

April xx, 2022

Clerk to the Board
Ms. Jeanine Townsend
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Delivered by e-mail to:
commentletters@waterboards.ca.gov

Subject: Comment Letter - Hexavalent Chromium Workshop

Dear Chair Esquivel and Members of the Board:

I am writing on behalf of (Name of Water Supplier) which serves (number of connections) in (City and County). (IF IT APPLIES, PLEASE ADD: We serve a disadvantaged community.) We appreciate the efforts of the State Water Resources Control Board's (State Board) Division of Drinking Water (DDW) to meet the requirements of Health and Safety Code (HSC) Section 116365(a) by establishing a Hexavalent Chromium (Cr6) Maximum Contaminant Level (MCL) as close to the Public Health Goal (PHG) as technologically feasible. We applaud DDW for proposing a compliance period and have recommendations for how to build on past lessons so that no one is left behind in meeting the new MCL for Cr6.

However, we feel the process in arriving at that new MCL lacks adherence to some fundamental scientific, legal and administrative procedures that will create uncertainty and leave the adopted MCL vulnerable to lawsuits. Those issues will create situations where water systems with levels of Cr6 above the MCL will be required to proceed under an economically infeasible treatment directive. Those situations create a bad precedent for other future MCLs.

We offer the following comments regarding the Draft Hexavalent Chromium MCL proposal released on March 21, 2022.

- 1. Scientific integrity:** We are concerned that the proposed MCL for Cr6 is apparently based upon an outdated public health goal set by the Office of Environment and Health Hazards Assessment (OEHHA) that was established for the prior MCL adopted in 2012 and invalidated in 2017. Health and Welfare Canada and other world health authorities have considered more recent health risk assessments in establishing standards for Cr6. We recommend that

the Division of Drinking Water renew its request to OEHHA to consider the latest science for the development of a new PHG.

- 2. Court mandated economic feasibility assessment:** In 2017, the California Superior Court invalidated the previous MCL for Cr6 principally because the California Department of Public Health, which was the applicable regulatory agency at that time, did not conduct a legally acceptable economic feasibility assessment. Since 2020, the DDW has made an earnest effort to explain why an economic feasibility assessment *will not* be conducted for the proposed Cr6 MCL. In its place, DDW has explained several ways to assess potential costs for various sizes of water systems without conducting the court-mandated assessment. The first suggestion that appeared in a 2020 White Paper proposed to estimate the cost of treatment by factoring all of the impacted entities divided by the estimated cost. The Draft MCL now proposes to assess the cost as a percentage of income and note those who surpass U.S. Federal EPA guidelines for affordable water rates. The Draft MCL also proposes to assess the cost for smaller water systems based upon the use of point of use/entry devices. While this is problematic for reasons to be discussed later in this letter, the bottom line is that these approaches seem to defy the California Superior Court's specific order in interpreting pertinent statutes to conduct an economic feasibility analysis.

Failure to conduct an economic feasibility analysis increases the probability that the new MCL to be approved by the State Water Board will again be invalidated by the courts. This may result in stranded costs to be incurred by the State of California and individual water systems that exceed the proposed MCL.

We highly recommend that the State Water Board specifically direct DDW to conduct an economic feasibility analysis of the proposed Cr6 MCL to be submitted to the State Department of Finance as required by law and as ordered by the courts.

- 3. Planned Universal Compliance:** Again, we applaud DDW for proposing a compliance period with larger water systems going first, providing time for economies of scale to benefit smaller water systems near the end of the compliance period.

We suggest that the State Water Board increase the timeline of compliance from 2 years to 4 years for large systems, from 3 years to 5 years for medium

systems, and from 4 years to 6 years for small systems. This will allow greater time for economies of scale and adaptive advances in technology led by the larger water systems, to benefit the smaller water systems.

Concurrently with the compliance periods, we urge the State Water Board to direct DDW to formulate a strategic plan for compliance. Such a plan must include a financial plan that dedicates state resources to help small water systems and those serving disadvantaged communities that otherwise cannot afford compliance with the new Cr6 MCL. We feel that such a financial plan if well executed will help DDW defend the MCL in court if it should be challenged. This is because such a plan and execution would “bake-in” economic feasibility into the regulation establishing the MCL.

Economic feasibility considers the aggregated cost of compliance, and the financial means and access to meet those costs. An MCL can be deemed economically infeasible if small water systems and disadvantaged communities do not have the means and/or opportunities of gathering the resources in a reasonable amount of time to buy and operate the equipment required to comply, regardless of its cost. While this recommendation may require re-prioritizing the SAFER and other state funding programs, it will stem “the race to the bottom” of non-compliance by water systems that do not have the means to comply with a new Cr6 MCL. In fact, if the 10ppb MCL adopted in 2012 had not been invalidated, the number of water systems failing to comply with the Safe Drinking Water Act would total over 500 water systems, double the number in OEHHA’s current human right to water database.

4. We are concerned about the ability of currently available analytical methods to meet the proposed hexavalent chromium detection limit for purposes of reporting (DLR), which is 0.05 ppb. The proposed DLR is 20 times lower than the DLR that was in place until 2017.

We suggest that the State Board increase the proposed DLR to 0.001 mg/L instead of the proposed 0.00005 mg/L. In addition, the State Board must allow sufficient time for laboratories to acquire the necessary equipment and certification to be able to meet the proposed DLR. Sampling for PFAS became a significant issue for small water systems given the lack of local laboratory capacity and the limitation of the number of laboratories across the state due to recent mergers.

- 5. The affordability analysis methodology is inconsistent between large and small systems.** The current affordability analysis heavily relies on point-of-use devices to meet the MCL at a reasonable cost, particularly for small and rural systems. Health and Safety Code [Section 116380](#) specifies the conditions in which point-of-use (POU) and/or point-of-entry (POE) devices may be used in lieu of centralized treatment. If POU or POE is used for analyzing affordability of the proposed MCL, these should be an alternative BAT, approved by the Board as specified in Health and Safety Code §116380 and with guidance to systems that may choose this path to compliance. Otherwise, the question of treatment cost should be analyzed on the basis of an actual compliance method, not one that is merely theoretical.
- 6. POU/POE Devices.** Reliance on POU/POE as an approved treatment technology can be challenging for some communities where this approach might not work if liability for the operation of such systems has not been addressed.

We thank you for considering our comments and we welcome the opportunity to discuss further.

Sincerely,

Name

cc