



State of California—Health and Human Services Agency
Department of Health Services



ARNOLD SCHWARZENEGGER
Governor

ACTION: Notice of Proposed Rulemaking
Title 22, California Code of Regulations

SUBJECT: Perchlorate in Drinking Water, R-16-04

PUBLIC PROCEEDINGS: Notice is hereby given that the California Department of Health Services will conduct a public hearing commencing at 10 a.m. on Monday, October 30, 2006 in the Auditorium, 1500 Capitol Avenue, Sacramento, California, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in this notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

All suppliers of domestic water to the public are subject to regulations adopted by the U.S. Environmental Protection Agency (USEPA) under the Safe Drinking Water Act (42 U.S.C. 300f et seq.) as well as by the California Department of Health Services (Department) under the California Safe Drinking Act (Sections 116270-116751, Health and Safety Code [H&S Code]). 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.

Section 116293(b) of the H&S Code mandates that the Department adopt a perchlorate MCL as close as possible to the public health goal (PHG) established by the Cal/EPA Office of Environmental Health Hazard Assessment (OEHHA), while considering the cost and technical feasibility of treatment and analysis.

This regulation package proposes the following amendments to Chapter 15, Division 4, Title 22 of the California Code of Regulations.

- Amend Section 64413.1 (Classification of Water Treatment Facilities) to include points for perchlorate treatment when calculating the classification of a treatment

facility and to update the radionuclide section references, which changed as a result of the radionuclide regulations adopted in June 2006.

- Amend Section 64431 (Maximum Contaminant Levels – Inorganic Chemicals) to adopt a perchlorate MCL and clarify the wording in subsection(a);
- Amend Section 64432 (Monitoring and Compliance – Inorganic Chemicals) as follows:
 - (a) and (b) to specify which water systems are required to monitor for perchlorate and cite the sections that provide the detailed requirements;
 - Table 64432-A to adopt perchlorate with its detection limit for purposes of reporting (DLR);
- Adopt a new section 64432.3 (Monitoring and Compliance – Perchlorate) to establish the monitoring and compliance determination requirements for perchlorate and provide variances for systems unable to afford compliance;
- Adopt a new section 64432.8 (Sampling of Treated Water Sources) to require monthly monitoring of the treated water for sources being treated for compliance with any inorganic MCL;
- Amend section 64447.2 (Best Available Technologies (BAT) – Inorganic Chemicals) to include perchlorate with its best available technology in Table 64447.2-A and list a new technology that is specifically applicable to perchlorate, i.e., biological fluidized bed reactor;
- Repeal section 64450 (Unregulated Chemicals – Monitoring), to eliminate obsolete requirements (the deadline for monitoring has passed); and
- Amend section 64465 (Health Effects Language – Inorganic Chemicals) to adopt health effects language for perchlorate.
- Amend section 64481 (Typical Origins of Contaminants with MCLs) to adopt the typical origins of perchlorate.

The net effects of the proposed regulations would be as follows:

- Community water systems (CWS) and nontransient-noncommunity water systems (NTNCS) would be required to monitor for, and comply with, an MCL for perchlorate;
- CWS and NTNCS unable to afford treatment to comply with the perchlorate MCL would be able to apply for a variance;
- CWS and NTNCS that treat a drinking water source to comply with an inorganic chemical MCL would be required to monitor the treatment effluent monthly;
- CWS and NTNCS that violate the perchlorate MCL would be required to use specific health effects language for the public notification; and
- Best available technologies would be specified for perchlorate removal.

None of the proposed amendments would affect California's primacy status, because the net effect of these amendments is that the state's regulation would be more stringent than the federal regulation, which is allowed. The USEPA has not yet proposed or adopted an MCL for perchlorate.

AUTHORITY: Sections 100275, 116275, 116293(b), and 116375, Health and Safety Code.

REFERENCE: Section 116275, 116293(b), 116385, 116530, and 116535, Health and Safety Code.

COMMENTS: Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations by 5 p.m. on Friday, November 3, 2006, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD. Written comments may be submitted as follows:

1. By mail or hand-delivered to the Office of Regulations, Department of Health Services, MS 0015, 1501 Capitol Avenue, P.O. Box 997413, Sacramento, CA 95899-7413. It is requested but not required that written comments sent by mail or hand-delivered be submitted in triplicate; or
2. By fax transmission: (916) 440-7714; or
3. By email to regulation@dhs.ca.gov (it is requested that email transmissions of comments, particularly those with attachments, contain the regulation package identifier "R-16-04" in the subject line to facilitate timely identification and review of the comment), or
4. By using the "Making Comments on DHS Regulations" link on the Department website at <http://www.applications.dhs.ca.gov/regulations/>.

All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

INQUIRIES: Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Michael G. McKibben, P.E., **Senior Engineer**, Standards and Technology Unit, Drinking Water Program, at (619) 525-4023.

All other inquiries concerning the action described in this notice may be directed to Don Lee of the Office of Regulations, at (916) 440-7663, or to the designated backup contact person, Linda Tutor, at (916) 440-7695.

CONTACTS: In any inquiries or written comments, please identify the action by using the Department regulation package identifier, R-16-04.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS: The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations, at the address noted above, will be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file). In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) that are available via the Internet may be accessed at <http://www.applications.dhs.ca.gov/regulations/> and then clicking on the "Select DHS regulations" button.

In order to request a copy of this public notice, the regulation text, and the initial statement of reasons be mailed to you, please call (916) 440-7695 (or California Relay at 711/1-800-735-2929), or email regulation@dhs.ca.gov, or write to the Office of Regulations at the address noted above. Upon specific request, these documents will be made available in Braille, large print, and audiocassette or computer disk.

AVAILABILITY OF CHANGED OR MODIFIED TEXT: The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

FISCAL IMPACT ESTIMATE:

- A. Fiscal Effect on Local Government: The first year cost to local government is estimated to be \$666,500. The cost for two subsequent fiscal years is estimated at \$16,970,800 annually, which is based on a 20 year amortization.
- B. Fiscal Effect on State Government: \$11,000.
- C. Fiscal Effect on Federal Funding of State Programs: None.
- D. All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action: The estimated annual cost (based on a 20 year amortization) would be \$5,857.
- E. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None.

DETERMINATIONS: The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for

which reimbursement is required by Part 7 (commencing with section 17500) of Division 4 of the Government Code.

However, if they were to incur costs, those costs would be of the following nature:

First, some local agencies would incur costs in their operation of public water systems. These costs would not be the result of a “new program or higher level of service” within the meaning of Article XIII B, Section 6 of the California Constitution because they apply generally to all individuals and entities that operate public water systems in California and do not impose unique requirements on local governments. Therefore, no state reimbursement of these costs would be required.

Second, some local agencies could incur additional costs in discharging their responsibility to enforce the new regulations for the small public water systems (under 200 service connections) that they regulate. However, the Department has determined that any increase in the local agency costs resulting from enforcing this regulation would be insignificant. Furthermore, local agencies are authorized to assess fees to pay reasonable expenses incurred in enforcing statutes and regulations related to small public water systems. (Health and Safety Code Section 101325) Therefore, no reimbursement of any incidental costs to local agencies in enforcing this regulation would be required, Government Code Section 17556(d).

The Department has made an initial determination that the regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the regulations will not significantly affect the following:

1. The creation or elimination of jobs within the State of California. The requirements summarized above should not have any affect in this area in that there would not be any change in water system or regulatory personnel needed for compliance with the proposed requirements.
2. The creation of new businesses or the elimination of existing businesses within the State of California. The nature of the water industry is such that the proposed regulation will not result in the creation or elimination of water systems. The impact of these regulations will be insignificant.
3. The expansion of businesses currently doing business within the State of California. Since water system size is basically a function of the number of service connections (consumers) served, the proposed regulations should not have any affect on expansion.

The Department has determined that the proposed regulations would not affect small business, since Government Code Chapter 3.5, Article 2, section 11342.610 excludes drinking water utilities from the definition of small business.

The Department has determined that the regulations will have no impact on housing costs.

ADDITIONAL STATEMENTS AND COMMENTS: In accordance with Government Code Section 11346.5(a)(13) the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

For individuals with disabilities, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of public hearing materials into Braille, large print, audiocassette, or computer disk. To request such services or copies in an alternate format, please call or write: Don Lee, Office of Regulations, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413, voice (916) 440-7673 and/or California Relay 711/1-800-735-2929. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

CALIFORNIA DEPARTMENT OF HEALTH SERVICES

R-16-04

Dated: August 7, 2006 _____
Director

Sandra Shewry