



California's State Water Board Poised to set a Maximum Contaminant Level for Hexavalent Chromium

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The metal element chromium is naturally occurring and can be found in rocks, volcanic dust, soil, plants, and animals from the natural erosion of chromium deposits. Chromium exists in two primary forms: trivalent chromium and hexavalent chromium (HC). Trivalent chromium is an essential human dietary element. HC, however, is a compound form of chromium that is produced by industrial processes. Manufacturing uses of HC include stainless steel production, welding and torch-cutting, chrome plating, and the manufacturing of textile dyes and pigments.

The manufacturing process can release HC which can ultimately get into drinking water through leakage, poor storage, or improper disposal. Once released, HC is soluble in water and can accumulate in water systems. The California State Water Board considers HC a human carcinogen relating to a variety of health issues.

MCL Rulemaking Background

The U.S. EPA has established a total chromium MCL of 100 micrograms per liter (ug/L). In 2014, the California Department of Public Health (CDPH) set an MCL for HC at 10 micrograms per liter (ug/L). That same year, California's drinking water program shifted from CDPH to the State Water Board. In 2017, the Sacramento Superior Court invalidated the MCL for HC because of a lawsuit by the California Manufacturers and Technology Association. and the Solano County Taxpayers Association. The court's invalidation was based on the state not fully considering the economic feasibility of complying with the MCL. 64 Cal. App. 5th 266.

In June 2023, the State Water Board released a Notice of Proposed Rulemaking for establishing an MCL of 10 ug/L for HC in drinking water. On August 2, the State Water Board held a hearing under the Administrative Procedure Act to receive input on the proposed

MCL. In November 2023, the State Water Board released the text of the proposed regulations and provided for a 15 day public comment period. Thereafter, the State Water Board will consider comments before recommending the proposed rule to the Board for adoption. The State Water Board must complete and submit its MCL on HC to the Office of Administrative Law no later than one year following the publication of the Notice of Proposed Rulemaking.

Take Aways

Health & Safety Code section 116365(a) requires the State Water Board to set MCLs “as close as feasible to the corresponding public health goals (PHG)...to the extent that is technologically and economically feasible.” The PHG for HC is 0.02 ug/L, as set in 2011. The rulemaking process proposes a 10 ug/L MCL. The State Water Board received public pressure to set a 0.03 ug/L MCL, but it is expected that the State Water Board will stick with its proposed MCL of 10 ug/L.

The State Water Board believes the proposed MCL is both technologically and economically feasible.

The State Water Board analyzed current, new, and emerging water treatment technologies, identifying three Best Available Technology (BAT) methods that can reliably remove HC from drinking water to levels less than the proposed MCL. The three BATs identified are: ion exchange, reverse osmosis, and filtration.

In selecting an economically feasible MCL, the State Water Board evaluated water treatment costs and what the cost of the treated water will be to the consumer. The State Water Board received public comments from water purveyors estimating that their cost to treat water to the proposed MCL would increase significantly, some estimating annual increased costs running between \$1.7 and \$5.1 million. The MCL, if approved, is generally expected to increase consumer water rates. However, those advocating for the proposed MCL, or a stricter MCL, comment that water purveyors have had the benefit of years to invest in the appropriate technology to address this public health concern. If approved, the new MCL may also result in more stringent remedial obligations at cleanup sites.

For more information and assistance navigating these new requirements, contact any attorney with Frost Brown Todd's [Environmental](#) practice group.

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