



History of LT2 Rule as it pertains to City of Portland

- **1993** Cryptosporidium outbreak in Milwaukee, Wisconsin, where a state-of-the-art water filtration system failed, allowing cow waste and sewage into drinking water system, leading to grave illness and death. (All drinking water outbreaks have occurred in filtered systems with unprotected source water.)
- **1990's** The level of Cryptosporidium contamination in Portland's in-town open reservoirs is studied and is found to be zero. (Current studies continue to demonstrate zero contamination by Cryptosporidium.)
- **1997** Rule development begins.
- **2000-2001** Federal Advisory Committee (FACA) negotiations. Corporate involvement in rule development process.
- **2003** Draft rule is released for comment. Includes mitigation option for open reservoirs.
- Commissioner Saltzman sends request to EPA to include a waiver provision in the final Rule.
- **January 9, 2004** Official comments submitted by "Unfiltered Systems Working Group" (Boston, NY, San Francisco, Seattle, Tacoma) state that draft rule overestimates risks and benefits, while underestimating major capital costs. NYC requests language that would allow for exemptions or variances to rule.
- **2004** An EPA LT2 Federal Advisory Committee consultant leads a Portland Reservoir Review panel that comprehensively examines the open reservoir issue, looking at all issues including water quality, security, age of facilities, costs, and historical significance. The reservoir panel remains unconvinced that there is any need or that there would be any public health benefit to eliminating the open reservoirs. The committee supports risk mitigation.
- **January 2005** Mayor Potter convenes stakeholder meeting and establishes LT2 committee, with representatives of neighborhood associations, business groups, conservationists, City's Public Utility Review Board, Large Water Users Coalition, and Portland Water Bureau.
- **March 2005** Portland City Council passes Resolution 36297 authorizing City to seek legislative alternatives and other means of complying with the impending rule.
- City meets with EPA to encourage EPA to alter the final rule to include alternate approaches that would allow Portland to avoid building additional treatment infrastructure.
- **January 5, 2006** Final rule published in Federal Register 40 CFR part 9, 141, and 142¹

- Requires the City to provide additional treatment to Bull Run water to inactivate or remove Crypto.
- Filtered systems, including systems with known outbreaks, are not required to take any action upfront (including watershed protection) beyond monthly testing of 50L of water. If filtered systems find a few oocysts, no action is required due to EPA-acknowledged flaws in sampling method.
- Requires the City to either cover or bury open reservoirs at Washington Park and Mount Tabor or to provide additional treatment at the outlets. (The risk mitigation option was inexplicably eliminated in the final rule despite the lack of any data collection on open reservoirs and any science to support burying or covering open reservoirs. The EPA documented public health problems in covered and buried storage only, none in open reservoirs.ⁱⁱ)
- **2006** Portland files legal challenge in Washington, D.C. District Court of Appeals; City of New York files as an Intervenor; Walla Walla files legal challenge
- **December 19, 2006** Oregon Wild and Oregon Chapter of Physicians for Social Responsibility file brief (amici curiae) in support of the City of Portland
- **April 2007** The Oregon State legislature unanimously passes and later Governor Kulongoski signs into law a “clean water variance” provision developed in line with the federal Safe Drinking Water Act variance provision. Action is taken in anticipation of the City’s interest in pursuing source water and open reservoir variances to the requirements of LT2. The State Health Department, Physicians for Social Responsibility, ratepayer groups, and environmental groups support this legislation.
- **November 2007** D.C. District Court of Appeals rejects Portland’s challenge, upholds rule. (Court did not address Portland’ system but rather deferred to agency and its right to promulgate rule.)
- **February 2008** City meets with EPA to discuss variance options. EPA states that variance for open reservoirs not possible, ignoring that the rule treats the reservoir requirement as a “treatment technique”.
- **2008** EPA slow in responding but ultimately refuses City’s first proposal (developed in conjunction with Dr. Gary Oxman, Multnomah County Health Officer and Amy Sullivan, PhD, Epidemiologist Multnomah County) to combine public health surveillance with additional water testing to secure EPA variance on water treatment portion of rule.
- **December 2009** Activists send letter to Obama Transition Team requesting exception to rule for Portland. EPA may consider a variance for treatment of Bull Run water based solely on testing an extremely large volume of water, more than is required of filtered systems with documented public health problems.ⁱⁱⁱ

EPA Deadlines

- **April 1, 2009** EPA-mandated deadline to sign a negotiated agreement with the State of Oregon and the EPA outlining how and by what date Portland will comply with the open reservoir aspect of the LT2 rule.
- **2012** Construction of a facility to additionally treat Bull Run water must be completed by 2012 (or 2014, assuming a two year extension.) According to the 2002 Report of the Bull Run Treatment Panel, it will take five to eight years to plan, design and construct a new treatment facility.
- **April 2009** City advertisements for design RFPs for both reservoir construction and water treatment facilities are imminent.

ⁱ (Note: Whole record was not available until City filed lawsuit challenging the rule as pertains to Portland. What began as a watershed protection regulation changed and later became known to water providers as “the UV light regulation” because UV treatment may be the cheapest way to comply with the rule.)

ⁱⁱ http://www.epa.gov/safewater/disinfection/tcr/pdfs/whitepaper_tcr_storage.pdf

ⁱⁱⁱ The EPA will minimally require that Portland increase our water sampling from the nationwide standard of 50 liters per month (600 L per year) to 13,500L over the next year, with near daily testing, which means a significant investment of time, energy and resources. Unlike EPA’s accommodation for filtered systems, should Portland find two or more *Cryptosporidium* oocysts, we would be forced to immediately build a treatment plant. It should be noted that EPA’s approved sampling method (HV1623) does not specify whether any oocysts detected are dead (harmless) or alive, nor does it specify the genotype. Therefore Portland could be forced to build a plant after detecting dead harmless and non-infectious microorganisms.