



Submitted via electronic mail to commentletters@waterboards.ca.gov

April 21, 2017

The Honorable Felicia Marcus, Chair
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

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

Dear Chair Marcus:

The Association of California Water Agencies (“ACWA”) and the California-Nevada Section of the American Water Works Association (“CA-NV AWWA”) appreciate the opportunity to provide comments to the State Water Resources Control Board (“Water Board”) on the proposed maximum contaminant level (“MCL”) for 1,2,3-Trichloropropane (“1,2,3-TCP”). ACWA represents more than 430 public water agencies that collectively supply approximately 90 percent of the water that is delivered for municipal, agricultural and industrial uses statewide. CA-NV AWWA is a professional/trade association comprising nearly 5,000 individual members in California from drinking water providers and companies on which they rely for products and services.

ACWA and CA-NV AWWA, with their respective member agencies and utilities, support the regulation of contaminants that are known health hazards in drinking water, and support the adoption of an MCL for 1,2,3-TCP. However, we request that the Water Board use the criteria provided in the federal Safe Drinking Water Act to include a time period for water suppliers to implement measures to comply with the new MCL without being deemed in violation of the proposed MCL. We also request that the Water Board consider the effects that implementation will have on water systems as this regulation is developed.

I. Need for a Compliance Period

- a. A compliance period is warranted given the significant impact that the MCL will have on water agencies.*

Some water systems will be required to develop new treatment facilities in order to comply with a new 1,2,3-TCP MCL. If adopted on the proposed timeline of July 2017 or

sometime thereafter, the draft regulation would require water systems to begin monitoring for 1,2,3-TCP for purposes of determining compliance starting in January 2018, just a few months after the regulation would become effective. Although compliance based on a running annual average of monitoring results would give some affected water systems a few months before being deemed in violation of the adopted MCL, many other affected water systems would be deemed in violation of the new standard soon after monitoring begins.

It is not feasible for public agencies to install appropriate water treatment systems to comply with the MCL within the time period provided in the draft regulation. The steps to properly install needed treatment include:

1. Identifying and evaluating available technologies;
2. Pilot testing and designing treatment facilities;
3. Securing financing;
4. Obtaining environmental review and permit approvals; and
5. Building and testing new treatment systems.

All of this can take years and require significant financial outlays. Some water systems have been working to identify and test cost-effective treatment technologies for 1,2,3-TCP, but unless and until the MCL is finalized by the Water Board it is not possible to know how much treatment, if any, will be required for individual systems affected by 1,2,3-TCP to come into compliance. Systems that need treatment to meet the MCL will need time to undertake the significant steps needed to install these facilities.

When a water system is deemed to not be in compliance with a public health-based drinking water standard, in addition to being subject to Water Board enforcement actions, there are, at minimum, three significant adverse impacts:

1. The water system is immediately subject to legal liability and lawsuits (lawsuits filed by California River Watch against the cities of Livingston and Vacaville are two examples);
2. Water supply reliability can be affected if wells must be shut off; and
3. Public confidence in the safety of drinking water may be seriously undermined along with confidence in the water system.

In light of this, ACWA and CA-NV AWWA strongly recommend that the Water Board amend the proposed rule to provide a specific, reasonable time period consistent with the federal Safe Drinking Water Act to enable water systems to comply with the new 1,2,3-TCP MCL without being deemed to be immediately in non-compliance and subject to possible adverse legal action and/or negative publicity, all of which could cause a loss of public confidence in drinking water.

b. Providing a compliance period is consistent with the federal Safe Drinking Water Act.

The federal Safe Drinking Water Act provides for a phase-in period of up to five years to ensure that water systems have a reasonable amount of time to undertake the work—including the planning, financing, design and construction of capital improvements like treatment facilities—that is necessary to comply with new drinking water standards. Specifically, §1412(b)(10) of the federal Safe Drinking Water Act provides the following authority to regulators:

A national primary drinking water regulation promulgated under this section (and any amendment thereto) shall take effect on the date that is 3 years after the date on which the regulation is promulgated unless the Administrator determines that an earlier date is practicable, except that the Administrator, or a State (in the case of an individual system), may allow up to 2 additional years to comply with a maximum contaminant level or treatment technique if the Administrator or State (in the case of an individual system) determines that additional time is necessary for capital improvements.

As a result of this statutory authority, federal primary drinking water standards have incorporated Compliance Dates that are separate from the Effective Date, allowing for more effective implementation. These compliance periods are important to avoid situations where water systems are put in a non-compliance situation due to the adoption of a new MCL. We suggest that the Water Board adopt a similar method in establishing compliance and effective dates for the proposed MCL for 1,2,3-TCP.

c. The California Legislature has signaled its support for reasonable compliance periods.

In 2015, Governor Brown signed SB 385, which provides a process for public water systems impacted by the state's MCL for hexavalent chromium a period of time to take the steps needed to achieve compliance with that standard. SB 385 did not change the requirement to comply with the standard or delay when compliance is achieved, and affected water systems are successfully taking the same steps toward compliance with the MCL that they would take without SB 385. The bill simply provided a limited period of time for a water system to work toward achieving compliance without being deemed in violation as long as strict safeguards are met. Among these safeguard provisions is a requirement that water customers be informed of the compliance plan and progress toward compliance.

SB 385 signaled the intent of the Legislature that a reasonable compliance period can be an appropriate practice if it is developed along with appropriate safeguards and public notification. Similar to the approach outlined in SB 385, our associations recommend the Water Board provide a reasonable period of time for water suppliers impacted by a new MCL for 1,2,3-TCP to come into compliance before they may be deemed in violation.

- d. Compliance periods are important to refine and optimize existing water treatment technologies or develop better technologies capable of meeting the new MCL with fewer social, environmental and financial impacts.*

Reasonable compliance periods foster the innovation needed to improve water treatment technologies. Compliance periods also help avoid public water system use of valuable resources to pursue available treatment systems only to learn that these systems may be obsolete before they are installed due to technology advancements that typically follow newly adopted MCLs. Because the compliance period is potentially less than twelve months from the effective date of the proposed MCL, the amount of time could compel water systems to skip steps needed to properly identify and evaluate treatment technologies. This can result in water treatment systems that do not work, are too costly to operate, or have unintended consequences that harm consumers.

II. Concerns with Implementation

While not proposing any specific changes to the proposed MCL, ACWA and CA-NV AWWA would like to emphasize that there are significant issues and questions related to how the Water Board implements the regulation. Water systems share with the Water Board the desire to have treatment facilities operated in such a manner that there is reliable 100 percent compliance at all times, with adequate safety factors. However, the Water Board must also consider that treatment costs can be greatly impacted by operational practices, in particular with operating granular activated carbon treatment, which is identified in the rule as the best available treatment for this contaminant. Additionally, in its July 2016 public workshop presentations the Water Board recognized system blending as an option for compliance. The requirements that the Water Board would impose as part of implementing this regulation must give full consideration to operational factors such as incorporating “non-detects” in averaging for MCL compliance, turn-around times between sampling and getting certified outside laboratory results, blending objectives, etc. ACWA and CA-NV AWWA, in conjunction with our members, stand ready to work closely with the Water Board’s technical staff to discuss and resolve the myriad of issues that arise in real-life operational situations.

III. Conclusion

ACWA and CA-NV AWWA appreciate the Water Board’s consideration of our comments. Should you have any questions, please do not hesitate to contact Rebecca Franklin of ACWA at rebeccaf@acwa.com or (916) 441-4545, or Tim Worley of CA-NV AWWA at tworley@ca-nv-awwa.org or (909) 291-2102.

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Sincerely,

Rebecca Franklin
Senior Regulatory Advocate
Association of California Water Agencies

Timothy Worley
Executive Director
California-Nevada Section, AWWA

cc: Honorable Members, State Water Resources Control Board
Mr. Darrin Polhemus, Deputy Director, Division of Drinking Water, State Water
Resources Control Board