

BEFORE THE STATE OF OREGON
OREGON HEALTH AUTHORITY
CENTER FOR HEALTH PROTECTION

In the Matter of

The City of Sandy Public Water System

BILATERAL COMPLIANCE AGREEMENT

The City of Sandy (the City) is a water supplier as defined in Oregon Revised Statute (ORS) 448.115(12) and Oregon Administrative Rule (OAR) 333-061-0020(150), and as a water supplier, has specific responsibilities that are identified in OAR 333-061-0025.

The City owns and operates the public water system serving Sandy, Oregon, identified by public water system ID# OR4100789 and located in Clackamas County, Oregon. The Sandy water system is a community water system serving approximately 11,000 people and is subject to regulation under ORS 448.115 to 448.290 and OAR 333-061-0005 to 333-061-0272.

Pursuant to its authority established in ORS 431A.010 and 448.255, the Oregon Health Authority, Public Health Division, acting through Drinking Water Services (DWS) has reviewed the operation of the Sandy water system. DWS has determined that water purchased by the City from the City of Portland, Portland Water Bureau (PWB) must be treated for *Cryptosporidium*.

I. PURPOSE

A. The City has a contract to purchase water for the Sandy water system from PWB. PWB was previously granted a variance from the requirement to treat water for *Cryptosporidium* as specified in OAR 333-061-0032(3)(e) through (g). This variance was revoked on December 18, 2017 and therefore water purchased by the City from PWB and subsequently served to customers by the Sandy water system does not meet the requirements of OAR 333-061-0032(3)(e) through (g). PWB plans to construct a water filtration plant and treat water for *Cryptosporidium* but the filtration plant will be located downstream of the point where water is currently diverted to the Sandy water system. If the point where water from PWB is diverted to the Sandy water system is not changed, the water purchased by the City from PWB will not receive adequate treatment for *Cryptosporidium* before it is served to customers served by the Sandy water system. Water without adequate treatment for *Cryptosporidium* represents a potential public health hazard.

Inadequately treated water may contain disease causing organisms. These organisms include *Cryptosporidium* which is a parasite that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches. OAR 333-061-0097

B. DWS and the City enter into this Bilateral Compliance Agreement (“Agreement”) to establish a schedule by which the City will construct facilities to adequately treat water purchased by the City from PWB, or by which the City will demonstrate it purchases adequately treated water from PWB. This agreement also serves to establish a deadline by which all drinking water served by the Sandy water system meets all treatment technique requirements in OAR 333-061-0032 and provides for protective interim measures until the drinking water is adequately treated.

C. DWS will not pursue enforcement actions against the City relative to the City’s compliance with OAR 333-061-0032(3)(e) through (g) while this Agreement is in effect, so long as the City is in compliance with all of the terms specified herein.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

1. The City purchases water for the Sandy water system from PWB. The City is

responsible for treating this purchased water according to OAR 333-061-0032(3)(a) because the City's connection to PWB is prior to the point at which PWB meets this requirement.

2. DWS issued a Final Order to PWB on March 14, 2012 granting a variance from the requirements to treat the water for *Cryptosporidium* and to provide at least two disinfectants, due to the nature of the raw water source and lack of detection of *Cryptosporidium*.
3. DWS revoked the Final Order granting a *Cryptosporidium* treatment variance on December 18, 2017 and entered into a bilateral compliance agreement with PWB whereby PWB will install treatment for *Cryptosporidium*.
4. PWB plans to install treatment for *Cryptosporidium* but the treatment facilities will be located downstream of the point where the City currently diverts water to the Sandy water system. The City has provided written confirmation to DWS that PWB will be able to supply water to the Sandy water system, "treated by the new filtration facilities up to the 3.0 MGD maximum of the current contract."
5. The City is required to meet all the responsibilities for water suppliers described in OAR 333-061-0025 and is therefore required to either move the location at which water is diverted from PWB or ensure adequate treatment is provided before drinking water purchased from PWB is served by the Sandy water system.

B. Conclusions of Law

As of December 18, 2017, PWB no longer had a variance from the *Cryptosporidium* treatment requirements in OAR 333-061-0032(3)(e) through (g) and therefore water the City purchases from PWB for the Sandy water system does not meet the treatment requirements in OAR 333-061-0032(3)(e) through (g). Water purchased by the City from PWB and subsequently served by the Sandy water system is therefore not in compliance with OAR 333-061-0032(3)(e) through (g).

III. CORRECTIVE ACTION SCHEDULE:

Upon completion of the activities described below, by the deadlines agreed upon, the City will meet the *Cryptosporidium* treatment requirements. **Water meeting all surface water and *Cryptosporidium* treatment requirements shall be served to all customers of the Sandy water system no later than September 30, 2027.**

- A. The City shall submit a revised master plan for the Sandy water system to DWS no later than December 30, 2019.
- B. The City shall submit an action plan to DWS no later than March 30, 2020. The action plan shall identify how water served by the Sandy water system will be fully treated for *Cryptosporidium*. The action plan shall identify all the tasks the City intends to perform to ensure all drinking water served by the Sandy water system is treated for *Cryptosporidium* according to OAR 333-061-0032 and set reasonable deadlines for completing all the identified tasks.

The City shall perform and complete all the tasks in the action plan by the deadlines specified in the plan and shall notify DWS in writing within 5 calendar days of completing each task. Upon approval by DWS, the submitted deadlines for the following tasks shall become enforceable by incorporation:

1. Begin design;
2. Submit complete, engineered construction plans and specifications to OHA for review and approval;
3. Complete design;
4. Begin construction; and
5. Begin start-up and commissioning.

Construction or installation plans shall meet the requirements in OAR 333-061-0060 for the construction or major modification of any facilities at the Sandy water system. Construction plans must be approved by DWS prior to any construction or installation taking place.

All construction and installation must meet the applicable construction standards in OAR 333-061-0050.

IV. INTERIM MEASURES:

To reduce the risk from *Cryptosporidium* in water purchased by the City from PWB and subsequently served by the Sandy water system and to protect public health, the following interim control measures shall be achieved until water purchased by the City from PWB and subsequently served to customers by the Sandy water system meets all surface water and *Cryptosporidium* treatment requirements:

A. Public Notification and Outreach:

1. According to OAR 333-061-0042(2)(a)(H) and (3)(a), within 24 hours of notification from PWB¹ that validated results indicate *Cryptosporidium* was detected at its water system intake and water from Bull Run was delivered at the time the sample was collected and is still present in the Sandy water system, the City or PWB, on the City's behalf, shall issue a press release to Sandy media outlets, post information about the detection on the City's website, www.ci.sandy.or.us, and utilize any appropriate social media used by the City. The press release must include the language in Appendix A. If DWS has determined that no additional protective measures are necessary to protect public health, DWS may allow the press release to be issued within one business day of receiving results if the press release would be required on a weekend or holiday except in cases of boil water advisories. If a press release regarding *Cryptosporidium* detections has been issued within the previous seven days, the City, with DWS approval, may issue periodic press releases that summarize the sampling results from the day of issuance to the previous detection, not to exceed seven-day intervals.
2. If DWS determines a boil water advisory is necessary for water purchased from PWB, the City or PWB, on the City's behalf, shall issue an advisory within 24 hours of the determination by DWS. The City shall make reasonable efforts to contact facilities serving vulnerable populations about such a boil water advisory and shall submit a draft of the public notice to DWS for approval before the notice is issued.
3. The City or PWB, on the City's behalf, shall issue a press release indicating water purchased by the City from PWB and subsequently served by the Sandy water system does not meet the *Cryptosporidium* treatment requirements in OAR 333-061-0032(3)(e) through (g) as soon as practical, but within 30 days after the effective date of this Agreement according to OAR 333-061-0042(3)(b) and (4)(a). The press release must include the language in Appendix A and must be repeated each calendar quarter until this Agreement is terminated.
4. The City shall continually post on its water quality webpage, www.ci.sandy.or.us/Water-Quality/, the information found in Appendix A or other language provided by DWS.
5. The City shall continually maintain a link on its website to PWB's website dedicated to *Cryptosporidium* information.
6. The City shall include the information found in Appendix A or other language provided by DWS annually in its consumer confidence report. The City's report may substitute for one of the quarterly press releases required above.

¹ PWB is required, in its agreement with DWS, to notify its purchasers of a *Cryptosporidium* detect.

7. Language in all public notifications must not contain additional language which nullifies the purpose of the notice, and must not be formatted in a way that defeats the purpose of the notice.
8. The City shall use the language contained in Appendix A in any press release or public notice it issues unless DWS provides updated language to be used in lieu of the language in Appendix A.

B. Reporting to DWS:

1. The City shall provide a copy of their standard protocol for issuing a boil water advisory to DWS within 60 days of signing this agreement.

C. Public Health Surveillance Activities:

1. On a continual basis, regardless of *Cryptosporidium* oocyst detects, DWS will coordinate with Oregon Health Authority, Acute and Communicable Disease Program (ACDP) regarding cryptosporidiosis cases. If sporadic human cases in the area served by the Sandy water system are elevated, ACDP will consult with DWS, the City, and local health agencies. If case counts remain elevated for more than two weeks an outbreak investigation will be opened; an outbreak investigation may also be opened earlier based on other compelling factors. If drinking water is a suspected cause, DWS shall immediately consult with a team of public health experts.
2. The City will participate in any cryptosporidiosis investigation or surveillance activities associated with the consumption of water supplied by the Sandy water system from the Bull Run watershed as requested by Clackamas County or the Oregon Health Authority.

V. DELAY OF PERFORMANCE / FORCE MAJEURE

- A. The City shall comply with the terms of this Agreement within the time limits set forth in this Agreement unless the performance is prevented or delayed by a Force Majeure event, or as otherwise agreed to in writing by DWS and the City.
- B. For purposes of this Agreement, a "Force Majeure" event is any event arising from causes beyond the control of the City or any entity controlled by the City that, notwithstanding due diligence by the City or any entity controlled by the City, delays or prevents performance of an obligation under this Agreement. The due diligence requirement includes using due diligence to anticipate any such event and to minimize the delay caused by any such event to the greatest extent practicable. A Force Majeure

event does not include, inter alia, increased costs of performance, changed labor relations, financial or business difficulties, normal inclement weather, or changed circumstances arising from the sale, lease or other transfer or conveyance of real estate interest.

- C. If the City believes that a Force Majeure event is likely to occur, is occurring, or has occurred that may affect its ability to perform an obligation under this Agreement, the City shall notify DWS by telephone or email within two business days of when the City first became aware of such event, and shall follow up with a formal notice to DWS within 15 days after the event with the following information:
 - 1. The action that may be or has been affected;
 - 2. The reasons for the delay;
 - 3. The length or anticipated duration of the delay;
 - 4. The measures taken or to be taken to prevent or minimize the delay;
 - 5. A schedule for implementing such measures; and
 - 6. Any additional information deemed appropriate by the City to support its Force Majeure claim.
- D. Failure to comply with the notice requirement of this paragraph shall constitute a waiver of any Force Majeure claim by the City as to the event in question.
- E. If DWS agrees that an actual or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligation shall be extended by written Agreement of the parties. An extension of the time for performing an obligation affected by a Force Majeure event shall not, of itself, extend the time for performing a subsequent obligation.
- F. The City shall have the burden of proving that a Force Majeure event was the cause of the noncompliance and the duration of the noncompliance.
- G. For any other non-Force Majeure event that nevertheless may delay the performance of any obligation under the Agreement, the City shall notify DWS in writing as soon as it becomes aware of such event and provide the same information as required for a Force Majeure event, as specified above. DWS may, in its discretion, extend the deadline for the City to perform an obligation under the Agreement after receipt of such notification.

VI. NOTICE OF NONCOMPLIANCE

- A. Prior to termination of the Agreement if DWS believes that the City is in violation of the Agreement, DWS shall notify the City in writing of the alleged violation and give the City a deadline for submitting a plan of correction along with timelines for coming into compliance. If the plan of correction is acceptable, DWS shall inform the City of that fact in writing. If the plan of correction is not acceptable to DWS, DWS shall notify the City in writing and require that the plan of correction be modified and resubmitted no later than 10 working days from the date the letter of non-acceptance was mailed to the City.
- B. Nothing in this section is intended to limit DWS's authority as set out in the Reservation of Rights.

VII. RESERVATION OF RIGHTS

- A. This Agreement does not constitute a waiver, suspension or modification of the requirements of the Oregon Drinking Water Quality Act; ORS 448.115 to 448.290 and administrative rules OAR 333-061-0005 to 333-061-0272, which remain in full force and effect.
- B. This Agreement does not relieve the City of any responsibilities or liabilities established pursuant to any applicable federal, state, or local law or regulation.
- C. Nothing in this Agreement is intended to limit DWS's authority to take any action permitted by law to protect the public's health. In the event that *Cryptosporidium* detections increase or other circumstances presenting risks to public health occur, DWS reserves all authorities to require the City to implement additional interim public health protection measures on an expedited timeline.
- D. DWS reserves the right to pursue enforcement actions against the City for failure to meet the requirements contained within this Agreement, which may include assessment of civil penalties or other legal remedies pursuant to ORS 431A.010, 431.155, 448.255 and 448.280. The City reserves all rights to defend such actions, except as provided in Section VIII of this Agreement.

VIII. NOTICE OF RIGHT TO REQUEST A HEARING

The City is entitled to hearing as provided by the Administrative Procedure Act (Oregon Revised Statutes, Chapter 183). By signing this Agreement, the City waives its right to contest the violations in Section II of this Agreement in a proceeding brought by DWS to enforce this Agreement.

IX. MODIFICATION AND TERMINATION

1. This Agreement may be amended from time to time as necessary by mutual agreement of the parties.
2. DWS will terminate this Agreement upon making a determination that the City has satisfactorily complied with all terms in Sections 3. and 4. of this Agreement.
3. Subject to DWS's obligations under Section VI of this Agreement, DWS may terminate this Agreement with 30 days written notice to the City by certified mail if DWS determines that the City is in violation of this Agreement or the facts or circumstances associated with this Agreement change.

X. EFFECTIVE DATE

This Agreement shall become effective upon signature by DWS and the City.

Dated this 19th day of September, 2018.



William R. King
Mayor
The City of Sandy

Dated this 21st day of September, 2018.



David Emme, Manager
Drinking Water Services
Oregon Health Authority

cc: Pete Farrelly, Oregon Health Authority, Drinking Water Services
Kari Salis, Oregon Health Authority, Drinking Water Services

Appendix A

Mandatory language to be included in press releases and public notices pursuant to Section II.C of this Agreement:

“The Portland Water Bureau does not currently treat for *Cryptosporidium*, but is required to do so under the drinking water regulations. Portland is working to install filtration by 2027 under a compliance schedule with the Oregon Health Authority. In the meantime, Portland Water Bureau is implementing interim measures such as watershed protection and additional monitoring to protect public health. [*Insert actions customers should take, and what steps PWB is taking to correct the situation.*]

Exposure to *Cryptosporidium* can cause cryptosporidiosis, a serious illness. Symptoms can include diarrhea, vomiting, fever, and stomach pain. People with healthy immune systems recover without medical treatment. According to the Center for Disease Control and Prevention (CDC), people with severely weakened immune systems are at risk for more serious disease. Symptoms may be more severe and could lead to serious life-threatening illness. Examples of people with weakened immune systems include those with AIDS, those with inherited diseases that affect the immune system, and cancer and transplant patients who are taking certain immunosuppressive drugs.

The Environmental Protection Agency has estimated that a small percentage of the population could experience gastrointestinal illness from *Cryptosporidium* and advises that customers who are immunocompromised and receive their drinking water from the Bull Run Watershed consult with their health care professional about the safety of drinking the tap water. [*Insert list of water suppliers that serve Bull Run water*] receive all or part of their drinking water supply from Bull Run. To learn if your drinking water comes from Bull Run, please contact your local drinking water provider.”