



CITY OF
PORTLAND, OREGON
OFFICE OF PUBLIC SAFETY

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February 4, 2013

Mr. David Leland, Program Manager
Oregon Health Authority Drinking Water Program
P.O. Box 14450
Portland, OR 97293-0450

Subject: Request for Schedule Adjustment of LT2 Requirements for Uncovered Finished
Drinking Water Reservoirs

Dear Mr. Leland:

As you well know, the Portland Water Bureau (PWB) currently stores finished drinking water in uncovered reservoirs at Mt. Tabor and Washington Park. On March 27, 2009, PWB submitted a schedule that was approved by the U.S. Environmental Protection Agency (EPA) to comply with the uncovered finished drinking water reservoir requirements in the Long Term 2 Enhanced Surface Water Treatment Rule (LT2). Portland's approved 2009 compliance schedule requires that it disconnect the reservoirs at Mt. Tabor from the distribution system by December 31, 2015, and cover Reservoir 3 and disconnect Reservoir 4 in Washington Park by December 31, 2020.

In a letter dated February 10, 2012, the City of Portland requested an extension of its LT2 reservoir compliance plan. That request was denied by OHA in a letter dated May 17, 2012. Since that request, new information has come to light that I feel merits additional reconsideration of our request for a deferral.

Having become aware that the City of Rochester, New York has been granted a request to amend its LT2 reservoir compliance schedule, the City of Portland again respectfully requests approval for a schedule adjustment for projects related to our compliance plan to replace its uncovered reservoirs with covered storage.

Specifically, on behalf of the Portland City Council, I request approval for a deferral of completion of the Mt. Tabor and Washington Park LT2 reservoir compliance projects to December 31, 2024, which is consistent with the City of Rochester's extension.

Portland is making this request for a new timeline because material economic and regulatory circumstances have changed since our compliance plan was submitted in early 2009. These circumstances include:

- Increasing water rates.
- Water demand that is declining steadily, resulting in even higher rates.

- Increasing debt-to-revenue ratio.
- Water Research Foundation Study 3021 which found no *Cryptosporidium* following extensive sampling in Portland's open reservoirs.
- Decision by the EPA to review and reassess the LT2 rule in response to President Obama's Executive Order and appeals from municipalities with uncovered reservoirs similar to Portland's.

In response to a request from New York's Senator Schumer and to President Obama's Executive Order 13563 requiring agencies "*...To facilitate the periodic review of existing significant regulations, agencies shall consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.*", the EPA announced in 2011 its plan to review and possibly revise the LT2 regulation.

In an August 2011 letter EPA Administrator Lisa Jackson advised Senator Schumer that "*...different reservoirs around the country have different specific conditions and protections that may have a bearing on the public health benefits of the LT2 coverage requirements.*" EPA has said that they will, "*...reassess and analyze new data and information regarding occurrence, treatment, analytical methods, health effects, and risk from viruses, Giardia, and Cryptosporidium to evaluate whether there are new or additional ways to manage risk while assuring equivalent or improved public health protection.*"

The Portland Water Bureau, community stakeholders, other utilities, industry organizations such as the American Water Works Association (AWWA) and the Water Research Foundation (WRF), industry consultants, and university researchers are participating in the LT2 review and revision process scheduled to be complete by 2016. As part of this process, the Portland Water Bureau has submitted to the EPA relevant reservoir data associated with WRF study 3021 "*Detection of Infectious Cryptosporidium in Conventionally Treated Drinking Water*" and relevant disease surveillance data.

Since submitting our LT2 compliance plan in 2009, the WRF 3021 researchers have published their study. Among its conclusions, "*...According to the USEPA's SWTR, the goal of conventional water treatment plants should be a maximum annual risk of Cryptosporidium infection of 1 in 10,000. The results from these 14 plants indicated that the occurrence of infectious Cryptosporidium in conventionally treated drinking water in some areas of the U.S., produced by correctly operating treatment plants, was low and drinking water meets this risk goal.*" In our previous communications with you, the Portland Water Bureau informed OHA of Portland's 7000 liter open reservoir sampling, but not of the conclusions of the published report.

In addition, as part of EPA's LT2 rule revision process, New York City has supplied EPA with extensive new uncovered reservoir data demonstrating that their Hillview reservoir is not a source of *Cryptosporidium*. Finally, last year, Rochester, New York, which secured an amendment to their LT2 reservoir compliance schedule to 2024, is currently collecting 50 liter *Cryptosporidium* samples twice per month, having previously not collected any samples prior to securing an extension of its LT2 reservoir compliance projects.

While it is uncertain what changes the EPA might ultimately make to the LT2 rule, the City of Portland has an interest in benefiting from any alternative compliance options that may develop through the revision process. What I hope to avoid, and what I believe you can agree would be unacceptable, would be to proceed with the construction of these reservoir projects only to find out in 2016 they are no longer mandated.

Such an outcome would leave Portland ratepayers in debt for hundreds of millions of dollars with no regulatory mandate for a project that is not a public health priority.

With regard to the legitimacy of economic arguments as a basis for project deferral, I point to the City of Rochester which has a physical infrastructure very similar to Portland's open reservoir infrastructure. Rochester had three (3) uncovered reservoirs including two historic reservoirs which, like ours, are highly engineered reservoirs not subject to run-off of surface water and are over 100 years old and set in city parks. In 2012 Rochester completed covering one reservoir and successfully secured a 10-year extension until 2024 from the EPA LT2 "treat or cover" requirement for their remaining two historic open reservoirs arguing financial hardship, limited resources, and questioning the requirement of onerous expenditures without any measurable public health benefit.

Rochester sought to amend, on economic grounds, their previous compliance agreement of the LT2 rule as it applies to their open drinking water reservoirs. The request was granted in March 2012 by the State of New York, in consultation with the Environmental Protection Agency. Portland deserves the same consideration and reprieve, based on analogous circumstances, stronger justification, and an equitable and consistent application of federal law.

In its December 20, 2011 letter requesting an amendment to their LT2 project schedule, Rochester cited a variety of economic challenges, including a drop in water demand and rising water rates, *"While the population decreased by 10% since 2000, the water rates increased 44%. We have sought alternative funding sources such as congressional earmarks, EPA appropriations, and NYSDWSRF funding, but we have been unable to secure funding to lessen the financial hardship for the Cobbs Hill and Highland UV improvement. Due to the capital investment needs of the water system, we are carrying a very high debt load with a total principal and debt load payment of approximately \$5.5 million due in 2014. This debt load includes the \$15 million we have already spent on LT2ESWTR compliance projects."*

The City's letter goes on to say, *"US EPA Administrator Lisa Jackson recently announced a review of the LT2 rule. Ms. Jackson was prompted to review the LT2 rule because of requests from New York City, US Senator Charles Schumer, and others to reevaluate the effectiveness of the regulation in light of new data that brings into question the assumptions upon which the LT2 rule was promulgated."*

The Portland Water Bureau has a much stronger argument for deferral of LT2 projects on economic grounds than Rochester. During the same period of time cited by Rochester (FY 2000-01 to FY 2011-12), retail water rates in Portland increased by 89% compared to Rochester's 44%. In the same period retail water demand has declined in Portland 12%. Since then, Portland's rates increased by 7.6% this year and are expected to rise by a similar amount in July.

Rising water rates place a burden on residential ratepayers, both homeowners who receive the bill directly, and renters for whom water costs are built into base rent increases. Water consumption is, of course, a basic human necessity, unlike other elective utilities such as cable TV, cell phones and internet. While Portland offers a generous low-income discount program for both water and sewer rates, the program does not shield enrolled ratepayers from water rate increases. In fact, those enrolled in the low income discount program see the same annual rate of increase in their bills as conventional retail ratepayers.

Rising water rates also have an impact on our commercial customers. Last year, Siltronic Corp.—the City's largest water customer and a major employer—shuttered half of its Portland manufacturing capacity, laying off 350 workers. While rising water rates were not cited as the primary reason for the closure, the company made the point at the time that rising rates threaten the competitiveness of its remaining silicon wafer manufacturing plant.

Siltronic is representative of many major water customers in the City of Portland, in that it operates in a commodity market with little ability to pass rising production costs on to its customers through higher prices. Therefore, as water rates have risen in Portland by double digits each of the last few years, large water users in commodity markets like dairy products, textiles, food processing, and chemicals are finding Portland a less and less competitive place to do business.

In 2000, the PWB held \$134.8 million in outstanding debt, with annual debt service of \$12.8 million. As of July 1, 2012, the PWB is carrying \$440.1 million in outstanding debt, with annual debt service of \$36.1 million, representing about 26% of annual revenues. Much of this debt has been taken on to pay for expensive LT2 compliance projects.

The City of Portland has made significant investments in open reservoir upgrades, completing upgrade work and closing out a \$23 million contract in 2011. One of the tasks assigned to a consulting firm studying the open reservoirs over a 9-year period was to outline projects necessary to keep the open reservoirs safely operating. Many of these projects have been completed over the last 10 years under four contracts totaling \$40 million. These contracts were financed by 25-year revenue bonds. Approval of the new timeline supports Portland's interest in good governance and in protecting this significant investment.

The PWB has robust risk mitigation measures in place to protect public health during the extension period. As stated in earlier correspondence, the PWB believes that the current observable risk to public health is low. Additionally, allowing the schedule adjustment will provide opportunity for the PWB to address deferred maintenance projects that will provide greater public health protections. For example a strategic objective of the PWB is to improve distribution system water quality by increasing unidirectional system flushing. Given the resources assigned to LT2, the PWB's ability to increase the number of miles of piping that are flushed each year has been limited.

Finally, since the original compliance schedule was adopted in 2009, it is again worth noting and repeating that in 2012 OHA granted a first of its kind in the nation variance to the LT2 source

water treatment rule to Portland recognizing the outstanding nature of the Bull Run raw water source and the protections developed and put into place over the past several decades by the city to protect its source water. I suspect that our Cryptosporidium testing and monitoring is among the most extensive in the country.

Approval of a schedule adjustment will enable PWB to pay down some water bond debt, and reduce the financial impact on ratepayers during the current recession, when households are facing financial pressures on many fronts.

For the reasons described above, the City of Portland hereby requests revisions to our compliance schedule that defer completion of the Mt. Tabor and Washington Park LT2 reservoir compliance projects to December 31, 2024.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Novick", written in a cursive style.

Commissioner Steve Novick
City of Portland, Oregon

c. Mel Kohn, M.D., M.P.H.

Enclosures