



December 28, 2020

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor, Sacramento, CA 95814
Via Electronic Mail: commentletters@waterboards.ca.gov

Dear Ms. Townsend:

Subject: Comment Letter – Hexavalent Chromium MCL Costs

I am writing on behalf of the California Association of Mutual Water Companies ("CalMutuals") to comment about preliminary MCL cost estimates for hexavalent chromium released by the State Water Resources Control Board on November 30, 2020. CalMutuals is a statewide association of over 300 mutual water companies founded in 2013 to advocate on behalf of our members on regulatory and legislative matters and bring them technical assistance resources.

The crux of our comments about the hexavalent chromium MCL cost estimates presented in the report, and two public workshops is that the analysis may not lead to applying economically feasible technologies as part of implementing an MCL. Failing to assess economic feasibility would not comply with the 2017 Superior Court order invalidating the MCL set in 2014 by the California Department of Public Health of 10ppb. Failing to apply economically feasible technologies is perilous because there remains a chance that the new MCL may be invalidated again if challenged in the courts, on the basis that the costs imposed on small water systems are not economically feasible. A court challenge's potential adds to regulatory uncertainty and threatens stranded costs by small water systems, which may make early investments to comply with a new MCL.

The possibility that a new MCL may face a successful legal challenge may be mitigated with the following recommendations:

1. Consider Point of Use Technologies for systems with under 200 service connections
Discussion: The Water Board should find technologies for water systems with less than 200 connections through the innovation of centralized monitoring and customer communication for point of use (POU) or point of entry (POE) devices and new technologies that allow for centralized monitoring. Regular inspections by small water systems would help ensure proper operation and maintenance of domestically installed devices. Protocols developed by the State Water Board for checking point of use devices can also be developed following the state's recent lead testing mandates for water systems for schools that request samples. Such a proactive approach would buffer the water system from liability for improperly functioning devices and

create effective pathways to assure that manufacturer warranties and replacement are carried out efficiently when the water system finds a device not properly performed.

2. Do not apply a methodology based upon the universal assumption of treatment if a source is above the potential MCL

Discussion: Applying a methodology based on universal treatment runs counter to the Division of Drinking Water's (DDW) strategy to consolidate small water systems that find themselves within five miles of a larger water system. While we don't believe that this strategy will yield the results envisioned by DDW on a wholesale basis, where it is likely to work will result in benefits as some small systems become aggregated to larger water systems without requiring additional treatment.

3. Do not apply linear risk assumption

Discussion: New studies indicate that the linear risk assumption adopted by OEHHA in 2012 for hexavalent chromium, based on a 2009 National Toxicology study, is outdated. By applying newer studies, Health and Welfare Canada, for example, found that a 100ppb standard for total chromium was sufficiently protective of public health. The linear risk assumption was alarmingly used in the State Water Board's workshop presentation to assert that the cancer risk of a 10 ppb MCL for hexavalent chromium would result in 1 cancer risk in a population of 2,000. By contrast, in August 2020, a team from ToxStrategies published a report finding that toxicity from hexavalent chromium was limited to extremely high doses that are not environmentally-relevant. The linear risk assumption for hexavalent chromium is not only needlessly alarmist but comes with dangerous trade-offs. The trade-offs include high costs that create risk by draining funds away from real threats such as other contaminants and lack of water system maintenance.

The most recent amendments to the Administrative Procedures Act, passed in 2011 (Senate Bill 617), reaffirm the Legislature's goal to establish requirements that lead to the adoption of more economically efficient and cost-effective regulations. We urge the SWRCB to adopt a baseline set of criteria for evaluating economic feasibility and applying them to all future MCLs and MCL reviews, including for potential treatment technologies.

Finally, any compliance mechanisms should be part of a "Strategic Compliance Plan" adopted by the SWRCB in tandem with new MCLs for smaller systems and disadvantaged communities. The "Strategic Compliance Plan" may include grants, technical assistance, consolidations, as well as variances and point of entry/point of use treatment tied to permanent solutions before the new drinking water standards are enforced.

Sincerely,

Adan Ortega Jr.
Executive Director
California Association of Mutual Water Companies