



April 21, 2017

The Honorable Felicia Marcus, Chair
and Members of the State Water Resources Control Board
c/o Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Delivered by email: commentletters@waterboards.ca.gov

**Subject: CWA Comments on Proposed 1,2,3-Trichloropropane
Maximum Contaminant Level Regulations (SBDDW-17-001)**

Dear Chair Marcus and Members of the Board:

On behalf of the California Water Association ("CWA") and its more than 100 investor-owned, CPUC¹-regulated member public water utilities, thank you for the opportunity to provide comments on the proposed regulations to set a Maximum Contaminant Level ("MCL") for 1,2,3-Trichloropropane ("1,2,3-TCP"), notice of which was provided by the State Water Resources Control Board ("Board") on March 3, 2017 (the "Proposed Regulations"). CWA commends the staff on the development of the Proposed Regulations and joins all the commenting parties at the April 19, 2017, public hearing in supporting the proposed MCL of 0.000005 milligrams per liter (mg/L), or 5 parts per trillion (ppt). CWA proposes two additions herein to the Proposed Regulations that its members believe will strengthen the ability of the regulated community to comply with the new MCL in an expeditious manner.

Comments

I. The Proposed Regulations Should Include a Systematic Compliance Strategy that Allows Water Systems to Come Into Compliance with the New Drinking Water Standard.

Many public water systems may be required to take potentially challenging and time-consuming actions in order to achieve compliance with the proposed new drinking water standard for 1,2,3-TCP. The Proposed Regulations do not recognize this important consideration. Water systems will need time to fully understand potential compliance issues and collect sufficient data upon which to

¹ California Public Utilities Commission.

Jack Hawks, Executive Director
California Water Association
601 Van Ness Avenue, Suite 2047
San Francisco, CA 94102-6316
415.561.9650
415.561.9652 fax
415.305.4393 cell
jhawks@calwaterassn.com
www.calwaterassn.com

Melissa Dixon, Administrative Director
California Water Association
700 R Street, Suite 200
Sacramento, CA 95811
916.231.2147
916.231.2141 fax
mdixon@calwaterassn.com

CWA President
Lawrence Morales
East Pasadena Water
626.793.6189
lawrence@epwater.com

CWA Vice Presidents
Keith Switzer
Golden State Water Company

Evan Jacobs
California American Water

Jeanne-Marie Bruno
Liberty Utilities

CWA General Secretary and Treasurer
Joel Reiker
11142 Garvey Avenue
El Monte, CA 91733
626.448.6183
jmreiker@sgvwater.com

CWA Billing Address
California Water Association
700 R Street, Suite 200
Sacramento, CA 95811

CWA Mailing and Shipping Address
California Water Association
601 Van Ness Avenue, Suite 2047
Mail Code: #E3-608
San Francisco, CA 94102-3200

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base a compliance strategy. Where treatment is determined to be necessary, the process of designing, financing, building and testing treatment facilities may take years. If the Board adopts the Proposed Regulation without modifying it to provide a practical path forward for public water systems to achieve compliance, many may be deemed in violation of the new standard despite their best (and good-faith) efforts to timely comply.

CWA recommends that the Board address this challenge by revising the Proposed Regulation to include a firm, but flexible strategy that would facilitate public water system compliance with the final MCL in a manner that balances the public health needs of customers with the cost and rate impacts on those same customers. A compliance program tailored to system-specific requirements that incorporates a workable pre-enforcement period, along with appropriate safeguards and milestones, would support the efforts of water systems seeking to implement cost-effective treatment, without delaying compliance.

Adopting such a strategy would be consistent with the approaches taken to “phase-in” compliance with other primary drinking water standard regulations, such as arsenic on the federal level² and chromium-6 on the state level.³ Of course, each proposed new drinking water standard requires individualized consideration to ascertain an appropriate compliance strategy. CWA recognizes that the carcinogenic nature of 1,2,3-TCP contamination necessitates treatment as expeditiously as possible, that Granular Activated Carbon (“GAC”) is a widely used and accepted treatment technology, and that there is much more consensus on the proposed standard for 1,2,3-TCP MCL than was the case for the chromium-6 MCL three years ago. Accordingly, CWA is neither recommending a five-year phased-in compliance time frame, nor the more elaborate SB 385 compliance program used for chromium-6. CWA references those two examples only for the proposition that implementing a practical compliance strategy that is responsive to public health, technical, financial and ratepayer needs has recent precedent. In CWA’s view, an 18 to 24-month compliance time frame, for instance, would remove the specter of unwarranted enforcement action without removing the urgency to get treatment up and running.

Therefore, in order to better account for the substantial technical, operational and capital investments that some public water systems will be required to make, CWA urges the Board to revise the Proposed Regulation to include a systematic compliance program that includes a reasonable period for public water systems to achieve compliance with a 0.005 ppb 1,2,3-TCP MCL.

² National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring; Final Rule, 66 Fed. Reg. 14, 6976 (Jan. 22, 2001).

³ Health and Safety Code Section 116431.

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II. The CEQA Document Issued in Connection with the Proposed Regulations Must Be Supplemented By Analysis of GAC Treatment.

Public Resources Code Section 21159 obliges the Board to perform, at the time of the adoption of a rule or regulation requiring “a performance standard or treatment requirement,” an environmental analysis of, among other things, the “reasonably foreseeable methods of compliance.”⁴ While CWA does not challenge the **conclusions** drawn by the Initial Study/Mitigated Negative Declaration (“IS/MND”) issued by the Board in connection with the Proposed Regulations, CWA does believe that this environmental document should be strengthened to clarify that the environmental analysis does, in fact, consider the likely environmental impacts of statewide implementation of GAC as the reasonably foreseeable method of compliance, as required by Section 21159.

The Initial Statement of Reasons and other supporting Board documents identify GAC as the Best Available Technology (“BAT”) for treatment of 1,2,3-TPC. Because water systems have a duty to implement BAT, GAC is the required, and therefore the reasonably foreseeable treatment technology/pollution control equipment that public water systems must implement in order to comply with the new drinking water standard. The Board, therefore, needs to ensure that the IS/MND analyzes implementation of GAC in compliance with Public Resources Code Section 21159’s express requirement for an analysis of environmental impacts of installing and operating such equipment. The economic analyses prepared for GAC have sufficiently developed assumptions regarding the installation and operation of GAC by water systems to support a complete and non-speculative environmental impacts analysis for installation, operation and maintenance of that treatment technology by water systems statewide. CWA’s specific recommendations for bolstering the Board’s IS/MND analysis of GAC are attached hereto as Appendix A.

A proactive effort by the Board to supplement the IS/MND and clarify that the analysis fully addresses the environmental effects of GAC implementation is critical to the efficient and cost-effective deployment of utility-sponsored 1,2,3-TCP treatment projects. By properly clarifying and expanding the Board’s IS/MND analysis, the Board will allow lead agencies implementing GAC in response to the Board’s adopted regulation to rely on an IS/MND prepared in compliance with Section 21159 to streamline, pursuant to Public Resources Code Sections 21159.2 and 21166, future CEQA review of water system projects to implement GAC. This is critical to the success of future compliance with the 1,2,3-TCP MCL because water systems will already be challenged to quickly permit and install GAC treatment systems to comply with the new MCL once adopted. As such, a streamlined CEQA

⁴ Public Resources Code Section 21159.

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review for the water utilities, which the Board's expanded analysis will facilitate, is essential to their timely compliance with the Board's final regulation.

For these reasons, CWA respectfully requests that the Board expand the analysis of the Initial Study/Mitigated Negative Declaration, as recommended herein, to clarify that it fully analyzes the likely environmental effects of GAC implementation, consistent with the requirements of Public Resources Code Section 21159.

Conclusion

Thank you again for the opportunity to provide these comments. CWA supports the Board's efforts to adopt primary drinking water standards for the protection of public health and seeks, by the above recommendations, to facilitate the orderly but expeditious implementation of a 1,2,3-TCP MCL. If you have any questions, please feel free to contact me at jhawks@calwaterassn.com or (415) 561-9650.

Sincerely,



Jack Hawks

Executive Director, California Water Association

cc: The Honorable Steven Moore, Vice Chair, State Water Resources Control Board
The Honorable Tam Doduc, Member, State Water Resources Control Board
The Honorable Dorene D'Adamo, Member, State Water Resources Control Board
The Honorable Joaquin Esquivel, Member, State Water Resources Control Board
The Honorable Michael Picker, President, California Public Utilities Commission
The Honorable Martha Guzman-Aceves, Commissioner, California Public Utilities Commission
The Honorable Clifford Rechtschaffen, Commissioner, California Public Utilities Commission
Mr. Tom Howard, Executive Director, State Water Resources Control Board
Mr. Eric Oppenheimer, Chief Deputy Director, State Water Resources Control Board
Mr. Rami S. Kahlon, Director, Water Division, California Public Utilities Commission
California Water Association, Water Quality and Public Policy Committees

**Appendix A: Recommendations to Assure Comprehensive CEQA
Analysis to Streamline PWS Installation of GAC**

Ref No.	Representative list of Provisions Affected	Recommendation
1.	<ul style="list-style-type: none"> • Initial Statement of Reasons (ISOR), <i>Economic and Technological Feasibility of Compliance</i>, p. 11 • IS/MND, Section A. Project Description • IS/MND, Cumulative Impacts, p. 62 	<p>By way of example, the ISOR analysis on page 13 states that local conditions and extensive variability among sources creates significant challenges for accurately extrapolating from existing data the total number of sources that may require treatment statewide. Other ISOR provisions similarly discuss limitations on the ability to determine the number of sources and treatment units that may be needed statewide. Nevertheless, the IS/MND needs to conservatively address implementation of GAC statewide for all potential sources. Therefore, we recommend augmenting the IS/MND project description to explain, with greater specificity, the assumptions used to assure that the environmental impacts analysis comprehensively and conservatively considers the impacts of implementing GAC units statewide by all PWSs reasonably likely to be required to address any source of 1,2,3-TCP contamination. The assumptions discussed on pages 17 and 18 of the ISOR may be useful for this purpose.</p>
2.	<ul style="list-style-type: none"> • ISOR, <i>Conclusions of Feasibility of Proposed MCL</i>, p. 22. • IS/MND, <i>Alternative Methods of Compliance</i>, pp. 10-11 	<p>The ISOR identifies Point of Entry (POE) treatment as a potential alternative method of compliance, but the IS/MND does not. We recommend augmenting the IS/MND to include POE as an alternative method of compliance, and an assessment of the likely impacts of implementing POE, which are unlikely to be significant. At a minimum, the IS/MND should acknowledge and explain the discrepancy.</p>
3.	<ul style="list-style-type: none"> • IS/MND, <i>Environmental Analysis of Reasonably Methods of Foreseeable Compliance</i>, p. 9. • IS/MND, <i>Environmental Analysis of Alternative Methods of Reasonably Methods of Foreseeable Compliance</i>, top of p. 11. 	<p>The text correctly notes that the analysis must take into account a reasonable range of existing environmental conditions, technical factors, population areas, geographic areas and potential sites. We recommend augmenting this text to clarify assumptions used to develop this reasonable range to show substantial evidence that the Board fulfilled this requirement in preparing the IS/MND.</p>
4.	<ul style="list-style-type: none"> • IS/MND, <i>Environmental Analysis of Reasonably Foreseeable Environmental Impacts and Mitigation Measures Related to GAC</i>, p. 14. 	<p>Clarify the discussion of future anticipated discretionary actions by the Board in connection with Safe Drinking Water Act amended permits, any public PWS in implementing GAC, and any other lead agencies with jurisdiction over private PWS implementation of GAC to provide that these future</p>

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		discretionary actions are not anticipated to required additional environmental analysis based on the comprehensive analysis of the IS/MND, but if such supplemental analysis is required, it could be conducted in connection with such future discretionary actions.
5.	<ul style="list-style-type: none"> • IS/MND, <i>Environmental Factors Potentially Affected</i>, p. 16 • IS/MND, <i>Evaluation of Environmental Effects</i>, Section 	Since operation of GAC units require pumps, demanding energy, we recommend adding an analysis of energy impacts pursuant to the CEQA Guidelines Appendix F.
6.	<ul style="list-style-type: none"> • IS/MND, <i>Evaluation of Environmental Effects, Air Quality</i>, pp. 23-25. 	We recommend adding in a discussion of construction air emissions for criteria pollutants since grading is anticipated to be necessary to install slabs, footings, etc., as is indicated on p. 33 of the IS/MND, and since greenhouse gas (GHG) emissions during construction are anticipated (p. 35). Standard Air Quality Management District construction mitigation measures may or may not be necessary. Rather than no impacts, we suggest that no cumulative air quality impacts would exist, but would be less than significant.
7.	<ul style="list-style-type: none"> • IS/MND, <i>Evaluation of Environmental Effects, Biological Impacts</i>, pp. 26-28 	We recommend adding an additional MM to assure impacts to listed species (factor a) and impacts to Section 404 jurisdictional waters (factor c) and habitat conservation plans (factor f) are fully mitigated. Consistent with the state and federal Endangered Species Acts and federal Clean Water Act and Board policy, we recommend that the additional MM should require that the GAC implementation projects should be designed to avoid and minimize impacts to those resources to the maximum extent feasible.
8.	<ul style="list-style-type: none"> • IS/MND, <i>Evaluation of Environmental Effects, Green House Gas Emissions</i>, pp. 34-36 	We recommend augmenting the GHG emissions analysis to encompass any increases in GHG's due to operational energy use.
9.	<ul style="list-style-type: none"> • IS/MND, <i>Evaluation of Environmental Effects, Hydrology Water Quality</i>, pp. 39 to 45 • IS/MND, <i>Evaluation of Environmental Effects, Utilities and Services</i>, p. 58 (wastewater treatment requirements), 	We recommend: <ul style="list-style-type: none"> • adding a reference to the information relied upon to support the assumption that Backwash would be free of detectable levels of 1,2,3-TCP; • expanding the discussion of all pollutants likely to be contained in the backwash to show that it is truly a low threat discharge, particularly given

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Analysis to Streamline PWS Installation of GAC

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	p. 59 (storm water drainage facilities)	<p>that MM 5 allows for PWSs to discharge the backwash to the storm drain upon approval of the storm drain operator;</p> <ul style="list-style-type: none"> • Because the analysis states that backwash will contain fines, which are prohibited from being discharged from storm drains to surface waters in certain quantities, we recommend that MM5 should be revised to require filtering of fine sediments prior to discharging to a storm drain; • Because the discharge of backwash from a storm drain to a receiving water may require and NPDES permit, and may not be permitted by an applicable MS4 permit, we recommend that MM5 should be revised to clarify whether any NPDES permit coverage is required in addition to the approval of an MS4 operator, and, if so, to specify that such discharges can be made pursuant to and in compliance with the General Drinking Water NPDES Permit. In addition to the MM’s specified in the section, compliance with the General Drinking Water NPDES Permit would assure no impacts from backwash to receiving waters. • We suggest that backwash discharges from storm drains to surface of ground waters may have insignificant rather than no impact on degradation of water quality.
10.	<ul style="list-style-type: none"> • IS/MND, <i>Evaluation of Environmental Effects, Noise</i>, pp 47-49. 	<p>We suggest:</p> <ul style="list-style-type: none"> • The analysis should clarify that both construction and operational noise from pumping systems and disposal were taken into account in the evaluation; • The noise from construction and operational impacts is likely to have some impact on ambient noise and receptors, but the impact is likely to be insignificant. • Compliance with local agency (city and county) construction noise ordinances will assure full and effective mitigation of any construction noise.
11.	<ul style="list-style-type: none"> • IS/MND, <i>Evaluation of Environmental Effects, Transportation/Traffic</i>, pp. 53-56 	<p>We suggest:</p> <ul style="list-style-type: none"> • The types of potential construction traffic should be mentioned, and it should be noted that any additional construction related traffic

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		impacts will be fully and effectively mitigated via compliance with local agency (city and county) construction traffic ordinances.
12.	<ul style="list-style-type: none"> • IS/MND, <i>Evaluation of Environmental Effects, Utilities and Services</i>, p. 60 	We suggest fines and other solids from backwash may also have to be disposed of in landfills.
13.	<ul style="list-style-type: none"> • IS/MND, <i>Evaluation of Environmental Effects, Cumulative Impacts</i>, pp. 62-63 	We suggest: <ul style="list-style-type: none"> • Clarifying that the cumulative impacts analysis considered all environmental factors and determined none of them to be cumulatively significant • Reformatting the cumulative impacts section to be a stand-alone section so it does not appear to be part of the mandatory findings of significance section, and relate only to those findings.