STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF DRINKING WATER (DDW)
AUGUST 1, 2017

ITEM 6

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION TO DELETE THE TEXT OF THE REGULATIONS ESTABLISHING AND IMPLEMENTING A MAXIMUM CONTAMINANT LEVEL FOR HEXAVALENT CHROMIUM IN CALIFORNIA CODE OF REGULATIONS, TITLE 22, SECTIONS 64431, 64432, 64447.2, 64465, AND 64481

DISCUSSION

Pursuant to the California Safe Drinking Water Act (Health & Saf. Code, div. 104, pt. 12, ch. 4, (commencing with § 116270)), the State Water Resources Control Board (State Water Board) is responsible for adopting primary drinking water standards, with which all public water systems, as defined in Health & Safety Code (HSC) Section 116275, must comply. Those primary drinking water standards that consist of levels of contaminants in drinking water are known as maximum contaminant levels (MCLs).

The State Department of Public Health adopted an MCL for hexavalent chromium of 10 ppb (parts per billion) in California Code of Regulations, title 22, section 64431 in April 2014, and the MCL was approved by Office of Administrative Law (OAL) on May 28, 2014, and became effective on July 1, 2014. When the State Department of Public Health adopted the hexavalent chromium MCL, it also adopted other provisions related to implementation of the MCL, which are found in California Code of Regulations, title 22, sections 64432, 64447.2, 64465, and 64481.

On May 31, 2017, the Superior Court of Sacramento County, ruling on a lawsuit filed on May 29, 2014, issued a Judgment Granting Petition for Writ of Mandate and a Peremptory Writ of Mandate. The court ordered the State Board to "take all actions necessary to cause the withdrawal of the maximum contaminant level for hexavalent chromium (the 'Chromium MCL') set forth in the California Code of Regulations, Title 22, Section 64431 as invalid." The court also ordered the State Board to file with the court by August 15 proof that it has submitted to Office of Administrative Law a " 'change without regulatory effect' to delete the text of the Chromium MCL pursuant to California Code of Regulations, Title 1, Section 100."

The CCR, title 1, section 100, provides that if a California superior court has held a regulation invalid, a state agency, with approval of OAL and without complying the formal rulemaking procedure in the APA, may delete the text of the regulation.

In order to comply with the court's order, the State Water Board proposes to submit to OAL a request to delete the text of the regulations establishing and implementing an MCL for hexavalent chromium, which consist of portions of CCR, title 22, sections 64431, 64432, 64447.2, 64465, and 64481.

POLICY ISSUE

Should the State Water Board:

Adopt a resolution to delete the text of the regulatory provisions establishing and implementing a maximum contaminant level for hexavalent chromium in California Code of Regulations, title 22, sections 64431, 64432, 64447.2, 64465, and 64481, and direct the staff to submit the deletion to OAL for approval?

FISCAL IMPACT

None.

REGIONAL BOARD IMPACT

None.

STAFF RECOMMENDATION

The State Water Board should adopt the proposed resolution.

D R A F T

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2017-

DELETING THE TEXT OF THE REGULATIONS ESTABLISHING AND IMPLEMENTING A MAXIMUM CONTAMINANT LEVEL FOR HEXAVALENT CHROMIUM IN CALIFORNIA CODE OF REGULATIONS, TITLE 22, SECTIONS 64431, 64432, 64447.2, 64465, AND 64481

WHEREAS:

1. Pursuant to the California Safe Drinking Water Act (Health & Saf. Code, div. 104, pt. 12, ch. 4, (commencing with § 116270)), the State Water Resources Control Board (State Water Board) is responsible for adopting primary drinking water standards, with which all public water systems, as defined in Health and Safety Code section 116275, must comply. Those primary drinking water standards that consist of levels of contaminants in drinking water are known as maximum contaminant levels (MCLs).

2. The State Department of Public Health adopted an MCL for hexavalent chromium of 10 ppb (parts per billion) in California Code of Regulations, title 22, section 64431 in April 2014. At the same time, the State Department of Public Health also adopted other provisions related to implementation of the MCL, which are found in California Code of Regulations, title 22, sections 64432, 64447.2, 64465, and 64481. The Office of Administrative Law (OAL) approved the regulations on May 28, 2014, and they became effective on July 1, 2014.

3. On May 31, 2017, the Superior Court of Sacramento County, ruling on a lawsuit filed on May 29, 2014, issued a Judgment Granting Petition for Writ of Mandate and a Peremptory Writ of Mandate, invalidating the hexavalent chromium MCL. The court ordered the State Board to "take all actions necessary to cause the withdrawal of the maximum contaminant level for hexavalent chromium (the 'Chromium MCL') set forth in the California Code of Regulations, Title 22, Section 64431 as invalid." The court also ordered the State Board to file with the court by August 15 proof that it has submitted to the Office of Administrative Law a " 'change without regulatory effect' to delete the text of the Chromium MCL pursuant to California Code of Regulations, Title 1, Section 100."

4. The CCR, title 1, section 100, provides that if a California superior court has held a regulation invalid, a state agency, with approval of OAL and without complying the formal rulemaking procedure in the APA, may delete the text of the regulation.

THEREFORE BE IT RESOLVED THAT:

1. The State Board has determined to delete the text of the regulatory provisions establishing and implementing a maximum contaminant level for hexavalent chromium in CCR, title 22, sections 64431, 64432, 64447.2, 64465, and 64481. Hexavalent Chromium Regulation

2. The State Water Board Executive Director or the Executive Director's designee shall sign the form 400 and the State Water Board staff shall submit to the Office of Administrative Law (OAL), for review and filing with the Secretary of State, pursuant to CCR, title 1, section 100, a request, with supporting documentation, to delete the text of the regulatory provisions establishing and implementing a maximum contaminant level for hexavalent chromium in CCR, title 22, sections 64431, 64432, 64447.2, 64465, and 64481.

3. If, prior to the OAL filing the regulations to be deleted with the Secretary of State, State Water Board staff, the State Water Board, or OAL staff determine that non-substantive corrections to the regulations to be deleted or supporting documentation are needed to facilitate the review process, the State Water Board Executive Director or the Executive Director's designee may make such changes.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on August 1, 2017.

Jeanine Townsend
Clerk to the Board