

## UPDATED INFORMATIVE DIGEST

All suppliers of domestic water to the public are subject to regulations adopted by the U.S. Environmental Protection Agency (U.S. EPA) under the Safe Drinking Water Act (42 U.S.C. 300f et seq.) as well as by the California Department of Public Health (Department) under the California Safe Drinking Water Act [Sections 116270-116751 of the Health and Safety Code (H&S Code)]. Pursuant to California Public Health Act of 2006 (Act; S. B. 162, Section 1, Chap. 241, Stats. 2006, specifically H&S Code Sections 131050, 131051 and 131200), effective July 1, 2007, the California Department of Public Health has authority to adopt the subject regulations. California has been granted primacy for the enforcement of the Federal Act. In order to receive and maintain primacy, states must promulgate regulations that are no less stringent than the federal regulations.

In accordance with federal regulations, California requires public water systems to sample their sources and have the samples analyzed for inorganic and organic substances in order to determine compliance with drinking water standards, including maximum contaminant levels (MCLs). Primary MCLs are based on health protection, technical feasibility, and costs. The water supplier must notify the Department and the public when a primary MCL has been violated and take appropriate action. In 1977, the Department adopted the then effective federal MCL of 0.050 mg/L (50 ppb) for arsenic.

On January 22, 2001, the U.S. EPA adopted a revised MCL of 0.01 mg/L for arsenic [Federal Register 66(14), 6976-7066], to be effective January 23, 2006; subsequently U.S. EPA postponed the regulation, but on April 17, 2002, confirmed a January 23, 2006, effective date for implementing the MCL [Federal Register 67(74), 19037, footnote 3 of Table III-2]. Later, U.S. EPA added a terminal “zero” to the MCL and clarified that the revised MCL for arsenic is 0.010 mg/L [Federal Register 68(57), 14501-14507, March 25, 2003]. Under federal primacy requirements, the State is required to adopt the 0.010 mg/L arsenic MCL or one more stringent.

Section 116361(b) of the California H&S Code mandates that the Department adopt a revised arsenic MCL, and Section 116365 of the California H & S Code requires that the Department set the MCL as close as possible to the public health goal (PHG), while considering cost and technical feasibility.

The California Environmental Protection Agency’s Office of Environmental Health Hazard Assessment (OEHHA) finalized its PHG for arsenic in April 2004. OEHHA set the PHG at 0.004 µg/L (4 ppt). Subsequently, the Department conducted a comprehensive cost-benefit analysis to consider cost and feasibility, evaluating possible MCLs of 0.002, 0.004, 0.006, 0.008, and 0.010 mg/L. Based on that cost-benefit analysis, the Department is proposing to adopt an arsenic MCL in conformance with the federal MCL of 0.010 mg/L.

Therefore, to conform to the federal regulations, the Department proposes the following amendments to Chapter 15, Division 4, Title 22 of the California Code of Regulations:

- Amend Section 64431 (Maximum Contaminant Levels – Inorganic Chemicals) to adopt a revised arsenic MCL of 0.010 mg/L for conformance with the Code of Federal Regulations (CFR) 141.23 [Federal Register 66(14), 6976-7066];
- Amend Section 64432 (Monitoring and Compliance – Inorganic Chemicals), revising existing subsections (f) and (g) to establish compliance determination requirements in conformance with CFR 141.23(c) [Federal Register 66(14), 6976-7066];
- Amend Section 64447.2 [Best Available Technologies (BATs) – Inorganic Chemicals] by establishing two additional BATs for arsenic remediation (electrodialysis and oxidation/filtration);
- Amend Section 64445.1(c)(5) to clarify compliance determination requirements for organic contaminants in conformance with CFR 141.24(h)(11)(iv) and 141.24(f)(15)(iv) [Federal Register 66(14), 6976-7066];
- Amend Section 64482 to adopt additional health information in conformance with the CFR 141.154 [Federal Register 66(14), 6976-7066]. Additionally, subsection (d) would be repealed as it is no longer necessary.

In addition, the Department proposes to amend:

- Section 64413.1(b), to clarify the calculation of points for determining water treatment facility classifications.
- Section 64413.1(b)(4), Table 64413.1-E, to clarify that the points are assigned for each contaminant. In addition, paragraph (b)(5) would be revised to reflect the proposed renumbering of Section 64432.
- Section 64414, to include subsection (f), which identifies the monitoring procedures specific to a standby source having had previous perchlorate detections. In addition, paragraph (a) would be revised to reflect the proposed renumbering of Section 64432 and the inclusion of a reference to the asbestos waivers described in 64432.2(c), which had been inadvertently previously omitted.
- Section 64432, as follows:
  - Amend subsection (a) to reflect the renumbering of 64432 and the addition of proposed subsections (b) and (h);
  - Adopt subsection (b) to clarify when monitoring for newly adopted inorganic MCLs would be initiated. The existing regulations do not provide such information;
  - Amend existing subsection (f)(2), renumbered as (g)(2), to clarify existing confirmation sampling requirements;
  - Adopt subsection (h) to require that water supplier to discontinue use of the source if the source is confirmed to exceed ten times an inorganic chemical MCL, consistent with existing Section 64445.1(c)(7) for organic chemicals;
  - Amend existing subsection (g), renumbered as proposed subsection (i), to clarify the running annual average calculation when more than one sample is taken in a quarter;

- Existing subsections would be renumbered due to the addition of subsections (b) and (h); and
- Section 64432.2(a) and (b), Monitoring and Compliance – Asbestos, would be amended to revise the references to existing subsections in section 64432, which are proposed to be renumbered.
- Section 64432.8, to clarify that the confirmation sampling and exceedance procedures specified in existing sections 64432.1(a)(1), 64432.1(b)(1), 64432.1(c), and 64432.3(d) - for nitrate, nitrite, nitrate plus nitrite, and perchlorate, respectively - should be followed.
- Section 64433.3(d) would be revised to reflect the proposed renumbering of Section 64432.
- Section 64445.1(c)(5)(A) and (B) would be revised to reference existing Section 64469, as opposed to repealed Section 64451(a). Additionally, section 64445.1(c) would be revised to clarify existing requirements.

The net effects of the proposed regulations on community and nontransient-noncommunity water systems (CWS and NTNCWS) would be as follows:

- CWS and NTNCWS would be subject to a state arsenic MCL of 0.010 mg/L, instead of 0.05 mg/L. CWS and NTNCWS are currently required to comply with the federal MCL of 0.010 mg/L;
- CWS and NTNCWS would determine MCL compliance for all inorganic chemicals except nitrate, nitrite, perchlorate, and asbestos, on the basis of a running annual average of quarterly monitoring results instead of an average of a sample and its follow-up confirmation sample;
- CWS and NTNCWS that have a source exceeding ten times an inorganic chemical MCL would be required to discontinue use of the source until approved for use by the Department;
- CWS and NTNCWS that have annual arsenic averages exceeding 0.005 mg/L, but less than or equal to the proposed MCL of 0.010 mg/L, would have to provide specific health effects language in their Consumer Confidence Reports; and
- CWS and NTNCWS that need to treat sources to comply with the arsenic MCL would have two additional BATs from which to choose.

None of the proposed amendments would affect California's primacy status, because the net effect of these amendments is conformance with the new federal regulations.