



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 21 2017

REPLY TO THE ATTENTION OF:

W-15J

The Honorable Karen W. Weaver
Mayor of Flint
1101 South Saginaw Street
Flint, Michigan 48502

Re: The City of Flint's February 8, 2017 Extension Request

Dear Mayor Weaver:

Thank you for your letter dated February 8, 2017, regarding the City's efforts to meet the requirements in EPA's November 17, 2016 Amended Order (Order). In your letter, you point out that the City is currently evaluating water source alternatives. Because of this ongoing evaluation, you have requested an extension of time for two elements required in the *New Source Treatment Plan (NSTP)*, which must be submitted to EPA by March 1, 2017: (1) addressing the City's technical, managerial and financial capacity to operate its PWS and (2) providing advanced notice and opportunity for public comment to the public on the NSTP.

Technical, Managerial and Financial Capacity:

By March 1, 2017, the City of Flint, Michigan Department of Environmental Quality (MDEQ), and State of Michigan (Respondents) are required to submit a NSTP. Under paragraph 60.b.iii of the Order, the NSTP is required to address the City's technical, managerial and financial (i.e., "TMF") capacity to operate its PWS in compliance with the Safe Drinking Water Act and National Primary Drinking Water Regulations. In your letter, you request that EPA grant the City additional time to address the issue of its TMF capacity until the City has completed its ongoing evaluation of potential water sources alternatives. EPA agrees that it makes little sense for the City to evaluate its TMF capacity when the City's intended treatment approach is still uncertain, as different approaches to water treatment will likely trigger different TMF capacity needs. Consequently, EPA will not require the Respondents to address TMF capacity in its March 1 submittal. Instead, EPA is requiring the Respondents to submit on March 1 a proposed timeline outlining the following:

- 1) when the alternatives analysis will be completed;
- 2) when a water source(s) will be selected; and
- 3) when the TMF capacity analysis associated with the selected source(s) will be completed.

If the City identifies a new water source as a result of the alternatives evaluation, please keep in mind that the City must notify EPA in writing within five days, as stated in paragraph 60.a of the Order.

Public Involvement:

Under paragraph 60.b.iii of the Order, the NSTP, which is due by March 1, was to be developed in consultation with the public through adequate advanced notice and opportunity for comment. In your letter, you again cite the ongoing evaluation of water source alternatives and assert that it would be prudent to delay public participation in the NSTP development “until this evaluation is complete and the proper economic, social, political and public health issues are vetted.”

While EPA recognizes that the City’s evaluation of water source alternatives is a “work in progress,” EPA strongly believes that there needs to be an opportunity for meaningful public involvement in the new water source selection in the event the alternatives evaluation being conducted leads to the City changing its intended water source. Transparency has been paramount throughout this whole process, which is why each step that Respondents take towards compliance with the Order is required to be made available to the public. Indeed, the specific requirement in paragraph 60.b.iii that Respondents develop the NSTP in consultation with the public via notice and comment were included exactly for that reason. EPA expects the Respondents to engage with the public as soon as possible to allow for public input on any decisions that directly affect them, such as changing the decision on the City’s source water.

I also emphasize, as was discussed during our February 15 call, the requirement for public participation regarding any new projects that the City intends to fund through the Drinking Water State Revolving Fund (DWSRF). Both the water treatment plant and meter replacement projects were not part of the City’s 2016 DWSRF project plan, and therefore must be subjected to the required state public participation process to get onto the funding list that MDEQ ultimately includes in the intended use plan submitted to EPA.

By state law, a community’s project plan must include a demonstration that there were adequate opportunities for public consultation, participation, and input in the decision-making process during alternative selection. In addition, the DWSRF process requires a state to have a process to assess the technical, financial, and managerial capability of all systems requesting assistance to ensure that the systems are in compliance with the requirements of the Safe Drinking Water Act (SDWA) and ensure that public water systems undertake feasible and appropriate changes in operations to comply with SDWA requirements over the long-term. These requirements are in line with the requirements in the EPA Order and must be completed.

Taking into account the fact that the NSTP was to be developed in consultation with the public, as well as the fact that the alternatives analysis process is still underway, EPA requires that the City submit its proposed “Public Participation Plan” to EPA by March 1, and that the Plan include the following:

- 1) a description of how the public has been or will be engaged in the ongoing alternatives analysis process;
- 2) a description of how the public has been or will be engaged in the ultimate selection of the City's new water source(s);
- 3) a description of how the public has been or will be involved in any DWSRF-related public participation opportunities; and
- 4) the City's plan and timeline for vetting the relevant economic, social, political, and public health issues associated with the alternatives evaluation.

Please do not hesitate to contact me at (312) 353-8320 or korleski.christopher@epa.gov to further discuss any questions the City may have regarding the content of this letter and the requirements of EPA's Order.

Sincerely,



Christopher Korleski
Director, Water Division

cc: Richard Baird, Michigan Governor's Office
Sylvester Jones, City Administrator, City of Flint
Keith Creagh, Director, Michigan Department of Natural Resources
Bryce Feighner, Director, Drinking Water and Municipal Assistance Division, MDEQ