



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET
DENVER, COLORADO 80202-1129

Phone 800-227-8917

<http://www.epa.gov/region08>

2011 FEB 14 AM 10:44

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EPA REGION VIII
HEARING CLERK

Ref: 8ENF-L

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
NO. 7009 3410 0000 2592 8185

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

Re: Complaint and Notice of
Opportunity for Hearing
Docket No. **SDWA-08-2011-0022**

Dear Whomever This May Concern:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" (complaint) filed against Tamarack II LLC (Tamarack) under § 1414(g)(3) of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300g-3(g)(3). The U.S. Environmental Protection Agency (EPA) alleges in the complaint that Tamarack failed to comply with an administrative order issued on September 10, 2010, under § 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), regarding the Fazooli's Family Italian Water System. The violations are specifically set out in the complaint.

By law, Tamarack has the right to request a hearing regarding the matters set forth in the complaint. Please pay particular attention to those parts of the complaint entitled "Opportunity to Request a Hearing" and "Failure to File an Answer." If Tamarack does not file an answer to this complaint within 30 days of receipt, a default judgment may be entered and the proposed civil penalty may be assessed without further proceedings. In its answer Tamarack may request a hearing. Tamarack has the right to be represented by an attorney at any stage of these proceedings.

EPA encourages all parties against whom it files a complaint proposing assessment of a penalty to pursue the possibilities of settlement through an informal conference. Any such settlement shall be finalized by the issuance of a final order by the Regional Judicial Officer, EPA Region 8. The issuance of a consent agreement shall constitute a waiver of the right to request a hearing on any matter to which Tamarack has stipulated in that agreement.



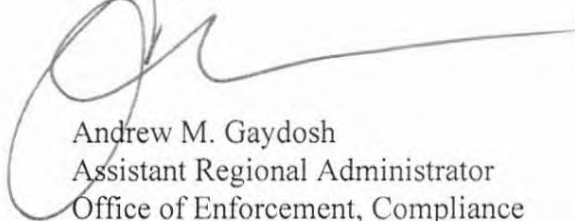
Printed on Recycled Paper

Whether or not Tamarack requests a hearing, its representative(s) may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. However, an informal settlement conference does **not** substitute for filing a written answer and requesting a hearing. A request for an informal conference also does not extend the 30-day period during which Tamarack must submit a written answer and a request for a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneously with, the adjudicatory hearing.

For any questions specific to the violations or penalty, the most knowledgeable people on my staff regarding this matter are Kimberly Pardue Welch, Environmental Protection Specialist, who can be reached at 800/227-8917, extension 6983, or Peggy Livingston, Enforcement Attorney, who can be reached at 800/227-8917, extension 6858.

We urge your prompt attention to this matter.

Sincerely,



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

Enclosure

cc: John Arrigo, Montana Department of Environmental Quality
Shelley Nolan, Montana Department of Environmental Quality
Tina Artemis, Regional Hearing Clerk, EPA Region 8
Josh Townsley (by certified mail, return receipt requested)



bcc: Peggy Livingston, 8ENF-L
Brenda Cazier, 8ENF-PT
Kimberly Pardue Welch, 8ENF-W
Lisa Kahn, 8ENF-W
Jack Rychecky, 8P-W-DW
John Gillis, 8P-W-DW
Reading File

cc addresses:

John Arrigo
Montana Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

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

Josh Townsley
Fazooli's Family Italian
105 Blacktail Road
Lakeside, MT 59922
(by certified mail, return receipt requested # 7009 3410 0000 2592 8192)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2011 FEB 14 AM 10:44

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IN THE MATTER OF)

Tamarack II LLC,)

Respondent)

Proceeding under § 1414(g)
of the Safe Drinking Water Act,
42 U.S.C. § 300g-3(g)
_____)

) Docket No. **SDWA-08-2011-0022**

) **COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

COMPLAINT

This civil administrative Complaint and Notice of Opportunity for Hearing (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 is attached to this Complaint as Complainant's Exhibit 1.

GENERAL ALLEGATIONS

The following general allegations apply to each count of this 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 is attached to this Complaint 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 is attached to this Complaint 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.

PROPOSED ADMINISTRATIVE CIVIL PENALTY

This 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 \$4,000 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 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. §§ 22.15 and 22.42 within thirty (30) calendar days after this 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 complaint.

FAILURE TO FILE AN ANSWER

If Respondent does not file a written answer with the Regional Hearing Clerk at the address above within thirty (30) days of receipt of this complaint, Respondent may be subject to a default order requiring payment of the full penalty proposed in this 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 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 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 thirty (30) calendar days of receipt of this complaint, Respondent need not file an answer. Alternatively, as allowed by 40 C.F.R.

§ 22.18(b), Respondent may file a statement with the Regional Hearing Clerk within thirty (30) days of receipt of the complaint agreeing to pay the full assessed penalty and may make the penalty payment within sixty (60) days of receiving the 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 17 day of February, 2011.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,

Complainant



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

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 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 # 7009 3410 0000 2592 8185

Josh Townsley, Operator
Fazooli's Family Italian
105 Blacktail Road
Lakeside, MT 59922
Certified Mail # 7009 3410 0000 2592 8192

Date: 2/14/2011

By: Judith M. McTernan
Judith McTernan

§21.13

approve or disapprove the State issued statement, in accordance with the requirements of §21.5.

(2) The Regional Administrator will periodically review State program performance. In the event of State program deficiencies the Regional Administrator will notify the State of such deficiencies.

(3) During that period that any State's program is classified as deficient, statements issued by a State shall also be sent to the Regional Administrator for review. The Regional Administrator shall notify the State, the applicant, and the SBA of any determination subsequently made, in accordance with §21.5, on any such statement.

(i) If within 60 days after notice of such deficiencies has been provided, the State has not taken corrective efforts, and if the deficiencies significantly affect the conduct of the program, the Regional Administrator, after sufficient notice has been provided to the Regional Director of SBA, shall withdraw the approval of the State program.

(ii) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in §21.12(a).

(g) Funds appropriated under section 106 of the Act may be utilized by a State agency authorized to receive such funds in conducting this program.

§21.13 Effect of certification upon authority to enforce applicable standards.

The certification by EPA or a State for SBA Loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

- Sec.
- 22.1 Scope of this part.
 - 22.2 Use of number and gender.
 - 22.3 Definitions.
 - 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
 - 22.5 Filing, service, and form of all filed documents; business confidentiality claims.
 - 22.6 Filing and service of rulings, orders and decisions.
 - 22.7 Computation and extension of time.
 - 22.8 *Ex parte* discussion of proceeding.
 - 22.9 Examination of documents filed.

Subpart B—Parties and Appearances

- 22.10 Appearances.
- 22.11 Intervention and non-party briefs.
- 22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding.
- 22.14 Complaint.
- 22.15 Answer to the complaint.
- 22.16 Motions.
- 22.17 Default.
- 22.18 Quick resolution; settlement; alternative dispute resolution.
- 22.19 Prehearing information exchange; prehearing conference; other discovery.
- 22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

- 22.21 Assignment of Presiding Officer; scheduling the hearing.
- 22.22 Evidence.
- 22.23 Objections and offers of proof.
- 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.
- 22.25 Filing the transcript.
- 22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion to Reopen a Hearing

- 22.27 Initial decision.
- 22.28 Motion to reopen a hearing.

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
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 1st quarter of 2008 and the 1st 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 10th 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) **AND**
1595 Wynkoop Street
Denver, CO 80202-1129

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

GENERAL PROVISIONS

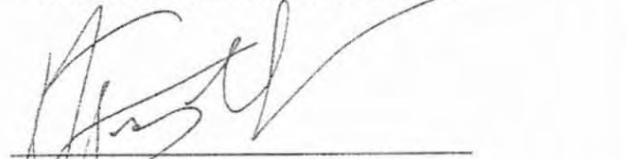
25. This Order does not constitute a waiver, suspension, or modification of any requirement of the Act or drinking water regulations. Issuance of this Order is not an election by EPA to forgo any civil or criminal action.

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



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

2010 NOV -3 AM 10: 59

EPA REGION VIII
READING OF EPA
COMPLAINANT'S
EXHIBIT NO. 3

Ref: 8 ENF-W

NOV 03 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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

Re: Violation of Administrative Order
Fazooli's Family Italian
Docket No. SDWA-08-2010-0072
PWS ID # MT0000889

To whom it may concern:

On September 7, 2010, the US Environmental Protection Agency (EPA) issued an Administrative Order, Docket No. SDWA-08-2010-0072, ordering Tamarack II, LLC (Respondent) as owner of the Fazooli's Family Italian public water system, to comply with various regulations issued by EPA under the Safe Drinking Water Act (SDWA), 42 U.S.C. section 300f et seq.

Our records indicate that Tamarack II, LLC is in violation of the Order. Among other things, the Order included the following requirements (excerpted from items 15 and 22 of the "Order" section on pages 3, 4 and 5 of the Order):

1. 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 maximum contaminant level (MCL) at 40 C.F.R. § 141.62(b).

Respondent failed to provide EPA with a compliance plan and schedule for bringing the system into compliance with the nitrate MCL within 14 days of receipt of the Order (by September 23, 2010). On October 1, 2010, EPA received a proposed treatment plan, from Mr. Donald Dammel, on behalf of the Respondent. The proposed treatment plan failed to provide all the required information, including an estimated cost for system modifications

and a schedule with milestone dates and a final date for completion of the project. Please submit a complete plan and schedule to EPA immediately.

2. 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.

Respondent failed to submit a public notice to EPA. If public notice has not been completed, please do so immediately and submit a copy to EPA. If public notice has been conducted, please provide EPA a copy.

EPA is considering additional enforcement action as a result of the non-compliance with the Order. Violating an Administrative Order may lead to (1) a penalty of up to \$37,500 per day per violation of the Order, and/or (2) a court injunction ordering compliance.

If you have any questions or wish to have an informal conference with EPA, you may contact Kimberly Pardue Welch at 1-800-227-8917, extension 6983 or (303) 312-6983. If you are represented by an attorney who has questions, please ask your attorney to contact Peggy Livingston, Enforcement Attorney, at 1-800-227-8917, extension 6858 or (303) 312-6858 or at the following address:

Peggy Livingston
Enforcement Attorney
U.S. EPA, Region 8 (8-ENF-L)
1595 Wynkoop Street
Denver, Colorado 80202-1129

We urge your prompt attention to this matter.



Lisa Kahn, Team Leader
Drinking Water Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice