

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF DRINKING WATER
FEBRUARY 22, 2017**

ITEM 4

SUBJECT

CONSIDERATION OF A RESOLUTION ADOPTING THE PROPOSED PRIORITIZATION OF DRINKING WATER REGULATIONS FOR CALENDAR YEAR 2017

DISCUSSION

All public water systems, as defined in Health & Safety Code (HSC) Section 116275, are subject to regulations adopted by the U.S. Environmental Protection Agency (U.S. EPA) under the Safe Drinking Water Act of 1974, as amended (42 U.S.C. 300f et seq.), as well as by the State Water Resources Control Board (State Water Board) under the California Safe Drinking Water Act (HSC, div. 104, pt. 12, ch. 4, § 116270 et seq.). California has been granted primary enforcement responsibility (“primacy”) by U.S. EPA for public water systems (PWS) in California. California has no authority to enforce federal regulations, and federal laws and regulations require that California, in order to receive and maintain primacy, promulgate regulations for California that are no less stringent than the federal regulations.

The State Water Board is tasked with adopting drinking water regulations and recycled water regulations, when associated with the protection of public health. These regulations include primary drinking water standards (e.g., maximum contaminant levels [MCLs] or treatment techniques), monitoring and reporting requirements, and any other standards related to providing safe drinking water (e.g., operator requirements, laboratory accreditation standards, design standards, pipe separation standards, etc).

Establishing Priorities for Regulatory Development Work

The prioritization of the regulations depends on several factors, including:

- The benefit to protection of public health gained by the timely adoption of a regulatory requirement or MCL.
- The establishment of a new or revised federal regulation, Maximum Contaminant Level (or Treatment Technique) addressing a specific contaminant or other requirement. California standards must be at least as stringent as federal standards for the state to maintain primacy for the drinking water program.
- The existence of any statutory mandates to adopt a regulation within a specific time frame. This would typically be a result of recent legislation or court case addressing a specific contaminant or issue.
- Other priorities and staffing resources available for the development and implementation of regulations. For example, the recent drought emergency work required staff and management attention and involvement. Though staff continued to work on regulatory priorities, the diversion of staff and management to the drought emergency had an impact on time schedules for completion.

Maximum Contaminant Levels - Review of Existing MCLs / Potential New MCLs

DDW staff complete the following tasks each year related to existing and potential new MCLs.

Review of Existing MCLs: Upon the adoption of any MCL, HSC Section 116365(g) requires the State Water Board to review each MCL at least once every five years. Per HSC section 116365(h), *“not later than March 1 of every year, the State Water Board shall provide public notice of each primary drinking water standard it proposes to review. Thereafter, the State Water Board shall solicit and consider public comment and hold one or more public hearings regarding its proposal to either amend or maintain an existing standard. With adequate public notice, the State Water Board may review additional contaminants not covered by the March 1 notice.”*

The Drinking Water Program’s historical practice has been to review MCLs each year to determine whether any revisions may be appropriate by considering: (1) Changes in technology or treatment techniques that permit a materially greater protection of public health or attainment of the public health goal (PHG), and (2) New scientific evidence that indicates that the substance may present a materially different risk to public health than was previously determined.

Since the transfer of the drinking water program to the State Water Board, DDW has posted the annual MCL review on its website. For 2016, the annual review was posted at: http://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/MCLReview2016.shtml. For 2016, DDW staff had proposed to conduct a review of the MCL for perchlorate, given the number of detections and the recent reduction in the PHG from 6 parts per billion (ppb or micrograms per liter) to 1 ppb, based on data used in the previous (2004) PHG but this time based on infant exposures. The analysis and the staff recommendation for the perchlorate MCL will be presented to the Board in a future Board Meeting.

For 2017, staff have conducted a review of existing MCLs and posted a preliminary review on its website: http://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/MCLReview2017.shtml. No changes in technology or treatment techniques have been identified that would permit a materially greater protection of public health or attainment of the PHG, and no new scientific evidence indicates that regulated contaminants may present a materially greater risk to public health than was previously determined. Therefore, no further review of MCLs is planned for this year.

Potential New Maximum Contaminant Levels (MCLs): HSC Section 116365 provides the requirements and criteria for establishing primary drinking water standards, including new MCLs. DDW staff are in the process of developing an MCL for 1,2,3-Trichloropropane (1,2,3-TCP).

The Division of Drinking Water (DDW) proposes an annual Board Item to provide an update on drinking water regulations, prioritization of those regulations, and the rationale for the prioritization. The proposed prioritization for calendar year 2017 is presented below.

Evaluation of Current Priorities for Regulatory Development

Adoption of an MCL for 1,2,3-Trichloropropane (1,2,3-TCP)

This is a high priority regulation package due to the widespread impact on many communities and the potential impact on health. In terms of regulations, this is the division's highest priority with a goal for adoption in 2017.

Regulation for Surface Water Augmentation (SWA) with Recycled Water

Prioritization of this regulation package is based on a statutory requirement for adoption. These regulations will be adopted in 2017.

DDW staff are in the process of developing regulations for SWA, which is a form of indirect potable reuse of recycled water. Water Code Section 13562 requires the State Water Board to adopt uniform water recycling criteria for SWA. **[Statutory Mandate]**

Revised Total Coliform Rule (RTCR)

The State Water Board is required to adopt state regulations for any new federal drinking water regulations. Currently, DDW staff are revising California's existing TCR to align with the new federal Revised Total Coliform Rule (RTCR), which became effective on April 1, 2016. This is a priority for the division with a goal for adoption in 2018. The requirements of the federal RTCR are already being implemented in California. Adoption of the state regulation will eliminate public water systems in California from having to comply with the existing state TCR and the federal RTCR and reduce associated staff workload.

Lead and Copper Rule (LCR)

The State Water Board also needs to align California regulations with relatively minor changes to the federal Lead and Copper Rule from a few years ago. These revisions are already being implemented in California. DDW staff are aware that the U.S. EPA will be adopting significant revisions to the federal Lead and Copper Rule in the near future and will be incorporating revisions into regulation at the same time the anticipated revisions to the federal Rule are adopted.

MCL Review for Perchlorate

For 2016, DDW staff proposed to conduct a review of the MCL for perchlorate, given the number of detections and the recent reduction in the PHG from 6 ppb to 1 ppb. A preliminary analysis of the information by DDW staff indicates that a reduction of the MCL from 6 ppb to 4 ppb (limited by the analytical detection) would not result in a materially greater health benefit. This analysis and the staff recommendation will be presented to the Board in a future Board Meeting.

Environmental Laboratory Accreditation Program (ELAP) Regulations

The Environmental Laboratory Accreditation Program is developing regulations necessary to effectively regulate laboratories that perform environmental testing for regulatory purposes in California. These regulations are likely to be considered for adoption in 2018, but DDW staff will be working on the regulation package in 2017.

ELAP will propose draft regulations in 2017 to implement HSC sections 100825 through 100920. The proposed regulations will overhaul provisions pertaining to administration of the program, laboratory personnel, onsite assessment, proficiency testing, quality assurance, enforcement, and fee schedules in Title 22, California Code of Regulation, Division 4, Chap 19, Certification of Environmental Laboratories, Article 1 to Article 14, §64801 to §64827.

Permanent Point-of-Use/Point of Entry (POU/POE) Regulations

There are currently emergency regulations in place to allow the use of POU and POE water treatment devices. On March 15, 2016, the State Water Board adopted [Resolution No. 2016-0015](#), approving emergency regulations pertaining to the use of POU and POE treatment. The emergency regulations became effective on April 1, 2016, and, pursuant to HSC section 116380 (as amended by Assembly Bill 434), permanent POU/POE regulations must be developed and become effective no later than January 1, 2018. DDW staff will be working on the regulation package in 2017.

[Statutory Mandate]

Unregulated Contaminant Monitoring Rule

DDW staff are gathering information for the development of regulations for a new Unregulated Contaminant Monitoring Rule (UCMR). UCMR regulations have been used by the U.S. EPA and California to gather extensive information on the scope and concentration of contaminants of concern prior to adopting drinking water standards for those contaminants. Having sufficient high quality data on contaminants in source water would support the determination of whether a contaminant in drinking water is a threat to public health and should be considered for a new MCL.

DDW staff will consult with the Office of Environmental Health Hazard Assessment (OEHHA) in determining which unregulated drinking water contaminants are of most concern. This should be viewed as a long-term program need requiring a substantial amount of investigative and development work.

Primacy Package Applications (Including Cross-Walks)

To maintain primacy, states must demonstrate that state regulations are legally enforceable and at least as stringent as federal regulations. Therefore, staff must prepare and submit to U.S. EPA a primacy package. As part of the primacy package, U.S. EPA provides a 'crosswalk' to be completed by the state to show how adopted state regulations align with all provisions of the federal regulations. DDW has a backlog of these primacy packages and is coordinating with U.S. EPA on prioritization and completion of these packages. The outstanding primacy packages include the following:

- *Lead and Copper Rule (LCR) and LCR Minor Revisions*
- *Surface Water Treatment Rule – Filtration Avoidance Amendment*
- *Interim Enhanced Surface Water Treatment Rule*
- *Filter Backwash Rule*
- *Stage 2 Disinfectant By-Product Rule*
- *Radionuclides Rule*
- *Arsenic Rule*
- *Groundwater Rule*

In 2016, DDW staff completed and submitted two of the outstanding primacy packages. For regulations currently under development (e.g., RTCR), the crosswalks will be prepared concurrently, included in the primacy package, and submitted to U.S. EPA after the regulation becomes effective.

Direct Potable Reuse (DPR) Regulations

DDW staff have recently completed a report to the State Legislature titled "Feasibility of Developing Uniform Water Recycling Criteria for Direct Potable Reuse." In that report, DDW staff stated that investigative work needed to support the development of DPR Regulations would continue although a specific time schedule for completion of the

necessary work was not included in the report. In 2017, staff will continue to undertake the technical work necessary to develop regulations for DPR. Staff are currently analyzing staffing and funding needs necessary to complete the necessary research identified in the report. This information will be provided to the State Water Board in an Informational Item later in 2017.

POLICY ISSUE

Should the State Water Board:

1. Approve DDW staff's proposal not to reexamine any existing MCLs this year?
2. Direct DDW staff to prioritize their work on drinking water regulations for calendar year 2017 as follows:
 - (1) *Maximum Contaminant Level (MCL) for 1,2,3-Trichloropropane (1,2,3-TCP)*
 - (2) *Surface Water Augmentation (SWA) Regulation*
 - (3) *Revised Total Coliform Rule (RTCR)*
 - (4) *Lead and Copper Rule (LCR)*
 - (5) *Maximum Contaminant Level (MCL) Review for Perchlorate*
 - (6) *Environmental Laboratory Accreditation Program (ELAP) Regulations*
 - (7) *Permanent Point of Use (POU) / Point of Entry (POE) Regulations*
 - (8) *Unregulated Contaminant Monitoring Rule (UCMR)*
 - (9) *Primacy Package Applications*
 - (10) *Work to Support Direct Potable Reuse (DPR)?*

FISCAL IMPACT

None.

REGIONAL BOARD IMPACT

None.

STAFF RECOMMENDATION

The State Water Board should adopt the proposed Resolution.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2017-

ADOPTING THE PROPOSED PRIORITIZATION OF DRINKING WATER REGULATIONS FOR CALENDAR YEAR 2017

WHEREAS:

1. All public water systems (PWS), as defined in Health & Safety Code (HSC) Section 116275, are subject to regulations adopted by the U.S. Environmental Protection Agency (U.S. EPA) under the Safe Drinking Water Act of 1974, as amended (42 U.S.C. 300f et seq.), as well as by the State Water Resources Control Board (State Water Board) under the California Safe Drinking Water Act (HSC, div. 104, pt. 12, ch. 4, § 116270 et seq.);
2. California has been granted primary enforcement responsibility (“primacy”) by U.S. EPA for PWS in California;
3. California has no authority to enforce federal regulations, and federal laws and regulations require that California, in order to receive and maintain primacy, promulgate regulations for California that are no less stringent than the federal regulations;
4. The State Water Board is tasked with adopting drinking water regulations and recycled water regulations, when associated with the protection of public health. These regulations include primary drinking water standards (e.g., maximum contaminant levels [MCLs] or treatment techniques), monitoring and reporting requirements, and any other standards related to providing safe drinking water (e.g., operator requirements, laboratory accreditation standards, design standards, pipe separation standards, etc);
5. HSC Section 116365(g) requires the State Water Board to review each MCL at least once every five years and HSC Section 116365(h) requires the State Water Board to provide by March 1 of each year notice of each primary drinking water standard it proposes to review that year and to solicit and consider public comment and hold one or more public hearings regarding any proposal to either amend or maintain an existing standard;
6. Since the transfer of the drinking water program to the State Water Board, the Division of Drinking Water (DDW) has posted the annual MCL review on its website. For 2016, the annual review was posted at:
http://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/MCLReview2016.shtml;
7. For 2016, DDW staff had proposed to conduct a review of the MCL for perchlorate, given the number of detections and the recent reduction in the Public Health Goal (PHG) from 6 parts per billion (ppb or micrograms per liter) to 1 ppb, based on data used in the previous (2004) PHG but this time based on infant exposures. The analysis and the staff recommendation for the perchlorate MCL will be presented to the Board in a future Board Meeting;

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8. For 2017, the draft annual review for 2017 has been posted at: http://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/MCLReview2017.shtml. No changes in technology or treatment techniques have been identified that would permit a materially greater protection of public health or attainment of the PHG, and no new scientific evidence indicates that regulated contaminants may present a materially greater risk to public health than was previously determined. Therefore, no further review of MCLs is planned for this year; and
9. DDW staff use multiple factors in prioritizing drinking water regulations, including the protection of public health, establishment of a new or revised federal regulation or rule, existence of statutory mandates, as well as the existence of other priorities and staffing resources available for the development and implementation of regulations.

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board approves DDW staff's proposal not to reexamine any existing MCLs this year.
2. The State Water Board directs DDW staff to prioritize their work on drinking water regulations for calendar year 2017 as follows:
 - (1) *Maximum Contaminant Level (MCL) for 1,2,3-Trichloropropane (1,2,3-TCP)*
 - (2) *Surface Water Augmentation (SWA) Regulation*
 - (3) *Revised Total Coliform Rule (RTCR)*
 - (4) *Lead and Copper Rule (LCR)*
 - (5) *Maximum Contaminant Level (MCL) Review for Perchlorate*
 - (6) *Environmental Laboratory Accreditation Program (ELAP) Regulations*
 - (7) *Permanent Point of Use (POU) / Point of Entry (POE) Regulations*
 - (8) *Unregulated Contaminant Monitoring Rule (UCMR)*
 - (9) *Primacy Package Applications*
 - (10) *Work to Support Direct Potable Reuse (DPR)*

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on February 22, 2017.

Jeanine Townsend
Clerk to the Board