



OREGON PUBLIC HEALTH DIVISION
Environmental Public Health

John A. Kitzhaber, MD, Governor

June 16, 2011

The Honorable Randy Leonard
Commissioner, City of Portland
1221 S.W. Fourth Avenue, Room 210
Portland, OR 97204

Oregon
Health
Authority

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Dear Commissioner Leonard:

I received your June 1, 2011 letter requesting “definitive guidance” regarding “how an uncovered reservoir variance can be achieved by the City of Portland.” The brief answer is that the City cannot receive a variance to this federal and state requirement.

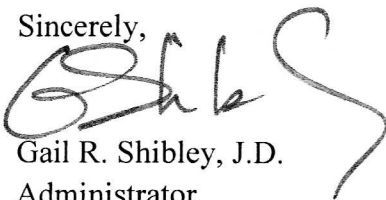
As you know, Portland’s water system is subject to federal law and regulation; the State, acting as Primacy agent on behalf of the federal government, directly assures compliance with those federal requirements. A central tenet of Primacy, codified in the federal Safe Drinking Water Act, requires a state to have regulations “no less stringent” than national regulations.

A variance from the “cover or treat” provision of the Long Term 2 Enhanced Surface Water Treatment (LT2) rule is not available for at least two reasons. First, neither the LT2 rule nor the law on which it is based provides for such a variance. Second, because of this federal regulatory “floor,” Oregon regulation cannot – and does not – provide for a variance from this standard.

I have enclosed a memorandum from the Oregon Department of Justice that provides more background and analysis, for your information and reference.

I appreciate the passion with which some argue that Portland should not cover its finished drinking water reservoirs. Absent an act of Congress or federal regulatory reversal, however, Portland (and every other water system subject to federal regulation) must either cover its finished water reservoirs or treat the discharge. The US Environmental Protection Agency has stated in its regulation and in direct communications with the City: There is no variance available under EPA’s regulation. To comply with Primacy requirements, there thus can be no variance under Oregon regulation.

Sincerely,



Gail R. Shibley, J.D.
Administrator

Encl: Oregon Department of Justice Memorandum
cc: Shannon O’Fallon, Senior Assistant Attorney General, Oregon Department of Justice
File

