, therefore, violated this requirement.

12. Respondent is required to notify the public of certain violations of the drinking water regulations. 40 C.F.R. §§ 141.201, 141.202 and 141.204. Respondent did not notify the public of the violations mentioned in paragraphs 8, 9, 10 and 11, and therefore, violated this requirement. Public



notice for the March 2006 nitrate MCL and the August 2005 failure to monitor total coliform violations cited in paragraphs 8 and 11 have been completed. Public notice for the October 2009 and July 2010 failure to monitor total coliform violations cited in paragraph 11 is not yet overdue.

13. Respondent is required to report any failure to comply with any of the drinking water regulations to the State within 48 hours (except where a different reporting period is specified in the drinking water regulations). 40 C.F.R. § 141.31(b). Respondent failed to report the violations listed in paragraphs 8 through 10 and 12, above, to the State and, therefore, violated this requirement.

14. Respondent is required to report any failure to comply with any coliform monitoring requirement to the State within ten days of discovering the violation. 40 C.F.R. § 141.21(g)(2). Respondent failed to report the violations listed in paragraph 11, above, to the State and, therefore, violated this requirement.

### **ORDER**

Based on the above violations, Respondent is ordered to perform the following actions upon Respondent's receipt of this Order (unless a different deadline is specified below):

15. Within 14 days of receipt of this Order, Respondent shall 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 shall include proposed system modifications, estimated costs of modifications, and a schedule for completion of the project and compliance with the above-mentioned regulations. The proposed schedule shall include specific milestone dates and a final compliance date (to be within 6 months from the date of EPA's approval of the plan). The plan and schedule must be approved by EPA before construction or modifications can commence. EPA's approval of Respondent's plan and schedule does not substitute for any State of Montana approvals of plans and specifications (engineering plans) which are also required before modifications can be made to the system.

16. The plan and schedule required by paragraph 15, above, will be incorporated into this Order as enforceable requirements upon written approval by EPA.

17. Within 30 days of receiving EPA's approval of the plan and schedule required by paragraph 15, above, Respondent shall submit to EPA and the State quarterly reports on the progress made toward bringing the system into compliance with 40 C.F.R. § 141.62(b). Each quarterly report is due by the 10<sup>th</sup> day of the month following the end of each calendar quarter.

18. Respondent must achieve and maintain compliance with 40 C.F.R. § 141.62(b) by the final date specified in the approved plan, or no later than 3 months after receiving EPA's approval of the plan and schedule required by paragraph 15, above, whichever is earliest. If implementation of the plan fails to achieve permanent compliance, EPA may order further steps and/or seek penalties for noncompliance.

19. Respondent shall monitor the system's water for nitrate quarterly until notified by the State in writing of a different monitoring schedule. 40 C.F.R. § 141.23(g) and ARM 17.38.219. Respondent shall report analytical results to EPA and the State within the first 10 days following the month in which sample results are received. 40 C.F.R. § 141.31(a).

20. Respondent shall comply with all confirmation sampling requirements found in 40 C.F.R. § 141.23(f)(2). This requires public water systems that exceed the MCL for nitrate to either 1) take a confirmation sample within 24 hours of notification of the analytical results or, if that is not possible, 2) immediately notify the consumers served by the system and take a confirmation sample within two weeks of notification of the analytical results of the first sample.

21. Respondent shall monitor the system's water monthly for total coliform bacteria, as required by ARM 17.38.215(1)(b). Respondent shall report analytical results to EPA and the State within the first 10 days following the month in which sample results were received, as required by 40 C.F.R. § 141.31(a). Respondent shall report any violation of the total coliform monitoring requirements to EPA and the State within 10 days of discovery, as required by 40 C.F.R. § 141.21(g)(2).

22. Within 14 days of receiving this Order, Respondent shall notify the public of the violations cited in paragraphs 8 through 11, as required by 40 C.F.R. part 141, subpart Q. Thereafter, following any future violation of the drinking water regulations, Respondent shall comply with the applicable public notice provisions of 40 C.F.R. part 141, subpart Q. Within 10 days of

providing public notice, Respondent shall submit a copy of the notice to EPA and the State.

23. Except where a different reporting deadline is specified in the drinking water regulations or this Order, Respondent shall notify EPA and the State within 48 hours of any failure to comply with the drinking water regulations, as required by 40 C.F.R. § 141.31(b).

24. Respondent shall direct all reporting required by this Order to:

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

**AND**

Shelley Nolan  
Montana Department of  
Environmental Quality- PWSS  
P.O. Box 200901  
Helena, MT 59620-0901

**GENERAL PROVISIONS**

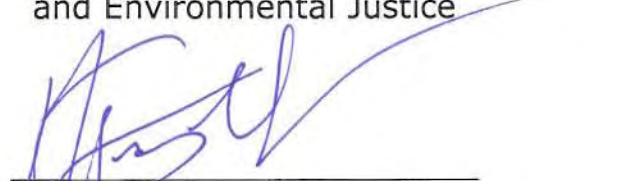
25. This Order does not constitute a waiver, suspension, or modification of any requirement of the Act or drinking water regulations. Issuance of this Order is not an election by EPA to forgo any civil or criminal action.

26. Violation of any part of this Order or the drinking water regulations may subject Respondent to a civil penalty of up to \$37,500 (as adjusted for inflation) per day of violation, 42 U.S.C. § 300g-3; 40 C.F.R. part 19.

Issued: Sept 7, 2010.



David Rochlin, Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

  
Arturo Palomares, Director  
Water Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice