

Unfiltered Water Systems Challenge EPA Proposed Rule

1) Where is Portland's Voice?

The EPA's new proposed rule on drinking water, the Long Term To Enhance Surface Water Treatment Rule (LT2ESWTR), has recently completed its comment period with strong challenges from the Unfiltered Systems Working Group, New York City (NYC), and a consortium consisting of the American Water Works Association, Association of Metropolitan Water Agencies, the National Association of Water Companies, and the National League of Cities.

The challenges are of interest to Portlanders because this proposed rule underlies much of the city's stated justification for its controversial decisions to bury the Mt. Tabor and Washington Park reservoirs, as well as to construct a \$200 million membrane filtration plant at Powell Butte.

Each of these agencies maintains that EPA vastly overstates the risk of contracting cryptosporidiosis in systems with unfiltered water, and underestimates the cost of compliance. With regard to the risk of disease, the Unfiltered Systems Working Group notes that EPA's conclusions are based on estimates that are contradicted by actual data. For instance, if EPA estimates were applied to the NYC and Metro Boston's population of about 10 million, the proposed Rule would avert 145,000 to 455,000 cases of cryptosporidiosis per year. However, the actual number of cases reported in these two areas, served by these two systems, both of which have active surveillance systems, have combined averages of only about 150 cases per year, none of which are directly attributable to the treated municipal drinking water. EPA estimates suggest that the number of deaths averted in the NYC and Metro Boston area would be 23-75 cases per year. Yet, over the last 6 years, there has been only 1 death attributed to crypto in NYC, and 0 deaths in Metro Boston. Again, this single death was not directly attributable to the treated municipal drinking water in NYC.

The NYC comment also criticizes EPA for basing its rule on estimates of disease rates rather than looking at actual published research. A national effort mandated by Congress and led by the Center for Disease Control and EPA to estimate the amount, if any, of disease caused by water across the country, is years overdue. Several university-based studies have found negligible crypto disease rates among HIV patients. NYC further states: "It is also interesting to note that efforts to study cryptosporidiosis have been limited by the fact that it is too difficult to find people with the illness to conduct the needed studies." NYC concludes that the public health benefit from complying with the proposed rule is vastly overestimated, and at the same time the costs are vastly underestimated.

The Unfiltered Working Group states its concern regarding the cost/benefit inaccuracies as follows, "this may cause harm to the regulated community". The group further notes that "an overestimate of risk reduces the consumer's confidence in public water supply and may be misused by less scrupulous interest groups" (page 8 Unfiltered Systems Working Group Comments on LT2SWTR).¹

These agencies also criticize the EPA for requiring higher levels of treatment for pristine unfiltered waters than it does for systems that have polluted source water. The group also criticizes EPA for discouraging, rather than encouraging, watershed protection as a water quality management strategy.

Portland ratepayers might be interested to note that although Portland is a member of the Unfiltered Systems Working Group, its signature is NOT on the group challenge to the EPA. Rosemary Menard, of the Portland Water Bureau, was the EPA representative to the Federal Advisory Committee during their meeting period from March 1999 - September 2000. The Unfiltered Systems Working Group document is signed by the water systems of Massachusetts (Metro Boston), New York City, San Francisco, Seattle and Tacoma, but not Portland.

2) Is the EPA proposed rule on unfiltered water systems likely to survive legal challenge?

Finally, the Court of the Appeals for the First Circuit, in United States v. Massachusetts Water Resources Authority, 256 F.3d 36 (8th Cir. 2001), considered whether a local municipality's (Boston) could refuse to construct an EPA-ordered filtration plant in favor of constructing more cost-effective alternative. In finding for Boston, the Court stated the municipality was entitled "to pursue its alternative approach to the extent that it could satisfy the Rule's avoidance criteria and ultimately provide a safer water supply." In light of this decision, it is likely that a challenge to proposed EPA rule on unfiltered or finished open reservoir water systems could withstand legal challenge.

The Unfiltered Systems comments can be read online at:

<http://www.cascade.epa.gov/RightSite/getcontent/TemDfile. odf?DMW OBJECTID=090007d48021ec&DMW FORMAT=odf>

NYC's very detailed and critical comments can be read online at:

<http://www.cascade.epa.gov/RightSite/getcontent/TemDfile. pdf?DMW OBJECTID=090007d48021ec27&DMW FORMAT=~odf>

AWWA-AMWA-NAWC-NLC'S strongly-worded comments can be read at:

<http://www.cascade.epa.gov/RightSite/getcontent/TemDfile. pdf?DMW OBJECTID=090007d48021ecab&DMW FORMAT=odf>

City of Portland Bureau of Water Works comments can be read at:

<http://www.cascade.epa.gov/RightSite/getcontent/TemDfile. odf?DMW OBJECTID=090007d48021db25&DMW FORMAT=Ddf>

Section: EPA Challenge

Appendix

- A. Professional Connections Raise Questions. Summary of how key players related to each other and to the EPA proposed rule. These connections raise concern about the independence of these individuals.
- B. American Water Works Association; Association of Metropolitan Water Agencies; National Association of Water Companies; National League of Cities -- joint comments to EPA on proposed LT2ESWTR rule.
- C. Summaries of major points from EPA comments from: Unfiltered Systems Working Group, New York City, and AWWA-AMWA-NAWC-NLC as they apply in Portland.
- D. Unfiltered Water Systems Working Group Comments on the proposed EPA rule. Sets out the strongly worded Unfiltered Working Group's objections to the proposed LT2ESWTR rule. Portland is notably absent as the only unfiltered system NOT to sign on to this document.
- E. New York City's Department of Environmental Protection comments to the EPA on the proposed LT2ESWTR rule. Sets out their strongly worded objections to significant aspects of the proposed rule.
- F. Friends of the Reservoir January 4, 2004 comment to the EPA on the proposed LT2ESWTR. Sets out objections to the proposed rules and makes proposals.
- G. Reservoir Panel member Frank Ray's 12/24/03 comment to the EPA on the LT2ESV~ITR titled AMCLG of zero for cryptosporidium is not based on the best available science.
- H. Commissioner Saltzman's November 19, 2003 request that the EPA include a waiver provision in

the Cryptosporidium treatment requirement of the proposed rule.

- I. PURB member Scott Fernandez's November 17, 2003 request that the Portland Water Bureau immediately and without prejudice identify and document the unique conditions of the Bull Run Water System that allow for future variances and exceptions to the LT2ESWTR.
- J. Summary of Bull Run Water Treatment, An Independent Review, LT2ESWTR, by Scott Fernandez, M.Sc., Portland Utility Review Board 2000-present and Water Quality Advisory Committee 1996-2000. Addresses lack of sewage in our system; proposes water testing method and recommends watershed protection measures.
- K. Comments of Dr. Valerie Hunter presented by Floy Jones to the City Council on October 1, 2003 entitled "What the Proposed EPA rule REALLY Says."
- L. Federal Register Vol. 68, No. 154/ Monday, August 11, 2003/ Proposed Rules pages 47718 and 47719. Outlines the EPA rules in regard to open reservoirs.
- M. June 6, 2002 paper from Scott Fernandez to the PURB Committee. Sets out research regarding the insignificance of cryptosporidium in the Bull Run watershed and what actions the City should take to protect water quality.