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July 12, 2017

Mr. Zachary Rounds
Regulatory Development Unit, Division of Drinking Water
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814
ddwregunit@waterboards.ca.gov

**RE: 1,2,3-Trichloropropane Maximum Contaminant Level (SBDDW-17-001) –
Response to Comments**

Dear Mr. Rounds:

The California Association of Mutual Water Companies (“CalMutuals”) is concerned with a number of the responses the State Water Resources Control Board (“Water Board”) has included in the DRAFT – Initial Response to Comments for Proposed 1,2,3-Trichloropropane (“1,2,3-TCP”) maximum contaminant level (“MCL”) regulations (“Response to Comments”). While some of our comments are aligned with organizations such as the Association of California Water Agencies, the bulk reflect our concern for small, older and disadvantaged communities. The proposed regulation will needlessly expose our affected members to litigation by third parties given that it is not feasible to recover funds from responsible parties to pay for necessary treatment systems before the regulation becomes effective. To address this, we ask that the State Water Resources Control Board institute a compliance period before enforcement takes place that accounts for the time, expense and effort necessary to recover the costs of installing treatment systems – especially for small systems, including many that serve disadvantaged communities.

CalMutuals and many of our members support the adoption of the proposed MCL for 1,2,3-TCP without further delay. The MCL will set a clear target for public water suppliers and utilities in developing the necessary steps towards meeting the MCL and continue to protect public health. However, our association remains extremely concerned that the regulations fail to include a sufficient time period for water suppliers and utilities to implement measures to comply with the new MCL without being deemed in violation.

Our association is concerned the Response to Comments fails to consider the practical processes that water suppliers must use to comply with the proposed MCL and the impacts that non-compliance has on disadvantaged communities in particular. We would like to address the following assertions in the Response to Comments in order to clarify the impacts that can be avoided simply by including a reasonable compliance period in the regulation.

I. The process that public water systems must use for installing new treatment devices is lengthy and expensive, even for known treatment technologies. Failing to include a compliance period will not speed up this process.

The Response to Comments notes that “granular activated carbon is neither a new nor a novel technology requiring extensive preliminary planning and design to implement. A compliance period to provide Public Water Systems additional time to come into compliance with the MCL for 1,2,3-TCP is therefore not proposed as part of the regulations.” This response fails to recognize the very real steps (and oftentimes lengthy steps) that water suppliers must use in order to develop and install a new treatment technology, regardless of whether or not the treatment is novel or widely used. As outlined in our previous comments, these include possible land acquisitions, environmental impact assessments, public contracting and bidding requirements, financing issues and possible rate increases, all of which we will now explain in detail.

a. Many wells are located in residential areas that do not have enough land around them to accommodate GAC.

In this proposed rule, granular activated carbon (GAC) is identified as the best available treatment technology. GAC has a footprint that is much larger than many wellhead locations can accommodate. This means that in order to install the treatment technology required to maintain compliance with the MCL for 1,2,3-TCP, water suppliers will have to acquire land adjacent to well sites through costly land purchases or condemnations. Alternatively, if this land is unavailable, water suppliers will have to acquire another parcel of land to house the treatment structure, and then connect it to the well via new piping. The amount of time that this may take is variable but cannot reasonably be accomplished in six months or less.

b. Even established treatment technologies such as GAC have environmental impacts that need to be evaluated and appropriately permitted.

In order to develop and construct a sizable infrastructure project such as installing a GAC system, all public agency water suppliers must complete environmental reviews to satisfy the California Environmental Quality Act. This is required because there will be construction impacts, possible increased traffic, visual impacts in the communities surrounding the systems, and waste products from the treatment process. Water suppliers must hold public hearings and receive comment in order to proceed with such a project. In addition, there are a number of operational considerations that must be appropriately analyzed such as backwash discharges and carbon change-outs. These processes must then be permitted by the Regional Water Quality Control Board. All of this adds to the time that it will take to complete a project of this nature. In their joint comments, the City of Chino, Chino Desalter

Authority and Monte Vista Water District estimate that the time to install GAC at all of their affected wells is 2-3 years.¹

c. Small and Disadvantaged communities must have regulatory certainty in order to justify spending money on installing new treatment devices.

The Response to Comments notes that “public water systems may choose to begin taking actions to remain in compliance with the proposed MCL in advance of the regulation effective date”.² Small, older water systems, and water systems serving disadvantaged communities, cannot justify spending significant funds without knowing if a regulation will be finalized, when it will be effective, and what it will require. Furthermore, the State’s Technical Assistance Program does not function in a manner that responds to applicant needs promptly enough before the regulation and enforcement takes effect.

In the best of circumstances, even with such early action, it still takes wealthier and larger water suppliers 2-3 years to raise sufficient funds, complete environmental review, bid construction contracts, and complete installation of treatment systems, including known treatment technologies such as granular activated carbon. Until the final MCL is adopted, it is not possible for water suppliers to be certain how much treatment, if any, will be required to be in compliance. This makes it impossible for water suppliers, especially those serving disadvantaged communities, to meet a compliance deadline that begins less than six months after the MCL is adopted, as this regulation proposes.

d. Compliance periods for new drinking water MCL’s drive technology advancements that benefit communities making them affordable to small and disadvantaged communities

The federal arsenic rule is a good example of the beneficial technological advancements that can occur when water systems have time to evaluate identified Best Available Technologies (BAT) and develop new ones. Few public water systems installed activated alumina treatment identified by USEPA as the BAT that would be widely used to meet the revised arsenic MCL. Within two years of adopting the MCL, research performed by water suppliers and their consultants resulted in better, more cost effective technologies with less impact on communities and the environment. Without the compliance period provided in the arsenic rule, public water systems would have had to forego the research needed to evaluate technologies and hastily install one of the limited technologies identified when the rule was promulgated. Many more of the impacted public water systems would have ended up with treatment systems that were ineffective or too costly to operate because they were selected to satisfy a compliance order rather than being based on pilot projects and comprehensive technology evaluations that consider water quality conditions and waste management requirements. This has been a major benefit to disadvantaged communities and small systems grappling with arsenic.

The timeline outlined in this regulation is insufficient to accommodate these required processes and therefore will place public water suppliers in compliance jeopardy without improving public health or speeding up the treatment installation process.

¹ Joint comments, at p. 3.

² At p. 14.

II. A reasonable compliance period is necessary to avoid unnecessary costs impacts to small, older and disadvantaged communities.

The Response to Comments notes that “although Public Water Systems may wish to avoid being declared noncompliant with the proposed MCL during the period between finding a source out of compliance and completing either installation of treatment or other activities which may bring the water system back into compliance, providing a compliance period is not necessary and not in the public interest.” CalMutuals completely and strongly disagrees with this assertion. If anything, the Board should consider the May 5, 2017 ruling in Sacramento Superior Court which cited the Division of Drinking Water for not properly assessing cost impacts on small water systems when setting the standard for Hexavalent Chromium.

Superior Court Judge Christopher E. Krueger ruled the Department of Public Health (DPH) failed to consider economic feasibility when it adopted the standard for Hexavalent Chromium. The cost factors analyzed in that case are similar to those in the proposed regulation for 1,2,3-TCP, especially for smaller water systems and disadvantaged communities. Those factors include affordability, cost of treatment, and delays inherent in the State’s ability to issue grants and provide technical assistance before the standard takes effect.

The Response to Comments also notes: “The State Water Board’s Division of Drinking Water District offices provide technical support to public water systems and funding opportunities are available through the Division of Financial Assistance through loans and grants.” CalMutuals has made a concerted effort to refer its members to the Division’s Financial and Technical Assistance programs. In the current year alone, nearly a dozen applications have been filed for technical assistance. In no instance has the response to those requests resulted in completion of a project, including activation of a treatment plant within six (6) months, a similar period before the standard for 1,2,3,-TCP goes into effect.

In one particular instance, beginning in November 2016, Maywood Mutual Water Company #1 that provides water to a disadvantaged community in Los Angeles County, was assigned assistance from the California Rural Water Association (CalRural) through the Division of Financial Assistance Technical Assistance Program. CalRural was to help the company navigate the rigorous process to permit the operation of a manganese treatment plant that was partially funded by a state grant. CalRural subsequently contacted the General Manager of Maywood Mutual Water Company #1 with notification that all work to apply for the permit would cease because all the funding for the task had been exhausted.

Most concerning to CalMutuals is the fact that once a water agency is declared to be non-compliant, it will be subject to enforcement action that can include both compliance orders and fines, and is vulnerable to third party citizen lawsuits. Also, being declared to be non-compliant as a result of an insufficient compliance period creates an unjustified negative perception among the water supplier’s customers. Moreover, the costs of legal fees and fines are passed directly onto the water system’s ratepayers, but such fees and fines do nothing to speed up the process that still needs to be followed in order to complete construction of the necessary treatment systems. This puts water suppliers in a situation of spending money not only on fines associated with the violation, but legal fees. This money does nothing to improve public health or speed up the construction process. The bottom line is that the

state has no viable program to assure that any water system (including those serving disadvantaged communities) can be brought into compliance with the six month compliance period.

a. Non-compliance threatens water supply reliability.

The Response to Comments notes that “the most contaminated sources may be shut down and the vast majority of water systems will continue to serve drinking water despite an exceedance of the MCL...” Not all public water systems have a replacement supply that will compensate for the lost supply from shut wells. Particularly, small disadvantaged communities may not have access to imported water, or it may be too expensive for them to utilize that source. Thus, the smallest water systems will be disproportionately adversely affected by this regulation. Again, the state does not have a viable technical assistance program that can promptly help such systems comply or find alternative sources of water within the six-month time frame that will trigger enforcement action.

III. A reasonable compliance period can be implemented in a manner that maintains water supplier transparency and accountability to the public, and is consistent with state and federal law.

a. Including an appropriate compliance period in the regulation does not preclude public notification regarding presence of contaminants.

The Response to Comments notes “the public may lose confidence in their water supply or supplier but the public also has a right to know when their drinking water does not meet public health standards.” Once the MCL for 1,2,3-TCP is adopted by the Water Board, state law requires that water suppliers “shall initiate the quarterly monitoring for that chemical in January of the calendar year after the effective date of the MCL”.³ The results of any such monitoring would be reported in the agency’s consumer confidence report and through public notices. The federal Safe Drinking Water Act has specific reporting requirements that water suppliers must use following a new MCL effective date. ACWA proposes language outlined in Attachment A to its letter that would clarify this.

b. Compliance periods are consistent with both the federal and state Safe Drinking Water Acts.

As highlighted in our previous comments, the federal Safe Drinking Water Act provides for a phase-in period of up to five years to ensure that water systems have a reasonable amount of time to undertake the work that is necessary to comply with new drinking water standards. Specifically, §1412(b)(10) of the federal Safe Drinking Water Act provides the following authority to regulators:

A national primary drinking water regulation promulgated under this section (and any amendment thereto) shall take effect on the date that is 3 years after the date on which the regulation is promulgated unless the Administrator determines that an earlier date is practicable, except that the Administrator, or a State (in the case of an individual

³ CCR § 64445(b).

system), may allow up to 2 additional years to comply with a maximum contaminant level or treatment technique if the Administrator or State (in the case of an individual system) determines that additional time is necessary for capital improvements.

As a result of this statutory authority, federal primary drinking water standards have incorporated Compliance Dates that are separate from the Effective Date, allowing for more effective implementation. For example, the federal Safe Drinking Water Act adoption of an MCL for arsenic outlines a pathway to compliance that includes public notification while avoiding the deleterious impacts to water suppliers of non-compliance. These compliance periods are important to avoid situations where public water systems are put in a non-compliance situation due to the adoption of a new MCL. We suggest that the Water Board adopt a similar method in establishing compliance and effective dates for the proposed MCL for 1,2,3-TCP.

c. The compliance process outlined in SB 385 would work as an alternative.

The State Water Board should learn from the mistakes made in connection with the adoption of the MCL for hexavalent chromium. When that standard was adopted, a longer compliance period was not provided. The water industry recognized the need for such a longer compliance period and ultimately SB 385 was introduced and eventually signed into law in 2015. SB 385 provides a process for public water systems impacted by the state's MCL for hexavalent chromium a period of time to take the steps needed to achieve compliance with that standard. SB 385 did not change the requirement to comply with the standard or delay when compliance is achieved, and affected water systems are successfully taking the same steps toward compliance with the MCL that they would take without SB 385, but without the immediate risk of being held in non-compliance. The bill simply provided a limited period of time for a water system to work toward achieving compliance without being deemed in violation as long as strict safeguards are met. Among these safeguard provisions is a requirement that water customers be informed of the compliance plan and progress toward compliance.

SB 385 signaled the intent of the Legislature that a reasonable compliance period can be an appropriate practice if it is developed along with appropriate safeguards and public notification. Similar to the approach outlined in SB 385, our associations recommend the Water Board provide a reasonable period of time for public water suppliers impacted by a new MCL for 1,2,3-TCP to come into compliance before they may be deemed in violation.

IV. Conclusion

CalMutuals strongly urges the Water Board to further revise this regulation to provide for an adequate compliance period that can meet the needs of small and disadvantaged communities. We are available to meet with you to discuss these comments and proposed changes in further detail. Please do not hesitate to contact Adán Ortega at adan@calmutuals.org or (714) 449-8403 .

Sincerely,

Adán Ortega
Executive Director
California Association of Mutual Water Companies
www.CalMutuals.org

cc: Honorable Chair and Board Members, State Water Resources Control Board
Mr. Darrin Polhemus, Deputy Director, Division of Drinking Water, State Water Resources
Control Board