



# CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

Public Comment  
1,2,3- TCP  
Deadline: 4/21/17 by 12 noon

FIGHTING FOR JUSTICE, CHANGING LIVES

March 30, 2017

Ms. Jeanine Townsend, Clerk of the Board  
State Water Resources Control Board  
P.O. Box 997377  
MS 7400  
Sacramento, CA 95899



VIA ELECTRONIC MAIL TO: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

Re: 1,2,3, Trichloropropane Maximum Contaminant Level (SBDDW-17-001)

Dear Ms. Townsend,

California Rural Legal Assistance, Inc. (CRLA) writes in response to the notice of proposed rulemaking and request for public comment on the proposed Maximum Contaminant Level for 1,2,3, Trichloropropane (123 TCP). CRLA's Community Equity Initiative works directly with residents in rural communities in the San Joaquin Valley whose groundwater supplies are contaminated with 123 TCP. CRLA commends the State Water Resources Control Board (SWRCB) for their work in developing a maximum contaminant level (MCL) for 123 TCP and, in doing so, for protecting the health of the residents CRLA serves. We offer the following comments on the proposed regulation.

## **I. The SWRCB Must Adopt the Five Parts Per Trillion MCL**

Health and Safety Code §116365(a) requires that a contaminant MCL be established as close to the Public Health Goal (PHG) and as protective for human health as is technologically and economically feasible. The Office of Environmental Health Hazard Assessment has established a Public Health Goal of .7 parts per trillion for 123 TCP.

Some laboratories have successfully developed analytical techniques that can detect 123 TCP at the PHG level of .7 parts per trillion, but detection at this level is cost-prohibitive on a large scale as this technology is not widely available. Instead, the proposed MCL of 5 parts per trillion is generally considered the lowest concentration of TCP that can be reliably and economically detected, which primarily occurs using two gas chromatography/mass spectrometry methods developed by the California state Sanitation and Radiation Laboratories.

Five (5) parts per trillion is the closest detection and treatment level to the PHG that is economically and technologically feasible, so the SWRCB must adopt this standard in accordance with Health and Safety Code §116365(a). The proposed MCL of 5 parts per trillion complies with §116365(a) and represents the most health-protective level currently possible for impacted communities.

## **II. Public Water Systems That Have Previously Detected Contaminants Should Not Be Permitted to Substitute Past Testing Data for Their Initial MCL Reporting Requirements**

Proposed changes to 22 CCR § 64445 would permit water systems to substitute existing monitoring data to satisfy the initial monitoring requirements of §64445 when a new MCL is established. Water systems with existing groundwater monitoring data would be permitted to substitute up to three of the mandatory four quarterly samples taken during the first year of monitoring, so long as the substitute samples were taken during the same quarterly period (i.e. first quarter, second quarter) and within the last two years. The SWRCB states that this change is proposed to encourage pre-emptive monitoring and to reduce sampling and analytical costs for water systems during the initial monitoring period. (Initial Statement of Reasons pg. 23)

CRLA recognizes that the SWRCB seeks to reduce the costs for water systems as they comply with regulatory requirements. The additional costs of water monitoring and treatment are frequently passed on to consumers in the form of increased utility rates, which may be unaffordable for residents in low-income communities. Cost-saving mechanisms can reduce the chances that these extra financial burdens will be passed on to communities that simply cannot afford them.

The SWRCB proposal to allow water systems to save money by substituting old data, however, comes at the price of endangering the health of residents. Levels of 123 TCP found in groundwater sources can vary drastically between quarters and between years. Allowing systems that have a history of 123 TCP contamination to substitute past data will not provide a clear picture to the SWRCB, the affected communities, or the general public of the current status of 123 TCP contamination in groundwater sources. This risks resident exposure to dangerous levels of the contaminant for longer than would be the case if contaminated systems were required to complete all four quarters of monitoring in the initial monitoring period.

One example of the variability of 123 TCP in a groundwater source across quarters and years can be found in the sampling data from Del Rey, a disadvantaged unincorporated community in southeast Fresno county. Del Rey first detected 123 TCP in its groundwater sources in 2007 and has been monitoring five of its wells for 123 TCP quarterly since mid-2012. The following data table shows the monitoring results from six consecutive quarterly samples taken from Well # 7 between 2013-2015. All data is shown in UG/L.

<b>Date of Sample</b>	<b>123 TCP concentration in UG/L</b>
10/9/2013	0.007 (7 ppt)
1/2/2014	0.012 (12 ppt)
4/9/2014	0.023 (23 ppt)
7/9/2014	0.01 (10 ppt)
10/8/2014	0.013 (13 ppt)
1/14/2015	0.022 (22 ppt)

This example indicates that the levels of 123 TCP measured vary greatly between quarters and across years. Comparing a January 2014 and January 2015 sample indicates that the quantity of contaminant present can vary widely even within the same quarter across years, so that hypothetically, if the 5 ppt MCL were to have taken effect in 2015 and January 2014 data were permitted to be substituted in place of a January 2015 sample during the initial monitoring period, the water district, the residents, the SWRCB, and the general public would not be informed that the 123 TCP levels had nearly doubled in Well 7 over the past year. This would lead to an underestimate of the average 123 TCP currently present in the groundwater system. It is significant that if January 2015 testing had been required rather than use of substitute data, the district would have immediately been in violation of the MCL because the 123 TCP present in January 2015 is more than four times higher than the proposed MCL of 5 ppt. Residents in this hypothetical would have a right to notice of the contamination immediately after submission of a January 2015 sample, but not after submission of a January 2014 sample. While this is a hypothetical example, there is every reason to believe that this type of situation could happen if substitute data were used, given the fluctuation of TCP levels across quarters and years.

Underestimating the amount of a contaminant present in the water system could ultimately deprive residents of the notice of the contamination to which they have a right under 22 CCR 64463 and of the benefits of remediation efforts to reduce the levels of the contaminant in the water. Permitting such a scenario runs counter to the State's obligation under Health and Safety Code §1116365(a) and (b) to place a primary emphasis on the protection of public health and to take measures to avoid any significant risk to public health caused by carcinogenic contaminants.

Striking a balance between protecting the health of residents in communities with contaminated groundwater sources and relaxing financial burdens on disadvantaged communities, the SWRCB should permit data substitutions for public water systems only if the systems has actively tested for the newly-regulated contaminant for at least the past three years and has found no detection of the contaminant within that time frame. This would allow uncontaminated water systems to avoid the unnecessary cost of re-testing each quarter during the initial monitoring stage while still requiring contaminated systems to provide current data on the status of their groundwater sources.

### **III. The State Should Provide Financial Assistance to Disadvantaged Communities for Remediation Efforts**

#### *a. 123 TCP disproportionately impacts rural low-income communities of color*

Hundreds of wells throughout the San Joaquin Valley have tested positive for 123 TCP. 123 TCP was added to pesticides throughout the 1980s and 1990s, and these pesticides were subsequently used throughout the Valley, so rural agricultural communities have been particularly adversely affected by the contamination. These communities, with which CRLA has been working for more than fifty years, are comprised primarily of low-income residents, farmworkers, immigrant communities, mono-lingual Spanish-speakers, and other Limited English Proficiency populations.

Residents in rural communities face multiple and overlapping obstacles to opportunity including, but not limited to, lack of access to services, infrastructure, healthy and affordable housing, quality education, and livable incomes. 2015 American Community Survey data shows that the median household income of residents in Del Rey, California is \$23,616, compared to a statewide average of \$61,818. The City of Arvin, another rural community in

the San Joaquin Valley that has groundwater sources contaminated with 123 TCP, has a median household income of \$35,609.

Rural communities, low income communities, especially racial and ethnic groups, are also disproportionately affected by environmental burdens such as 123 TCP contamination. CalEnviroScreen 3.0—a tool developed by the California Office of Environmental Health Hazard Assessment to identify the communities in California most significantly impacted by environmental burdens—consistently ranks communities in the San Joaquin Valley in the top twenty-five percent of the most pollution-burdened areas of the state. Del Rey, for example, is ranked in the top ten percent of most pollution-burdened communities in the state. The City of Arvin is placed in the top twenty-five percent of environmentally burdened communities. Both also have groundwater contaminated with 123 TCP.

*b. 123 TCP remediation costs will be high and will likely be passed on to residents*

Remediation costs for 123 TCP contamination will be high, and these costs will likely be passed on to consumers in the form of rate increases. SWRCB remediation cost estimates place the estimated increased cost-burden per connection for TCP remediation at \$609.00 annually for small water systems of less than 200 connections and \$25.00 for large water systems of more than 200 connections.

The SWRCB cost estimates likely underestimate the actual costs for treatment for several reasons. First, the SWRCB overestimates the effect of economies of scale on medium-sized water systems. The cost estimates place water systems into overly-simplified categories of small systems with less than 200 connections and large systems with more than 200 connections, assuming over \$500 difference annually in the cost of connections between the two.

Economies of scale will greatly reduce the cost per connection for residents in large contaminated cities, yet the effect will be different for a community with 500 connections than for a metropolitan area with 100,000. Both the community of Del Rey and the City of Fresno are considered the same category of “large systems” with an estimated cost increase annual of \$25.00. Del Rey uses 5 wells to serve around 350 connections. The City of Fresno uses 260 wells to serve 500,000 people. Residents of Del Rey may not experience a \$609.00 annual increase estimated for systems with less than 200 connections, but it is likely that, given the small size of their system, their annual increase will be closer to that number than to the estimated \$25.00 annual increase that large metropolitan areas such as Fresno. Therefore, the current cost estimates given by the SWRCB likely underestimate the financial impact on residents in communities like Del Rey.

Second, the SWRCB treatment estimates do not include overhead and maintenance costs, costs for land acquisition, or site-specific costs. These additional costs can be substantial and may significantly increase the costs borne by residents in contaminated communities. Del Rey, for example lacks sufficient space at four of the five active well sites to construct the necessary Granulated Active Carbon (GAC) vessels, backwash reclaim tanks, and chlorination systems required for 123 TCP treatment and also have sufficient space for GAC delivery trucks. The Del Rey Community Service District must purchase additional property, including potentially purchasing a residential lot from a local resident, to accommodate the treatment plants. These additional costs are likely to be experienced by many communities, especially small districts that lack large parcels for their treatment facilities.

Overhead and maintenance(O&M) costs will also be significant and will likely be passed on to consumers. In Del Rey, engineers have estimated O & M costs for 123 TCP remediation over 40 years at more than \$7.7 million, with

a total cost for capital and O & M together reaching over \$18 million. This estimate suggests that O & M costs for 123 TCP treatment in general will be costly to maintain. Excluding estimated O & M costs in its analysis, the SWRCB has underestimated the cost that will be passed on to consumers in contaminated communities.

*c. The SWRCB underestimates the impact that increased utility rates will have on disadvantaged communities*

The SWRCB acknowledges in its Initial Statement of Reasons that the cost implications for 123 TCP remediation will have a disproportionate impact on small communities, and the “estimated annual cost of \$609 per connection could represent a significant financial burden to some California communities.” The SWRCB is dismissive of the real impact of cost increases, however, in its analysis of the application of CA Water Code Section 106.3 to the proposed regulation.

CA Water Code §106.3 states that:

(a) It is hereby declared to be the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. . .

(b) All relevant state agencies, including the department, the state board, and the State Department of Public Health, shall consider this state policy when revising, adopting, or establishing policies, regulations, and grant criteria when those policies, regulations, and criteria are pertinent to the uses of water described in this section.

Analyzing the relationship between WCW 106.3 and the proposed 123 TCP MCL, the SWRCB states that “the State Water Board has considered this statewide policy and determined the proposed regulations will further the stated policy.” (Initial Statement of Reasons pg 32) To support this conclusion the SWB states

“Even though the proposed regulations may result in increased costs to those that are served by PWS that have to install treatment to address 1,2,3 TCP, *that potential cost is outweighed by the benefits of having a source of water that does not contain a known carcinogen*” (Initial Statement of Reasons, pg 32- Emphasis added)

The statement that the “potential cost is outweighed by the benefits” does not give the appropriate weight to the “affordable” component of the rights enshrined in CWS §106.3, and seems to suggest that so long as the cost is “worth it” for residents it is somehow affordable. This suggests that the SWRCB does not recognize the levels of poverty in rural areas of the San Joaquin Valley impacted by 123 TCP contamination and does not fully appreciate the impact that rate increases can have on low-income families. Increased financial burdens that are unaffordable remain unaffordable even when paying for essential services like clean water.

Rural communities already pay more for utilities than larger metropolitan areas due to the latter benefitting from economies of scale. The disproportionately high rates that rural residents pay for services like water is especially true in smaller communities. CRLA has worked with the small communities of El Porvenir and Cantua Creek in rural Fresno county, where low-income residents have historically paid \$75-100 monthly for water service even though their drinking water was contaminated and unusable.

Rural low-income residents in areas adversely affected by 123 TCP contamination experience significant overlapping obstacles to opportunity, including financial obstacles. Approximately 71% of low-income households in Fresno County overpay for rent. Low-income families are already overstretched financially and an increase in monthly utility bills will lead to some families simply being unable to pay them, or being forced to choose between paying utility bills or other essential costs such as rent, health care, child care, or food. When residents are unable to cover all their financial obligations it increases the risk of homelessness and displacement, which has devastating effects on families and communities. SWRCB should not underestimate the impact that increased utilities fees will have on the communities impacted by 123 TCP contamination.

*c. The SWRCB should provide financial assistance to disadvantaged communities impacted by 123 TCP*

The SWRCB acknowledges in its Initial Statement of Reasons not only that the cost of treatment for 123 TCP may be “economically infeasible” for small water systems, but that economic assistance provided by the state in the form of grants and low-interest loans will be crucial to help alleviate the financial burden these communities will face as they begin remediation efforts. (Initial Statement of Reasons pg 23)

Water Code Section 106.3 does not expand the obligations of the state to provide additional resources to develop water infrastructure, but the state must take seriously its obligation to consider the human right to affordable, clean, water when “designing revising, adopting or establishing policies, regulations, and grant criteria” (S. 106.3 (c ))

Rural disadvantaged communities have been particularly affected by 123 TCP contamination, and as state resources will be crucial to prevent the costs of remediation being passed on to already-overburdened low-income residents, the state should make funding available for disadvantaged communities to finance monitoring and remediation efforts. Low-income residents simply cannot afford to shoulder the economic burden of remediation.

If the state decides to explore options to off-set the costs of providing financial assistance for 123 TCP remediation, the state should not utilize taxes on bottled water to generate funds. Residents that live in contaminated communities already must purchase bottled water to cook with, drink, and bathe with, and should not be taxed on these purchases to pay for remediation efforts. The state should seek additional public input on methods to raise the necessary funds that do not create additional burdens on contaminated communities.

#### **IV. Conclusion**

The SWRCB proposes an MCL that protects the health of residents in rural disadvantaged communities relying on contaminated groundwater sources. The state must adopt the MCL at 5 parts per trillion to comply with its legal obligations under Health and Safety Code §116365(a). The proposed regulation should allow water systems that have tested for contaminants for at least three years and have found no contamination to substitute data from prior tests for their initial monitoring requirements as a cost-saving measure. However, to protect public health, systems that have previously identified contamination should not be allowed to do so. Finally, the State should provide financial assistance for disadvantaged communities contaminated with 123 TCP so that low-income residents are not further financially overburdened with the costs of remediation.

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CRLA appreciates the opportunity to provide comment on the proposed regulation.

Sincerely,



Mariah C. Thompson

Staff Attorney, Community Equity Initiative  
California Rural Legal Assistance, Inc.  
3747 E. Shields Ave, Fresno CA, 93726  
Phone: (559) 233-6710  
Email: [Mthompson@crla.org](mailto:Mthompson@crla.org)

CC: Ilene Jacobs, Director of Litigation, Advocacy, and Training, California Rural Legal Assistance, Inc.  
[ijacobs@crla.org](mailto:ijacobs@crla.org)

Marisol Aguilar, Co-Director, Community Equity Initiative, California Rural Legal Assistance, Inc.  
[maguilar@crla.org](mailto:maguilar@crla.org)