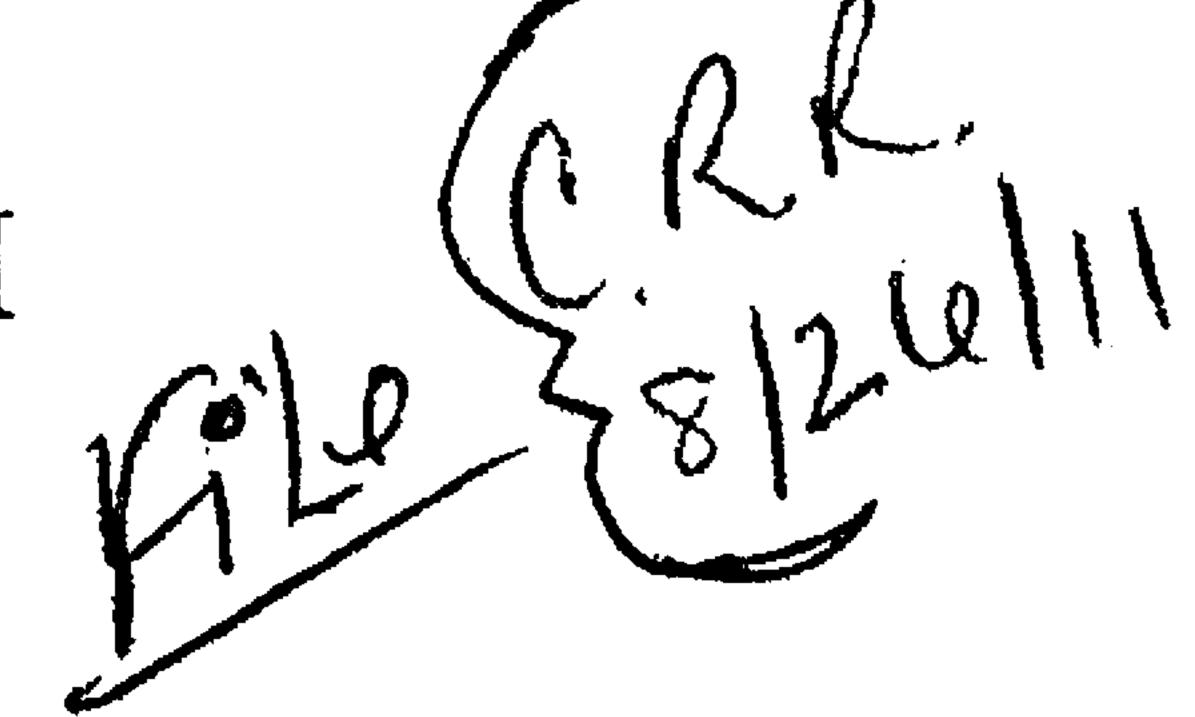
### STATE OF NEW YORK DEPARTMENT OF HEALTH ADMINISTRATIVE TRIBUNAL



August 23, 2011

Nameof Respondent:

Debra A. Malaney

Address of Respondent:

Town of Ticonderoga, PO Box 471

Ticonderoga NY 12883

Res pondent D/B/A:

Ticonderoga WD

D/B/A Address:

ROUTE 74

TICONDEROGA

RE: MATTER OF DEBRAA. MALANEY

D/B/A TICONDEROGA WD

Docket Number: 20110406

#### Dear Debra A. Malaney:

The New York State Department of Health has evidence of violations of the Public Health Law and/or Health Department Regulations contained in Title 10 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (NYCRR), as set forth in the finding of Violation(s) enclosed. A Hearing has been scheduled before an impartial Administrative Law Judge of the Administrative Trib unal on the following date, time, and place:

Date:

October 26, 2011

Time:

10:00 AM

Place:

NYS Department of Health, Saranac Lake District Office, 41 St. Bernard Street, Saranac Lake

YOU ARE ON NOTICE THAT YOU HAVE SEVEN (7) DAYS FROM RECEIPT OF THIS NOTICE TO RESPOND TO THE DEPARTMENT. FAILURE TO RESPOND WITHIN SEVEN DAYS AFTER RECEIPT OF SERVICE WILL CONSTITUTE AN ADMISSION OF THE CHARGES AND A WAIVER OF THE RIGHT TO A HEARING, AND AUTHORIZE THE ADMINISTRATIVE LAW JUDGE, WITHOUT FURTHER NOTICE, TO FIND THE FACTS TO BE AS ALLEGED IN THE FINDING OF VIOLATION, AND TO RENDER A DECISION AND ORDER SUSTAINING THE ALLEGATIONS, AND IMPOSING A PENALTY. (SUMMARY OF THE APPLICABLE HEARING PROCEDURE IS ENCLOSED).

#### OFFER OF SETTLEMENT ALTERNATIVE

If you wish to settle this matter without a Hearing, sign and return the enclosed Stipulation (Form AT-15) within seven (7) days of your receipt of this notice. This settlement offer includes payment of a fine of \$100, payable to the New York State Department of Health. Enclose your full payment with the signed stipulation and send to the NYS Department of Health, Saranac Lake District Office, 41 St. Bernard Street, Saranac Lake, NY,129831834. Payment must be made with check or money order. If you wish to decline the offer of Stipulation and opt for a Hearing, please note such intention on the AT-15 Form where indicated, and mail back to the Department.

Sincerely,

lules Callaghan

Administrative Tribuffal Representative

Saranac Lake District Office

Enclosures

### STATE OF NEW YORK DEPARTMENT OF HEALTH ADMINISTRATIVE TRIBUNAL

#### SUMMARY OF HEARING PROCEDURES:

- 1. The hearing will be held in conformance with Section 12a of the Public Health law, Article 3 of the State Administrative Procedure Act and 10 NYCRR Part 76.7. Hearings are presided over by an Administrative Law Judge, and are open to the Public. The text of the Public Health Law and the Regulations at Title 10 are available at the New York State Department of Health's web site (www.health.state.ny.us). The text of the State Administrative Procedure Act and all other New York State statutes are available at the New York State Senate's web site (www.senate.state.ny.us)
- 2. The hearing will be conducted in English. If you do not speak or understand English, you are allowed to bring someone to the hearing to assist you.
- 3. If you or any party or witness to this proceeding is a deaf person, the Department, upon reasonable notice, will provide at no charge, a qualified interpreter of the deaf to interpret the proceedings and the testimony of any deaf person.
- 4. If you will be represented by an attorney, your attorney must furnish to the Department appropriate documentation of his or her authorization to represent you.
- 5. A record of all proceedings will be made and witnesses will be sworn and examined. The parties may appear in person and/or be represented by Counsel, may testify, present documentary evidence, produce witnesses, cross examine adverse witnesses, examine such evidence as may be produced, request the issuance of subpoenas and have all rights essential to a fair and impartial hearing. The burden of proof at the hearing will be on the department.
- 6. You should bring to the Hearing any evidence of compliance efforts, such as receipts for purchases, contracts, estimates and design plans and be prepared to substantiate your corrective actions and/or plans for correction of violation(s). Prompt correction of violations may be considered by the Department in assessing penalties. However, correction alone does not excuse the violation and fines may be assessed for violations committed by the Respondent. Failure to correct violations after the hearing subjects you to further legal action by the Department.
- 7. Failure to respond within seven days after receipt of service will constitute an admission of the charges and a waiver of the right to a hearing and authorize the administrative law judge, without further notice to find the facts to be as alleged in the finding of violation and to render a decision and order sustaining the allegations and imposing a penalty.
- 8. If the Respondent does not appear at the hearing, either in person or by an attorney, the hearing may proceed. Failure to appear at the time and place designated for the hearing will constitute a default in appearance and a decision and order will be rendered and issued by the Administrative Law Judge based on the record.
- 9. At the conclusion of the Hearing, the Administrative Law Judge will issue a written decision sustaining or dismissing the Finding of Violation(s). The Decision will contain findings of fact and, as applicable, orders issued and penalties assessed based on evidence presented. The Respondent may also be assessed a fine not to exceed \$2,000 per violation, pursuant to Sections 12 and 206 of the Public Health Law or as otherwise provided under applicable regulations. Licenses to operate may also be suspended or revoked.

### STATE OF NEW YORK DEPARTMENT OF HEALTH ADMINISTRATIVE TRIBUNAL FINDING OF VIOLATIONS

Respondent: DebraA. Malaney

Address: Town of Ticonderoga

PO Box 471

Ticonderoga NY 12883

Phone: (518) 585-6265

D/B/A: Ticonderoga WD

Address:

ROUTE 74

TICONDEROGA

Date

of Vio laion

State Law, Sanitary Code, or Regulation (10 NYCRR)

Violation Findings

Maximum Assessable

\$2,000.00

Fine Surcharge

[Vio-Jatin 1 of 2 Violation ID 122734]

Aug 08, 2011 5-1.30 (b)

or ground water sources directly influenced by Earth Filter units at the Baldwin Landing Filter surface water shall be filtration and disinfection Plant on Lake George are habitually broken, techniques, approved by the State in accordance with section 5-1.22 of this Subpart, enter the distribution system. This was made capable of 99.9 percent removal and/or inactivation of Giardia lamblia cysts and 99.99 staff upon a recent inspection of one of the percent removal and/or inactivation of viruses, between a point where the raw water is no longer subject to recontamination by source water runoff and a point downstream before or at the first consumer. Compliance with this treatment technique requirement shall be no later than June 29, 1993 for surface water sources or within 18 months for ground water sources determined to be directly influenced by surface water sources, unless the department determines that the supplier of water can meet specific avoidance criteria as defined in subdivision (c) of this section.

Minimum treatment for surface water sources Was violated in that: The Diatomaceous therefore allowing unfiltered surface water to evident to both town personnel and NYSDOH filter units while it was dismantled for repairs. This is a violation of the Surface Water

Docket Number: 20110406

Date of Hearing: October 26, 2011

Date of Notice August 23, 2011

Treatment Rule.

[ Violation 1D 122737 ]

Aug 08, 2011 5-1.71 (a)

The supplier of water and the person or persons operating a public water system shall exercise due care due care and diligence in replace the Chilson Reservoir. The Chilson the maintenance and supervision of all sources Reservoir does not comply with federal of the public water system to prevent, so far as regulations that require finished water possible, their pollution and depletion.

Was violated in that: The Ticonderoga Water District has also failed to maintain, repair or reservoirs to be covered.

\$2,000.00

### STATE OF NEW YORK DEPARTMENT OF HEALTH ADMINISTRATIVE TRIBUNAL STIPULATION

#### In the matter of Finding of Violation(s) against

Rispondent: Debra A. Malaney

Address: Town of Ticonderoga

PO Box 471

Ticonderoga

NY 12883

D/B/A: Ticonderoga WD

Address: ROUTE 74

TICONDEROGA

The parties wish to resolve this matter by means of a settlement instead of an administrative hearing and, therefore agree that:

- There exist valid and sufficient grounds, as a matter of fact and law, for the issuance of this Stipulation and Order under the Public Health Law and the Respondent consents to its issuance, accepts its terms and conditions and waives any right to challenge this Stipulation/Decision in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules or in any other action or proceeding.
- b. That the Respondent agrees to the following terms and conditions:

Docket # 20110406

Docket Number: 20110406

Date Issued: August 23, 2011

#### State Law, Sanitary Code, or Regulation (10 NYCRR) Violation Findings

[Violatia 1 of 2]

5-1.30 (b)

Minimum treatment for surface water sources or ground water sources directly influenced by surface water shall be filtration and disinfection techniques, approved by the State in accordance with section 5-1.22 of this Subpart, capable of 99.9 percent removal and/or inactivation of Giardia lamblia cysts and 99.99 percent removal and/or inactivation of viruses, between a point where the raw water is no longer subject to recontamination by source water runoff and a point downstream before or at the first consumer. Compliance with this treatment technique requirement shall be no later than June 29, 1993 for surface water sources or within 18 months for ground water sources determined to be directly influenced by surface water sources, unless the department determines that the supplier of water can meet specific avoidance criteria as defined in subdivision (c) of this section.

Was violated in that: The Diatomaceous Earth Filter units at the Baldwin Landing Filter Plant on Lake George are habitually broken, therefore allowing unfiltered surface water to enter the distribution system. This was made evident to both town personnel and NYSDOH staff upon a recent inspection of one of the filter units while it was dismantled for repairs. This is a violation of the Surface Water Treatment Rule.

Conclusion: Alleged

Assessed Fine: \$2,000.00

Modified Fine: \$50.00

Docket Number 20110406

## STATE OF NEW YORK DEPARTMENT OF HEALTH ADMINISTRATIVE TRIBUNAL STIPULATION

Docket # 20110406

#### State Law, Sanitary Code, or Regulation (10 NYCRR) Violation Findings

[ Violento 2 of 2 ]

5-1.71 (a)

The supplier of water and the person or persons operating a public water system shall exercise due care due care and diligence in the maintenance and supervision of all sources of the public water system to prevent, so far as possible, their pollution and depletion.

Was violated in that: The Ticonderoga Water District has also failed to maintain, repair or replace the Chilson Reservoir. The Chilson Reservoir does not comply with federal regulations that require finished water reservoirs to be covered.

Conclusion: Alleged
Assessed Fine: \$2,000.00

Modified Fine: \$50.00

#### The following abatements are to be completed:

1) On or Before December 30, 2011:

The Town of Ticonderoga shall submit an engineering report to the NYSDOH for a project that will 1) replace the Chilson Reservoir with a new storage tank, 2) upgrade or replace the Lake George filtration plant, and 3) upgrade or replace the Gooseneck Pond water supply.

2) On or Before October 01, 2012:

The Town of Ticonderoga shall submit final engineering plans and specifications for ap proval to the NYSDOH for a project that will 1) replace the Chilson Reservoir with a new storage tank, 2) upgrade or replace the Lake George filtration plant, and 3) upgrade or replace the Gooseneck Pond water supply.

3) On or Before July 01, 2015:

The Town of Ticonderoga shall complete construction of a project that will 1) replace the Chilson Reservoir with a new storage tank, 2) upgrade or replace the Lake George filtration plant, and 3) upgrade or replace the Gooseneck Pond water supply.

# STATE OF NEW YORK DEPARTMENT OF HEALTH ADMINISTRATIVE TRIBUNAL STIPULATION

Total Assessed Fines	\$4,000.00	Total Fines Payable	\$100.00
Total Modified Fines	\$100.00		
		Total Amount Due	\$100.00
This Stipulation shall be effective upo company by personal service or by ce	· · · · · · · · · · · · · · · · · · ·	•	s attorney or representative of a
l accept the stipulation offer an with the conditions set forth. It total fines of \$100 is enclosed respondent fails to comply with this Stipulation, the Department demand the balance of Total A immediately, without the opposite	Payment of the lifthe terms of the terms of the sessed Fines		tipulation offer and will appear for the tober 26, 2011.
hearing.		Owner / Operator	Date
AGRE	ED AND SO ORDER	ED Administrative Tribun	al Representative Date
		of Limited A	uthority

### THIS STIPULATION IS SUBJECT TO PUBLIC RELEASE AS A FINAL AGENCY ACTION

Docket# 20110406