

BEFORE THE  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of: )  
 )  
 )  
 )  
 )  
 Proposed 1,2,3-Trichloropropane (1,2,3-TCP) )  
 Maximum Contaminant Level (MCL) Regulations )  
 (Gov. Code, §11346.5(a)(1)) )  
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PUBLIC HEARING

Joe Serna Jr. - CalEPA Headquarters Building  
Coastal Hearing Room  
1001 I Street, Second Floor  
Sacramento, CA 95814

Wednesday, April 19, 2017

9:00 a.m.

Reported by:  
Peter Petty

## APPEARANCES

### Board Members Present:

Felicia Marcus, Chair  
Steven Moore, Vice Chair  
Tam Doduc  
Joaquin Esquivel

### Staff Present:

Thomas Howard, Executive Director  
Jonathan Bishop, Chief Executive Director  
Eric Oppenheimer, Chief Deputy Director  
Michael A.M. Lauffer, Chief Counsel  
Jeanine Townsend, Clerk to the Board  
Courtney Tyler, Assistant Clerk  
Darrin Polhemus, Division of Drinking Water  
Kim Niemeyer, Office of Chief Counsel  
Conny Mitterhofer, Division of Water Rights  
Zachary Rounds, Division of Drinking Water  
Mark Bartson, Division of Drinking Water

### Public Comment:

Martha Davis, Inland Empire Utilities Agency  
Tutuy, Self  
Cecy Gonzalez, Self  
Bartolo Chavez, Self  
Lucy Hernandez, Self  
Ryan Jensen, Community Water Center  
Jose Gurrola, Mayor, City of Arvin  
Rebecca Franklin, Association of California Water Agencies  
Jack Hawks, California Water Association  
Beth Smoker, PAN North America  
Andria Ventura, Clean Water Action  
Asha Kreiling  
Kena Cador, ACLU of Northern California  
Van Grayer, Vaughn Water Company  
Raul Barraza, City of Arvin  
Carlos Arias, Del Rey Community Services District  
Adan Ortega, California Association of Mutual Water Companies  
Randy Reck, Environmental Justice Coalition for Water  
Mariah Thompson, California Rural Legal Assistance  
Susan Little, Environmental Working Group

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P R O C E E D I N G S

APRIL 19, 2017 9:06 A.M.

CHAIR MARCUS: Good morning. My apologies for the delay this morning. It's just important that folks on the Web are able to hear as well.

I'm Felicia Marcus. I'm the Chair of the Board and today is Tuesday, April 19th -- Wednesday?

UNIDENTIFIED SPEAKER: It's Wednesday.

CHAIR MARCUS: It says Tuesday. (Laughter.)

UNIDENTIFIED SPEAKER: You're right.

CHAIR MARCUS: So we've demonstrated I can read, but I don't know what day it is. Sorry.

All right, it's Wednesday, April 19th at 9:13 a.m. and the meeting is called to order. With me, to my left is Vice Chair Steve Moore. Normally, to his left would be Board Member DeeDee D'Adamo. She wasn't able to be here this morning, but I assume that she's listening on the Web. To my right, Board Member Tam Doduc, and to her right is our newest Board Member Joaquin Esquivel. Welcome, yay.

MR. ESQUIVEL: Welcome.

CHAIR MARCUS: Thrilled to have you. Mr. Howard, will you please introduce the staff that's assisting today?

MR. HOWARD: Thank you. To my left,

1 Michael Lauffer, Chief Counsel. To my right, John Bishop  
2 and Eric Oppenheimer, Chief Deputies and assisting the  
3 Board are Jeanine Townsend and Courtney Tyler.

4 CHAIR MARCUS: Thanks very much.

5 For those of you who are not familiar with our  
6 emergency procedures in the building, if you hear an  
7 emergency sound, proceed to the exit nearest you. It's  
8 helpful if you look to see what that is and take your  
9 stuff and your friends and proceed down the stairwells.  
10 If you need assistance, someone will help you find a  
11 protected area. We gather in the corner of Caesar Chavez  
12 Park, down near 10th and J. If you want to wait with us,  
13 you'll know when the "all clear" comes and when we can  
14 come back.

15 The meeting's being Webcast and recorded, as  
16 we've established this morning. So please when you come  
17 up to the microphone, try and speak close enough to it  
18 that it gets picked up, but not so close as to cause  
19 static or a pop.

20 And the last thing is please take any of your  
21 noise-making devices and put it on silent, or stun or  
22 turn it off.

23 This morning, we're beginning the meeting,  
24 thank you, with a workshop to deal with 1,2,3-TCP, with  
25 the maximum contaminant level proceeding. It is a

1 workshop and so, as is our practice, I need to read a  
2 statement for the record.

3           The Division of Drinking Water has proposed a  
4 Maximum Contaminant Level, or an MCL, for 1,2,3-  
5 Trichloropropane, 1,2,3-TCP, of five parts per trillion.  
6 This is a new process for the State Water Board and the  
7 first MCL that the Board will be adopting since the  
8 transfer of the Drinking Water Program in 2014.

9           Today's public hearing is to receive the public  
10 comments regarding the proposed regulations. Today's  
11 workshop will begin with Drinking Water staff providing a  
12 short presentation on the health effects and statewide  
13 occurrence of 1,2,3-TCP, the MCL development process, and  
14 the proposed 1,2,3-TCP regulations.

15           Following the presentation we'll begin  
16 receiving your public comments. We ask that comments be  
17 kept to no more than -- normally, we'd say three minutes,  
18 I don't know how many speaker cards we have, so let me  
19 wait. Do you have more than were on the Board before?  
20 All right, there's quite a few. So we will keep it to  
21 three minutes in length to help ensure that everyone  
22 interested in commenting is afforded that opportunity.

23           Please understand that today's public hearing  
24 is an opportunity for you to provide comments on the  
25 regulations. The State Water Board may not respond to

1 your comments during this hearing, but all of your  
2 comments will be responded to in the final regulation  
3 documents. And these documents will be made available to  
4 the public. The State Water Board anticipates that the  
5 final documents will be available in the next month or  
6 two.

7 The State Water Board will not be taking any  
8 action on the regulations today. The adoption of the  
9 final regulations by the State Water Board is anticipated  
10 to occur in late May or early June, at a regular Board  
11 meeting.

12 For those watching through the Webcast, staff  
13 have included information regarding Internet-available  
14 documents in the presentation itself. If you'd like to  
15 submit comments regarding the proposed regulations then  
16 they must be submitted to the Board Clerk no later than  
17 5:00 p.m. on Friday, April 21st. Comments provided  
18 during today's public hearing will be recorded by a court  
19 reporter.

20 I'm now going to turn the presentation over to  
21 Darrin Polhemus, the Deputy Director of the Division of  
22 Drinking Water to introduce the staff presentation.

23 MR. POLHEMUS: Thank you. Good morning, Chair  
24 Marcus, Darrin Polhemus, Deputy Director for the Division  
25 of Drinking Water -- I almost said Financial Systems

1 there -- so I'm proud to be here with the staff to do the  
2 first MCL before the State Water Board.

3           And I'm going to introduce staff and then turn  
4 it over to them. Starting from my right is Kim Niemeyer,  
5 our Chief Council Assistant for the Division of Drinking  
6 Water and this regulated package. Conny Mitterhofer,  
7 who's left me now and is now in the Division of Water  
8 Rights. Wow, I'm going to get all the Divisions messed  
9 up today, but she's helping us see this through, so I  
10 appreciate that. Zach Rounds, who will be doing the main  
11 presentation today and staff on this; and Mark Bartson,  
12 one of our managers in the Division of Drinking Water.

13           And with that go ahead, staff.

14           MS. MITTERHOFER: Good morning Chair Marcus,  
15 members of the Board. So we are here this morning to  
16 discuss the 1,2,3-Trichloropropane maximum contaminant  
17 regulations.

18           So I just wanted to reiterate what Chair Marcus  
19 said previously, the State Water Board is not going to be  
20 taking action on the regulations today. This is the  
21 public hearing in accordance with the Administrative  
22 Procedure Act requirements. The intent of the hearing is  
23 to receive public comments. The State Water Board will  
24 respond to public comments in their Final Statement of  
25 Reasons. And written public comments, again must be

1 submitted to the State Water Board by Friday, April 21st,  
2 at 5:00 p.m.

3           So how did we get here? A quick note on the  
4 schedule, we had focused stakeholder meetings in the late  
5 May, early June timeframe, where we went to Visalia,  
6 Bakersfield and Fresno. That was followed by public  
7 workshops in Sacramento, Bakersfield and Fresno, where we  
8 released the preliminary staff recommendation for an MCL.  
9 The public comment period started on March 4th, again  
10 running through this Friday at 5:00 o'clock. We are here  
11 for the public hearing and we anticipate Board adoption  
12 date as previously mentioned in hopefully the May/June  
13 timeframe. And that would then give us an effective date  
14 of the regulations on July 1st, or the following quarter.

15           I'm going to be turning the presentation over  
16 to Zach Rounds. He's been the Lead Engineer on the  
17 regulation package and he will be going over the short  
18 staff presentation.

19           MR. ROUNDS: All right, so the presentation  
20 will start with an overview of the history and background  
21 of 1,2,3-TCP, some information on statewide occurrence  
22 and the health effects of ingesting it through drinking  
23 water. That will be followed by a brief description of  
24 the development process for these regulations, and then a  
25 description of each proposed regulation. After the

1 conclusion of the presentation, we'll begin taking public  
2 comments.

3 All right, so for history and background,  
4 1,2,3-TCP was used as an industrial solvent and for  
5 degreasing in some industrial processes. It was an  
6 ingredient in some soil fumigants that were widely used  
7 for decades. 1,2,3-TCP is also notable as a contaminant  
8 that moves into groundwater aquifers without much soil  
9 absorption, thereby remaining in water supplies.

10 So, the State Board used data from 2001 to late  
11 2015, in developing the proposed regulations. The data  
12 revealed 471 wells with confirmed detections above five  
13 parts per trillion and with a range of detections from  
14 five parts per trillion to over 10,000 parts per  
15 trillion. All but a few of the sources with detections  
16 were groundwater sources.

17 So this map shows areas in the Central Valley  
18 with groundwater sources, which have average  
19 concentrations of 1,2,3-TCP above five parts per  
20 trillion. There are also areas of contamination along  
21 Los Angeles County extending out towards San Bernardino.  
22 And this map is not intended to be reflective of the  
23 entirety of statewide contamination.

24 So for the health effects, 1,2,3-TCP is  
25 considered to be a carcinogen or a cancer-causing

1 substance. And exposure routes to 1,2,3-TCP through  
2 drinking water are from consuming contaminated water or  
3 from the inhalation of water vapor that may contain  
4 1,2,3-TCP such as steam from a hot shower.

5 In 2009, the Office of Environmental Health  
6 Hazard Assessment, or OEHHA, set a public health goal of  
7 0.7 parts per trillion in drinking water. The public  
8 health goal represents a level of contamination that  
9 would result in 1 in 1 million people developing cancer  
10 after drinking two liters of water per day and breathing  
11 air containing 1,2,3-TCP over a 70-year lifetime. Public  
12 health goals represent a target for the State Water  
13 Board, when developing standards but are not required to  
14 be attainable at the time they are set. They are a  
15 measure of that one in a million goal.

16 VICE CHAIR MOORE: Mr. Rounds, real quick on  
17 that, a question? I was curious, or if you could  
18 explain, is there a controlling factor? Is it exposure  
19 through water or exposure through air that is driving the  
20 0.7 endpoint or are they additive?

21 MR. ROUNDS: I wish I had my toxicologist for  
22 this. I believe it's considered additive. I will always  
23 direct people back to the OEHHA report. It's lengthy and  
24 contains more information, but the bulk of exposure is  
25 considered through drinking water.

1           When developing primary drinking water  
2 standards the State Water Board is required by statute to  
3 set the standards as close to the public health goal as is  
4 technologically and economically feasible, while placing  
5 primary emphasis on the protection of public health.

6           And that leads to this slide. These are the  
7 major common steps to develop an MCL that result from  
8 those statutory requirements. The State Water Board  
9 collects water quality data to determine the extent of  
10 contamination and is a backbone for the feasibility  
11 determinations and health benefits.

12           Possible regulatory detection limits are then  
13 investigated and then those and the existing data are  
14 used to identify a range of potential MCLs that are  
15 evaluated. The State Water Board considers the impact of  
16 population and health benefits at the evaluated MCL,  
17 various costs to the state to comply with the evaluated  
18 MCL, and which technologies should be included as the  
19 best available technologies. These evaluations are then  
20 used in selecting and in finally proposing an MCL, which  
21 leads us to now.

22           In addition to what I described, the State  
23 Water Board also has a few additional requirements that  
24 came into place with this. We're required to perform an  
25 external peer review of all the scientific elements of

1 our proposed regulations for 1,2,3-TCP. That was the  
2 proposed detection limit for purposes of reporting, the  
3 proposed best available technology, our economic  
4 estimation method, our risk assessment evaluation and  
5 whether or not the proposed MCL was actually health  
6 protective.

7 We sent the peer review package out to peer  
8 reviewers last year and received comments in the fall.  
9 The majority of the comments responding from peer  
10 reviewers were in agreement with our conclusions. And we  
11 responded in turn to the comments of concern from them.  
12 Particular comments that they had concerns with were the  
13 analytical methods and how they associated with the DLR.  
14 And again we respond to that with our comments.

15 And concerns that by selecting -- and this will  
16 come up again later -- by selecting a best available  
17 technology we were not considering the use of alternative  
18 technologies. But for that just because we select the  
19 best available technology does not preclude the water  
20 systems from deploying alternative technology, which is  
21 sufficiently protective of public health and meets the  
22 same goals.

23 We're also required to comply with CEQA and we  
24 prepared an Initial Mitigated Negative Declaration, which  
25 is out for comment, simultaneously right now.

1           We were also required to perform what's called  
2 a major regulations analysis. State Administrative  
3 Procedure Act requires any regulation that has a proposed  
4 economic impact of over \$50,000 million in a 12-month  
5 period to perform additional economic evaluation of the  
6 proposed regulations. And we performed all of that with  
7 our in-house and submitted it to the Department of  
8 Finance and they had comments and we responded to their  
9 comments. And everything is available up on the  
10 Department of Finance website.

11           So coming to the proposed regulations, we are  
12 proposing an MCL of five parts per trillion. We're  
13 basing this on the technical feasibility of available  
14 analytical methods and treatment capable of detecting and  
15 treating to less than five parts per trillion. The  
16 economic feasibility of monitoring and treatment to the  
17 State of California and the protection provided to public  
18 health at five parts per trillion of a theoretical cancer  
19 risk of less than 1 in 100,000.

20           CHAIR MARCUS: Can I ask a question? I know we  
21 probably talked about this a bit in the briefing, so the  
22 detection level is five parts per trillion. But the  
23 treatment -- you can test it to five parts per trillion,  
24 because that's the detection level -- but do you suspect  
25 that the treatment goes below the five parts per

1 trillion?

2 MR. ROUNDS: We think so.

3 CHAIR MARCUS: You just can't show it?

4 MR. ROUNDS: Correct. There are newer methods  
5 in development, but we don't have laboratories certified  
6 to use them that can go less than five. We anticipate,  
7 as the MCL rolls out at five, over time, more labs will  
8 improve their technology and move on to lower improved  
9 capabilities of detecting. And then from there, we can  
10 reevaluate, but I'm fairly certain the best available  
11 technology will remove it to less than five parts per --  
12 we know it will bring it to less than five parts per  
13 trillion. We have data for that. Just how far down, we  
14 can't really speak to.

15 All right, so compliance and monitoring for  
16 1,2,3-TCP will be performed in accordance with existing  
17 organic chemical regulations. Compliance will be based  
18 on a running annual average where water systems collect  
19 quarterly samples and begin averaging the results to  
20 determine if the average is above the MCL.

21 Water systems will be required to begin  
22 monitoring for 1,2,3-TCP in January 2018, assuming an  
23 effective date of the MCL sometime in 2017. And initial  
24 monitoring will consist of quarterly sampling for one  
25 year.

1           After initial monitoring is complete, a source  
2 without detections of 1,2,3-TCP will be able to  
3 transition to routine monitoring of once every one or  
4 three years, depending on the type of source. And a  
5 source with detections at or above the MCL will be  
6 required to perform more frequent compliance monitoring,  
7 again in accordance with existing regulations.

8           The proposed regulations add a Detection Limit  
9 for purposes of reporting or DLR of five parts per  
10 trillion. The DLR is a regulatory definition of how low  
11 the concentration of a contaminant must be for it to be  
12 considered non-detect, less than five. Analytical  
13 methods to detect 1,2,3-TCP down to the proposed DLR of  
14 five parts per trillion have been used for over a decade.  
15 And numerous labs certified for those methods are  
16 available statewide.

17           The proposed regulations establish granular  
18 activated carbon, or GAC, as the best available treatment  
19 for the removal of 1,2,3-TCP. GAC is already in use in  
20 some water systems for the removal of 1,2,3-TCP and has  
21 been shown to successfully remove 1,2,3-TCP to less than  
22 the proposed MCL of five parts per trillion.

23           Water systems interested in using alternative  
24 technologies to the best available technology may be  
25 allowed to do so provided that that technology, as I said

1 earlier meets applicable standards, because BATs are not  
2 a mandatory form of treatment.

3 In addition to providing treatment water  
4 systems may also be able to achieve MCL compliance using  
5 alternative methods such as drilling a new well, removing  
6 the contaminated well from use or blending it with other  
7 clean sources, and purchasing water from or consolidating  
8 with a nearby water system with uncontaminated water.

9 VICE CHAIR MOORE: So just take a breather here  
10 a little bit. Granular activated carbon is an incredible  
11 miracle of treatment, speaking as an engineer. It solves  
12 a lot of issues, taste and odor, a lot of other  
13 contaminants. So I was curious, and you may not know  
14 this off the top of your head, but what percent roughly  
15 of our water treatment systems around the state currently  
16 employ granular activated carbon?

17 Just to give folks a sense of context, this is  
18 not an exotic treatment. But it's not used everywhere,  
19 because there's a cost to it. But it does solve a lot of  
20 drinking water issues for us. And it's one of our  
21 workhorses. So do you have a sense of what percent of  
22 our water treatment facilities use carbon?

23 MR. POLHEMUS: This is Darrin Polhemus. I  
24 don't have a good sense of percentage overall. I do know  
25 that it's very commonly used whenever there's a volatile

1 organic material that we're trying to remove, it's kind  
2 of the go-to treatment, as you say, in those instances  
3 and very often shows up. It's also, if you think about  
4 it, it's very common. It's in your Brita water filter  
5 and a lot of the home water filters, so it's in the  
6 refrigerator water filters. It's a very common treatment  
7 and stable and well known in its guise. But as you say  
8 it's costly, so it's not put on unless it's usually  
9 needed in some sense.

10 MR. ROUNDS: And while I can't answer  
11 statewide, I just couldn't tell you that, for 1,2,3-TCP  
12 we did in the regulation packages as part of our process,  
13 we identified systems that had already installed granular  
14 activated carbon both for specifically 1,2,3-TCP and for  
15 other contaminants. So I'm going to wind up putting my  
16 foot -- I want to say 10 to 20 percent of the sources  
17 already had GAC, but I'm running off memory on that.

18 MR. POLHEMUS: But that gives you a sense of  
19 the scale of this.

20 MR. ROUNDS: Yeah.

21 MR. POLHEMUS: And then it's already quite  
22 widely deployed now.

23 MR. ROUNDS: Right, thank you.

24 All right, so we're also adding some required  
25 language into the regulations for the annual consumer

1 confidence reports and public notification language for  
2 the health effects and sources of TCP that would be used  
3 when water systems are required to do public  
4 notification.

5           Finally, the proposed regulations will also  
6 include the ability for water systems to "grandfather"  
7 existing water quality data collected prior to the  
8 effective date of the MCL to count towards the initial  
9 required monitoring. The regulations require that  
10 requests be made in writing to the district offices, so  
11 that there's a level of approval at the district level.  
12 And that the substitutions may only be for similar  
13 quarters within the year such as April to June 2016 for  
14 April to June 2018.

15           Additionally, only three of the four quarters  
16 of the required sampling may be substituted. At least  
17 one sample must be collected during the initial  
18 monitoring period. This regulation will apply both to  
19 1,2,3-TCP and barring future changes, any other future  
20 organic chemical MCLs that we develop.

21           Additional information on 1,2,3-TCP and our  
22 proposed regulations may be found on the two websites up  
23 on the screen right now. And with that, I end my  
24 presentation and ask if the Board has any other further  
25 comments or questions.

1           MR. POLHEMUS: So Board Member Moore, I did  
2 look up the PHG response about your question about  
3 whether it's drinking water exposure pathway. So in  
4 essence they determined that the dermal exposure was less  
5 than two percent, so they discounted that. They looked  
6 then at the inhalation and drinking water. They assumed  
7 the two liter, as we may mentioned, for the drinking  
8 water. They assumed an equivalent two liters for  
9 inhalation, so a total of four liter equivalent was  
10 determined for the study and the determination. So  
11 roughly half-and-half.

12           MS. DODUC: A question about the PHG, I believe  
13 OEHHA is required to review and if necessary update the  
14 PHG every five years. So given that the PHG for 1,2,3-  
15 TCP was adopted in 2009, I believe you said by OEHHA,  
16 have they done any sort of review to determine whether or  
17 not it needs to be updated? I think they were supposed  
18 to do it in 2014. If not, then do you know that they are  
19 going to do it in the future and if so how would that  
20 impact the proposed MCL?

21           MS. MITTERHOFER: When we started working on  
22 the regulation package we did reach out to OEHHA to ask  
23 if they were currently in the process or had immediate  
24 plans, and the information we got was that they didn't  
25 have immediate plans to review the PHG. If the PHG was

1 modified in the future we also have an MCL review process  
2 in place where we look at MCLs on a yearly basis. And if  
3 a PHG was lowered than we could consider lowering the MCL  
4 if that was appropriate. And would bring that to the  
5 Board.

6 MS. DODUC: Thank you.

7 MR. ESQUIVEL: When it comes to that MCL  
8 review, does that also include the best available  
9 technology recommendation as well?

10 MS. MITTERHOFER: Yes. As part of the MCL  
11 review we look to see if there's any new substantial  
12 information regarding new treatment technologies or if  
13 the constituent presents a substantially larger health  
14 risk than previously anticipated.

15 MR. POLHEMUS: We also evaluate the detection  
16 level in case the lab processes have lowered the ability  
17 to detect the chemical at a lower level. So all of those  
18 are considered in the review we do annually.

19 CHAIR MARCUS: All right, let's move into  
20 public comments. I want to thank so many of you in the  
21 audience all around for all the time you've spent on  
22 this, both as we move into our first MCL setting -- many  
23 people suggested this should be it -- but also all the  
24 time that many people have spent with our staff and with  
25 us in meetings leading up to this. We really appreciate

1 it.

2 I'm going to name the speakers three in  
3 advance. You have a chance to get ready to come on up  
4 quickly and you can relax if you're not in the next three  
5 and really listen each of the speakers. So the first  
6 three are Martha Davis from the Inland Empire Utilities  
7 Agency, followed by Tutuy from Agua, (phonetic) followed  
8 by Cecy Gonzalez.

9 MS. DAVIS: Good morning.

10 CHAIR MARCUS: Good morning.

11 MS. DAVIS: I'm Martha Davis with the Inland  
12 Empire Utilities Agency, speaking here today on behalf of  
13 the Monte Vista Water District, the City of Chino and the  
14 Chino Basin Desalter Authority, all retail agencies  
15 located within our service area.

16 I have four points for you today. Number one,  
17 we support the MCL. I'm not a scientist, but this is  
18 clearly bad stuff. And we need to protect our public, so  
19 the direction that your staff is proposing is the right  
20 thing to do.

21 If we have a concern it's just making sure that  
22 there is adequate compliance time for the agencies that  
23 are doing their due diligence, to build the granulated  
24 activated carbons or the other alternative technologies,  
25 to make sure that they are in compliance with the MCL.

1 Particularly for the GAC, the reality is it takes two to  
2 three years to actually put together the full design of  
3 those systems, get it structured, paid for, implemented.

4           And I'll give you an example, the Monte Vista  
5 Water District has already noted hits within their  
6 system. It could affect up to 33 percent of their water  
7 supplies. They've already put out an RFP to begin the  
8 process of designing their system to come up with a  
9 compliance plan for their system and the other agencies  
10 are doing the same thing. But they're quite concerned,  
11 based on the timeline that is included in this  
12 regulation, that even starting now before you actually  
13 adopt the standard, they would not end up being in  
14 compliance. That they would be in violation, by the  
15 third quarter, that you have within your system.

16           So either take a look at the compliance period,  
17 or as an alternative at the very least take a look at SB-  
18 385 for the Hexavalent chromium. Because that allowed  
19 water agencies who recognized that they could be in  
20 violation to have a compliance plan that you approved.  
21 They would have proper notifications for the public,  
22 proper accommodation for the protection of public health,  
23 but it will enable them to go ahead and implement a --  
24 it's a pathway to compliance and not be in violation of  
25 the standard. It's a common sense approach, it enables

1 good actors to do the right thing, but do it within a  
2 timeframe that actually is realistic given all the things  
3 that have to go in to putting together a compliance plan.

4           And then my other point, actually appreciate  
5 that the staff are recognizing all the alternative  
6 technologies. We'd simply ask that the regulation  
7 clearly call that out, because blending is a strategy.  
8 And we're dealing with an MCL that's right on the edge of  
9 detect guidance on how to do the blending with detect and  
10 non-detect water will be really important for agencies as  
11 they figure out a common sense compliance strategy.

12           And finally I'd like to close with supporting  
13 and associating ourselves with the comments that will be  
14 made by the Association of California Water Agencies.  
15 And thank you for the consideration of our comments.

16           CHAIR MARCUS: Thank you. (Timer buzzes.)  
17 Good timing too, you may win the prize, first off the  
18 bat. Although you don't have to use your whole time.

19           Hello, Tutuy followed by Ms. Gonzalez, followed  
20 by Bartolo Chavez.

21           TUTUY: I'm Tutuy and I'm from Visalia. And on  
22 behalf of my 17-year-old daughter that I'm raising and my  
23 mother, who recently passed away, have been drinking  
24 contaminated water for some time now. And I live on a  
25 fixed budget. I don't make more than \$600 a month and I

1 pay out about \$80 a month to have to buy water. And  
2 that's for cooking purposes also, it isn't just drinking.

3 When talking with my daughter she says, "Dad,  
4 how can I be safe? How can I be healthy if I can't even  
5 drink the water?" My mother wasn't too concerned,  
6 because she was older. But she thought of her  
7 grandchildren, great grandchildren. So my daughter said  
8 "Tell them, dad, they need to clean up the water. They  
9 need the water clean for us young people and the younger  
10 people." And her recent niece, who's three weeks old.

11 So I do support the MCL five parts per trillion  
12 regulations. And hope that we all understand that water  
13 is sacred and it's life. Thank you.

14 CHAIR MARCUS: Thank you. Thank you for coming  
15 again, good to see you.

16 Ms. Gonzalez followed by Mr. Chavez followed by  
17 Lucy Hernandez.

18 MS. GONZALEZ: (Through Interpreter)

19 Good morning. My name is Cecy Gonzalez. I  
20 live in the community of Bakersfield, but I also work  
21 with and represent residents of the City of Arvin. So  
22 I'm speaking not just for myself, but for the entire city  
23 of 500,000 people. And in that city, there is a dialysis  
24 clinic.

25 Many of the people in this community are rural

1 residents, farm workers. They are the people who bring  
2 food to each and every one of our tables, and many of  
3 them are paying a high price, having to bathe with and  
4 drink contaminated water. So I'm speaking on behalf of  
5 the people that are exposed to this contaminated water.  
6 We have so many clinics in our town, and how many more  
7 clinics are we going to need, because nobody has taken  
8 the time to inform residents about the problem? Nobody  
9 has informed them about the risks of drinking this  
10 contaminated water, or how to mitigate exposure when  
11 bathing by limiting the length of your shower and keeping  
12 a window open.

13           So for our people, for our *gente*, it's  
14 incredibly difficult and unrealistic to bathe in just  
15 five minutes. They are working out in the field for  
16 eight hours exposed to dirt and chemicals. And how can  
17 we possibly tell them that they need to come home and not  
18 bathe in their own water?

19           I appreciate the question from Board Member  
20 Steven Moore about the relevance of the statistics,  
21 because I too am very concerned about these statistics.  
22 I'm also speaking on behalf of my aunt, who lives in the  
23 City of Arvin. My aunt had one kidney removed and her  
24 other kidney only functions at 45 percent and the only  
25 mistake that she made was to live and work in the fields.

1 My best friend has been diagnosed with skin cancer, and  
2 who was worried about her and making sure that she was  
3 limiting her risk from exposure to this cancer-causing  
4 chemical?

5           So I'm here today only to touch your minds and  
6 your hearts about this risk, because there's so many  
7 people that have been exposed and nobody has taken the  
8 time to inform them. Nobody has told them about this  
9 risk or mitigating their exposure. How many more clinics  
10 are we going to need, and I'm just here because I worry  
11 about the statistics as well.

12           So we, the people in this country, we have been  
13 neglected for such a long time and we're concerned that  
14 our needs aren't being met. My only concern is that  
15 today, you guys make a decision to limit this exposure,  
16 because tomorrow may be too late. So this is a problem  
17 nationally and we have been pleading for help, recording  
18 videos on YouTube, and we don't want this problem to  
19 become a travesty on the international stage.

20           Thank you so much, Steven, for your question  
21 about the statistics. We need those answers as soon as  
22 possible. There's many people in Arvin who I think can  
23 answer that question directly and hopefully we can bring  
24 them an answer. Thank you.

25           CHAIR MARCUS: *Muchas Gracias.*

1           Mr. Chavez followed by Ms. Hernandez followed  
2 by Ryan Jensen from the Community Water Center.

3           MR. CHAVEZ: *Buenos Dias.*

4           CHAIR MARCUS: *Buenos Dias.*

5           MR. CHAVEZ: (Through Interpreter)

6           I come to represent the City of Arvin to speak  
7 on the same issues as the lady who was just speaking.  
8 And I come in support of a strict regulation on 1,2,3-  
9 TCP. So I'd love to repeat everything that Ms. Gonzales  
10 just said, but you've already taken that into account. I  
11 just want to reiterate the importance of this issue and  
12 that this really is an international concern.

13           In addition to the limit we need more  
14 information in our communities about how to limit our  
15 exposure. We need people to come and explain to us about  
16 the problem, about the risks, and how we can minimize our  
17 risks.

18           Water is vital to every form of life, every  
19 single beverage we make whether it's just drinking water,  
20 tea, every single one of them use water. And it's  
21 absolutely unavoidable to completely stay away from  
22 drinking the tap water. So I'm here just to remind you  
23 that you're the ones that have the power to help with the  
24 situation. You're the ones that have the funding to  
25 change with the situation. So many communities would

1 say, "We'd love to do something to do something about it,  
2 but we don't have the funds." And you guys can make that  
3 funding available to solve this problem.

4 I'd like to thank you for hearing us today.  
5 I'd also like to thank my Mayor, Jose Gurrola and the  
6 General Manager of Arvin CSD, Raul Barraza, who are also  
7 here today. And I hope that you listen to their  
8 commentaries as well. Thank you.

9 CHAIR MARCUS: *Gracias.*

10 MS. HERNANDEZ: Good morning. My name is Lucy  
11 Hernandez. I live in the West Goshin community. And our  
12 water is contaminated with the 1,2,3-TCP. And we know  
13 it's a bad contamination for our families' health and  
14 we're afraid to drink our tap water.

15 When we got to connected to the City of  
16 Visalia, we were very happy to have safe drinking water,  
17 not knowing that that water is contaminated with the  
18 1,2,3-TCP. We spend about \$60 to \$80 a month purchasing  
19 bottled water, plus our regular bill of \$60 to \$80 or  
20 \$100, some people pay a month, for water that we cannot  
21 drink, because we are afraid to drink our water.

22 I would like the State Water Board to know that  
23 it's time to set a limit at five parts per trillion to  
24 keep our families safe. It's very important to protect  
25 our health and it's time to provide safe and affordable

1 drinking water to our disadvantaged communities. I urge  
2 you to protect our communities' health, and it's time for  
3 every Californian to have access to safe and affordable  
4 drinking water.

5 I really want to thank you guys for giving us  
6 the opportunity to let you know how we go through this  
7 situation in our communities. And it's very devastating  
8 to see our families, how we struggle to pay for water  
9 that we cannot use to drink or cook. Plus, it breaks my  
10 heart to hear some families tell their children to stop  
11 drinking all that water, because it's expensive to go and  
12 purchase water. And it shouldn't get to the point.

13 I think that it's time to make a change. And I  
14 support the five parts per trillion for our water for the  
15 best of everybody. And I really want to thank you guys  
16 for giving us the opportunity. Thank you.

17 CHAIR MARCUS: Thank you for joining us.

18 Mr. Jensen followed by Jose Gurrola from the  
19 City of Arvin, and Rebecca Franklin from the Association  
20 of California Water Agencies.

21 MR. JENSEN: Good morning, members of the  
22 Board.

23 CHAIR MARCUS: Hi. Thank you for your help as  
24 well.

25 MR. JENSEN: So as you know, my name is Ryan

1 Jensen and as the Community Water Solutions Manager, for  
2 Community Water Center, I work with the communities that  
3 are impacted. And I know firsthand why we need to set a  
4 very health protective MCL for 1,2,3-TCP.

5 Community Water Center, and our partners in  
6 other environmental justice organizations have been  
7 strong advocates of a health protective MCL for 1,2,3-TCP  
8 since this regulatory process began. The sooner we can  
9 enact the health protective MCL, the sooner we can ensure  
10 that all Californians have access to safe drinking water  
11 that's not laced with a known carcinogen.

12 Every time I talk to one of the communities  
13 that have been impacted, they always have the same  
14 questions. Can I buy a filter to take it out of my  
15 water? What is my public water system going to do about  
16 this? The answer to every single one of those questions  
17 is, "Until an MCL is set, none of those solutions are  
18 available to you. You need to buy bottled water."

19 Now I know how important this is, not only from  
20 my work in the communities, but from firsthand  
21 experience. I also live in Visalia. And we know there's  
22 1,2,3-TCP in the water. The most recent available CCR  
23 report has detection of 1,2,3-TCP at over 15 times the  
24 proposed MCL. That's over 100 times the public health  
25 goal. We spend about almost \$800 a year on bottled water

1 living in Visalia.

2 As you can see demonstrated today, by the  
3 public participation of the people who've traveled for  
4 hours from the San Joaquin Valley to be here, this is  
5 something that our communities care deeply about. And I  
6 also have with me today a stack of over 120 support  
7 letters, which I will leave with the Clerk of the  
8 Board's, also expressing support for a health protective  
9 MCL.

10 Once the MCL is in place, the Board should  
11 ensure that resources are made available to help source,  
12 secure long-term drinking water solutions for communities  
13 that need them, both through its technical assistance  
14 programs and by looking to the responsible parties.

15 We urge a swift adoption of the proposed five  
16 parts per trillion MCL for 1,2,3-TCP. Thank you.

17 CHAIR MARCUS: Thank you very much.

18 Mayor Gurrola, thank you for joining us.

19 Ms. Franklin, and then Jack Hawks from the  
20 California Water Association.

21 MAYOR GURROLA: Good morning Madam Chair, Board  
22 members, and staff. Thank you for the opportunity to  
23 speak before you on this important matter. I represent  
24 the City of Arvin and as elected officials, we strive to  
25 do the best that we can for our communities. And the

1 City of Arvin, and communities up and down the state,  
2 either through the Central Valley or the Inland Empire,  
3 have been subject to carcinogens just like 1,2,3-TCP.

4           And it's a public health issue when families  
5 and children stop drinking something healthy like water  
6 and turn towards unhealthy beverages. It's an  
7 environmental justice issue when a lot of these  
8 communities are communities of color and low income.  
9 It's a quality of life issue. And especially when it's  
10 at the hands of some corporations' activities that  
11 pollute the water it's an environmental justice and it's  
12 a human rights issue. And so I stand here in support of  
13 the proposed MCL.

14           And I'm sure that if that is proposed, it's  
15 going to give water districts, cities, agencies, the  
16 ability to identify whether or not they have this  
17 contaminant in their water, give information to the  
18 public as to whether that contamination is there and  
19 hopefully provide resources to mitigate that  
20 contamination.

21           I look forward to working with you after the  
22 adoption of this MCL to secure long-term sustainable  
23 funding sources and resources to attain safe, affordable  
24 and reliable drinking water, not just for the City of  
25 Arvin or the region of Kern, but throughout the entire

1 state. And I urge you to adopt, eventually adopt this  
2 health protective MCL. Thank you for all your work.

3 CHAIR MARCUS: Thank you for joining us, we're  
4 honored.

5 Ms. Franklin followed by Mr. Hawks followed by  
6 Beth Smoker from PAN North America.

7 MS. FRANKLIN: Good morning, Chair Marcus and  
8 Board members.

9 CHAIR MARCUS: Good morning.

10 MS. FRANKLIN: My name's Rebecca Franklin with  
11 the Association of California Water Agencies and we  
12 appreciate the opportunity to provide comments on this  
13 proposed MCL. We represent more than 430 public water  
14 agencies that collectively deliver about 90 percent of  
15 the water that's delivered statewide. And you've already  
16 heard from a couple of our members today, so our members'  
17 highest priority is protecting public health while  
18 ensuring a reliable water supply. And we definitely  
19 support the Board's action on adopting an MCL for 1,2,3-  
20 TCP.

21 We do have two key concerns. You actually  
22 already heard both of them from Martha from IEUA. The  
23 first is the need for a reasonable compliance period. So  
24 as was mentioned by staff this morning, the anticipated  
25 adoption of this MCL is July or later this year with a

1 compliance deadline of January 2018, which gives our  
2 agencies less than six months potentially to get their  
3 treatment in place. And even for those that are planning  
4 in advance, that's just not enough time probably. And so  
5 they may immediately be out of compliance in January,  
6 when they take that first sample.

7           Once an agency is deemed in violation of an MCL  
8 it can lead to wells being shut off, which can lead to  
9 water liability issues. It also seriously undermines  
10 public confidence in the safety of drinking water and the  
11 public water system and can subject agencies to third-  
12 party lawsuits. So agencies really want to treat for  
13 this and be in compliance, they just need an appropriate  
14 amount of time or a pathway to compliance such as that  
15 outlined in SB 385.

16           The second concern relates to implementation of  
17 the regulation. Again, as Martha stated there's real  
18 operational considerations both with granular activated  
19 carbon or other treatment methods. And having an MCL  
20 really close to a detection level creates some questions  
21 about things like how non-detect should be averaged into  
22 determining MCL compliance. So also concerns about how  
23 to establish blending targets if agencies pursue that  
24 path to compliance.

25           So our members are definitely interested in

1 working with staff to resolve these issues and discuss  
2 how we can move forward as the staff develops final  
3 regulations. So thanks and I'm happy to answer  
4 questions.

5 CHAIR MARCUS: Thank you.

6 Mr. Hawks followed by Ms. Smoker followed by  
7 Andrea Ventura from Clean Water Action.

8 Hi.

9 MR. HAWKS: Thank you, Chair Marcus and members  
10 of the Board.

11 CHAIR MARCUS: Thanks for the assist before.  
12 Thanks for the assist in answering the question with your  
13 head nod before, that was helpful.

14 MR. HAWKS: Well, I actually want to go  
15 further. Before I begin I do want to answer Vice Chair  
16 Moor's question about the GAC penetration, using the  
17 example of one of our member utilities. This utility has  
18 800 wells around the state including a number in the  
19 Central Valley and it deploys about 185 different  
20 treatment systems. And of those, currently about 35 are  
21 GAC.

22 And when the MCL for 1,2,3-TCP is completed,  
23 they are estimating that that number will double. So  
24 right now it's just under 20 percent and it will double  
25 to about 40 percent.

1 CHAIR MARCUS: Okay.

2 MR. HAWKS: So now I'll begin our comments.

3 CHAIR MARCUS: That's all right, we'll give you  
4 a little extra time.

5 MR. HAWKS: So I'm Jack Hawks again, Executive  
6 Director of the California Water Association,  
7 representing the PUC regulated water utilities. CWA  
8 supports the MCL development for 1,2,3-TCP.

9 And we respectfully offer two additions to the  
10 final regulation. The first one you've heard already,  
11 with respect to a compliance strategy that will be more  
12 progressive in nature, more akin to the compliance  
13 strategy adopted for hexavalent chromium.

14 And what our comment letter is actually going  
15 to say is that we're recommending that the Board adopt  
16 what we're calling a workable pre-enforcement period,  
17 along with appropriate safeguards and milestones that  
18 support the efforts of water systems seeking to implement  
19 the effective treatment technology tailored to their  
20 system-specific requirements. And we think adopting such  
21 a strategy, as I just said, would be consistent with what  
22 the federal government did with respect to arsenic and  
23 what the State of California did with respect to chrome-  
24 6.

25 Our second recommendation deals with respect to

1 the analysis associated with the GAC treatment as the  
2 best available technology. The Public Resources Code  
3 Section 21-21159 obliges the Board to perform at the time  
4 of the adoption of a regulatory standard, an  
5 environmental analysis of the reasonably foreseeable  
6 methods of compliance. So accordingly, CWA believes that  
7 the Initial Statement/Mitigated Negative Declaration  
8 should be strengthened to clarify that the environmental  
9 analysis does in fact consider the likely environmental  
10 impacts of a statewide implementation of GAC as the  
11 reasonably foreseeable method of compliance required by  
12 the section.

13           We think the Board needs to ensure that the  
14 IS/MND analyzes implementation of GAC with respect to the  
15 environmental impacts of installing and operating the GAC  
16 equipment. We think the economic analysis already  
17 prepared for GAC have sufficiently developed assumptions  
18 that will allow the staff to supplement the IS/MND with  
19 this environmental analysis.

20           And the reason, just real quick, the reason of  
21 course, is that the more the Board does in the  
22 regulation, with respect to this, it will allow the lead  
23 agencies on their CEQA review and analysis for these  
24 treatment technologies to expedite that. And then that's  
25 easier --

1 CHAIR MARCUS: Right, so that speeds up the  
2 implementation of the solution.

3 MR. HAWKS: Right, and then it's easier than  
4 for the water systems to do the same thing in their CEQA  
5 review.

6 CHAIR MARCUS: How interesting, okay. Great,  
7 we'll look forward to those comments to help us. Good.

8 Ms. Smoker followed by Ms. Ventura followed by  
9 Asha Kreiling for herself today.

10 MS. SMOKER: Good morning. I'm Beth Smoker,  
11 with the Pesticide Action Network, North America. Thank  
12 you, the Board and the staff for your work on this  
13 important issue. For over 30 years, PAN has been working  
14 to create a just, thriving food system. We work to lift  
15 the economic and health burdens that farmers and farm  
16 workers in rural communities face and reclaim the future  
17 of food and farming.

18 PAN has worked for decades to stop the danger  
19 to our health, environment, and food system that  
20 pesticides can cause. The legacy of fumigant pesticides  
21 including Dow's Telone continue to threaten the air of  
22 communities, long after 1,2,3-TCP has contaminated the  
23 water of communities up and down the state.

24 This is one critical step to remediate a wrong  
25 and we encourage the State Water Board to continue to

1 work with DPR, CDFA, OEHHA and others to ensure  
2 hazardous fumigants are limited and the state continues  
3 to invest in sustainable agriculture, so that we don't  
4 have to deal with contamination like this is the future.  
5 We applaud the Board for upholding the science behind  
6 1,2,3-TCP and regulating this cancer-causing drinking  
7 water contaminant.

8 PAN and our statewide coalition, Californians  
9 for Pesticide Reform, support the proposed five parts per  
10 trillion MCL and we urge you to not extend the compliance  
11 period. The time is now for these communities to have  
12 safe drinking water. Thank you.

13 CHAIR MARCUS: Thank you very much.

14 Ms. Ventura followed by Ms. Kreiling followed  
15 Kena Cador from the ACLU.

16 MS. VENTURA: Good morning.

17 CHAIR MARCUS: Hello. I remember our first  
18 meeting on this issue.

19 MS. VENTURA: That's right. I do too.

20 CHAIR MARCUS: This was the top priority.

21 MS. VENTURA: I want to really congratulate and  
22 thank the Board for making this a priority and for staff  
23 for really doing a good job. This has been, as I've said  
24 before, a night and day process where it's been a greatly  
25 appreciated process. And without a lot of wasting time

1 but doing it deliberately to get it right. So thank you  
2 for that.

3 Obviously I'm here to support the five parts  
4 per trillion proposed MCL. But I don't come alone. I  
5 did hand in a hard copy, which I will submit  
6 electronically tomorrow, a letter that was signed by over  
7 50 environmental, environmental justice, health-based,  
8 social justice and agricultural groups that support this  
9 MCL. And I'll be handing in about 300 letters from Clean  
10 Water Action members, residents of the State of  
11 California that support this as well.

12 I'm not going to review the reasons why the  
13 health, because they've been said much more eloquently  
14 than I can except to say that this is also an  
15 opportunity. You know, we've heard about the need for  
16 resources to meet these standards. This is a great  
17 opportunity to make sure that the responsible parties are  
18 held accountable, because of the vast majority of cases  
19 here, not all of them but most of them are -- this was  
20 an avoidable problem caused by a faulty pesticide that  
21 was sold knowingly. And we do believe that those  
22 companies that acted as such bad actors should be held  
23 accountable for the costs of this treatment.

24 I do want to address the issue of the extended  
25 compliance interim. We do oppose that, but let me be

1 clear as to why and give you a little bit different  
2 perspective. I was very disappointed to hear SB 385  
3 invoked. That was the process that we supported to  
4 create a process to extend the compliance period with an  
5 oversight by the Board that was passed through the  
6 Legislature.

7           When the process for setting drinking water  
8 standards was first established it was established with  
9 the reality in mind that what water providers need to go  
10 through to get there, to be in compliance. There is a  
11 buffer time. Monitoring has been happening. They can't  
12 start treatment until they know what the standard is, but  
13 there's a lot of thought that goes in behind that and  
14 we're very glad that the water community is supporting  
15 this MCL.

16           However, we hear this every drinking water  
17 standard that comes up and the reality is the system has  
18 worked okay, with Perchlorate which is not regulated  
19 federally, with other drinking water contaminants that  
20 I've worked on. With Hex chrome the water community  
21 actually came to us and said, "This one is unique. This  
22 one is not activated carbon. This one is far more  
23 complex, financially as well as technologically. Would  
24 you work with us?" And we were very reluctant, if I may  
25 just for like --

1 CHAIR MARCUS: No, please go ahead. This is an  
2 important issue.

3 MS. VENTURA: We were very reluctant to do that  
4 at first, because we were afraid that would be used again  
5 as a precedent. And we were very clear that if we worked  
6 on Hex chrome, "Do not expect us to support this in the  
7 future." We said that publicly. We said that to the  
8 water community. We were told, "Yes, we understand that,  
9 but we do need your help on this one."

10 My job was not only to support that  
11 legislation, but to get the environmental community to  
12 support it, because there was a lot of concern about  
13 this.

14 CHAIR MARCUS: Right.

15 MS. VENTURA: It was the right thing to do, but  
16 this is not that situation. This is not that complexity.  
17 This is activated carbon, which is the workhorse out  
18 there. No doubt that these are always challenges for our  
19 water providers. They do, do a good job at trying to  
20 provide safe and clean water, but we would not support  
21 it.

22 This has been delayed long enough, not because  
23 of the Board, but because of the process that came  
24 before. This is about cancer. We need to get moving on  
25 it. Thank you.

1 CHAIR MARCUS: Thank you very much.

2 Ms. Kreiling followed by Kena Cador followed by  
3 Van Grayer, from the Vaughn Water Company.

4 MS. KREILING: Hello Chair Marcus and Board  
5 members.

6 CHAIR MARCUS: Hi.

7 MS. KREILING: Asha Kreiling, I'm representing  
8 myself today and as an ally of Community Water Center and  
9 Clean Water Action and everyone else here today  
10 supporting the five part per trillion MCL regulation.

11 Thank you to the State Water Board for making  
12 the MCL for 1,2,3-TCP a priority last year. Thank you  
13 Conny and Zach, and the rest of the TCP team for your  
14 diligence, your transparency and, your commitment to this  
15 regulation. Reading the regulation reaffirmed my  
16 confidence in the State Water Board's commitment to  
17 protecting public health and implementing the human right  
18 to water. And I'm happy to be here today to support the  
19 staff's draft regulation and recommendation of a five  
20 part per trillion MCL.

21 When we can easily and reliably detect TCP in  
22 water at the detection limit; and when the cost to comply  
23 is irrelevant, because of the presence of responsible  
24 parties; and when the theoretical cost to the states do  
25 not change drastically from five parts per trillion to an

1 alternative number, the proposed MCL of five parts per  
2 trillion is really the only option. As the Initial  
3 Statement of Reasons says clearly reduced exposure to  
4 1,2,3-TCP results in reduced risks to cancer.

5 Reducing the exposure as much as is feasible is  
6 required by Health and Safety Code 116365 and is of  
7 benefit to public health. Not only should a five part  
8 per trillion MCL be adopted, but it should be adopted as  
9 soon as possible. I would echo all the comments made by  
10 the previous speakers regarding the compliance period.  
11 It's been 10 years since the state set a 0.7 part per  
12 trillion public health goal. And it's been 25 years  
13 since the state has called it a known human carcinogen.  
14 This regulation will literally save lives from a  
15 contaminant that should have never been in our drinking  
16 water in the first place.

17 And to all the organizations, companies and  
18 lobbyists here today, or working behind the scenes who  
19 have submitted comments that seek to delay or weaken this  
20 regulation, shame on you. Thank you.

21 CHAIR MARCUS: Thank you.

22 Ms. Kador followed by Mr. Grayer followed by  
23 Raul Barraza, Jr.

24 (Off mic colloquy re: mic issues.)

25 MS. CADOR: So good morning, my name is Kena

1 Cadour. And I am an Equal Justice Works Fellow at the  
2 ACLU of Northern California, speaking here today on  
3 behalf of the ACLU of California.

4           So first, the ACLU thanks the State Water  
5 Resources Control Board and its members for the  
6 consideration of the many advocacy voices and positions  
7 that you have heard in your previous meetings. The ACLU  
8 of California supports the Board's proposal to establish  
9 the most stringent health protective maximum contaminant  
10 level possible for 1,2,3-TCP.

11           We've also provided written comments for the  
12 Board's consideration, because the importance of  
13 establishing an MCL for this dangerous contaminant cannot  
14 be overstated.

15           Prolonged exposure to 1,2,3-TCP increases the  
16 risk of cancer and may lead to kidney and liver damage in  
17 addition to the depression of the central nervous system.  
18 To date, 1,2,3-TCP has contaminated at least 562 drinking  
19 water sources in California, serving an estimated 8  
20 million people.

21           Water toxicity affects all Californians, but it  
22 doesn't affect everyone equally. Instances of  
23 contamination can be traced back to pesticides applied  
24 extensively to farmland, making the agricultural-rich  
25 areas of California's Central Valley and the Imperial

1 County more vulnerable to contamination.

2           What's more, the majority of contaminated sites  
3 are in Fresno, Kern, Tulare and Los Angeles counties and  
4 clustered in cities with disproportionate numbers of  
5 residents of color. Without any state or federal  
6 intervention requiring filtration or other systems of  
7 regulation, 1,2,3-TCP contamination will persist and it  
8 will continue to affect the drinking water of residents.

9           California is the first state in the country to  
10 adopt the human right to water. Clean drinking water is  
11 not just a commodity, but it's a necessity. Given the  
12 dangers of 1,2,3-TCP, an enforceable drinking standard is  
13 imperative. And this Board has an obligation to set an  
14 enforceable standard that will protect all Californians.  
15 So California is long overdue for establishing a  
16 detectable standard for 1,2,3-TCP and the ACLU of  
17 California supports the adoption of the most stringent  
18 standard possible. The cost of not doing so is too  
19 great.

20           No one should have to turn on their tap water  
21 and wonder if the water is safe to drink. Thank you.

22           CHAIR MARCUS: Thank you very much. Thanks for  
23 joining us.

24           Mr. Grayer followed by Mr. Barraza followed by  
25 Carlos Arias, from the Del Rey Community Services

1 District.

2 Hi. Thanks for joining us.

3 MR. GRAYER: Good morning. Thank you for  
4 providing the opportunity to comment this morning. My  
5 name is Van Grayer. I'm the General Manager of Vaughn  
6 Water Company, a public water system located in  
7 Bakersfield, California. I'm also the Chair for the  
8 California Mutual Association of Water Companies Task  
9 Force for TCP.

10 Vaughn Water Company has 1,2,3-TCP detections  
11 in eight of our wells and we have been voluntarily  
12 testing for TCP since 2012. We're seeking our  
13 anticipated treatment costs from the responsible parties  
14 for TCP contamination in our wells, Dow Chemical and  
15 Shell Oil, in a lawsuit that has been pending since 2012.  
16 Vaughn Water and nine other water systems who were also  
17 plaintiffs in similar TCP lawsuits submitted a joint  
18 comment letter in support of the proposed maximum  
19 contaminant level for TCP this week.

20 The members of the two other water systems who  
21 joined the comment letter are here also with me, Carlos  
22 Arias of Del Rey CSD and Raul Barraza of Arvin CSD. They  
23 also have some things to say, but I wanted to come here  
24 and read a portion of the letter to you members of the  
25 Water Board, in person.

1           When it comes to TCP contamination, the  
2 undersigned water systems share the same two goals.  
3 First, we want 1,2,3-TCP removed from our groundwater  
4 supplies and public exposure to 1,2,3-TCP in our  
5 communities eliminated.

6           Second, we want the parties responsible for  
7 causing the 1,2,3-TCP contamination, rather than our  
8 water customers, to cover the cost of treatment. That is  
9 why we and dozens of similarly situated Central Valley  
10 water systems have turned to the courts seeking  
11 compensation from Shell and Dow to pay for, among other  
12 things the installation, operation and maintenance of TCP  
13 treatment facilities. Shell and Dow argue however that a  
14 maximum contaminant level to the bright line that should  
15 confine when a contaminant damages the water supply. And  
16 the absence of an MCL for 1,2,3-TCP is the single  
17 greatest uncertainty-generating factor impeding  
18 resolution of these lawsuits.

19           Consequently, it is our hope that the adoption  
20 of the proposed MCL at five parts per trillion -- a level  
21 that is the equivalent of the detection limit for the  
22 reporting purposes, and is thus the level that is close  
23 as technically feasible to the public health goal -- will  
24 promote swift resolution of the 1,2,3-TCP cost recovery  
25 lawsuits. And strengthen our ability to hold the

1 responsible parties accountable for the cost of TCP  
2 remediation, which in turn will help us achieve our  
3 shared goal of installing 1,2,3-TCP treatment with  
4 minimal impact on our ratepayers.

5           In contrast, setting the MCL higher than the  
6 detection limit on account of substantial cost of  
7 treatment, will only further enrich the responsible  
8 parties at the expense of public health. Maximum  
9 contaminant levels typically require a difficult choice  
10 between public health and affordability. But in the case  
11 of 1,2,3-TCP the choice in favor of public health should  
12 be an easy one to make.

13           We urge the Board to adopt the proposed 1,2,3-  
14 TCP maximum contaminant level at five parts per trillion  
15 and to do so as soon as possible. Thank you so much for  
16 your time.

17           CHAIR MARCUS: Thank you.

18           VICE CHAIR MOORE: Okay, Mr. Grayer. Could I  
19 ask you a quick question? We've heard some comments of  
20 concern from water representatives about the timeline for  
21 compliance. I didn't hear you express that type of  
22 concern.

23           MR. GRAYER: We don't believe the compliance  
24 timeline is an issue. The timeline is very short. I  
25 believe it's a January 2018 compliance. That leaves us

1 very little time to purchase the equipment, supplies and  
2 material necessary to construct, and build these  
3 treatment facilities. Compliance issues, whenever a  
4 water supply receives a Notice of Non-compliance,  
5 undermines the integrity of the water system's ability to  
6 provide safe drinking water. I think the Board should  
7 consider expanding or modifying that timeline.

8 CHAIR MARCUS: I have a question, can't you  
9 just tell your customers the story? I assume you have,  
10 since you filed suit. So if your customers know that  
11 you're on it and that we're on it, why does it undermine  
12 confidence in you, because you've already told them you  
13 have the problem.

14 MR. GRAYER: Well, on top of arsenic treatment,  
15 on top of various other constituents in the water,  
16 nitrates, public opinion is -- the water here in  
17 California, groundwater supplies are facing various forms  
18 of contamination. TCP just adds to that.

19 CHAIR MARCUS: Thank you.

20 Mr. Barraza followed by Mr. Arias followed by  
21 Adan Ortega from the California Mutual Water Company  
22 Association.

23 MR. BARRAZA: Good morning. My name is Raul  
24 Barraza. I am the General Manager for Arvin Community  
25 Services District. We also have 1,2,3-TCP in most of our

1 wells and, of course, this is a huge concern for my  
2 District, for my District's Board and our community.

3           It's a tragedy that farm workers from a couple  
4 of decades ago busted their backs in the fields all day,  
5 were exposed to the pesticide on the job, and then years  
6 down the road find that their generations of their  
7 families are now in danger from the same chemicals that  
8 they used to make a living from. It's a disgrace and we  
9 need to do everything we can to protect public health and  
10 make the water safe. The MCL being set at five parts per  
11 trillion will help us to do that.

12           Arvin is a disadvantaged community and we try  
13 to keep the rates as low as possible. It's going to be  
14 extremely expensive to put in filtration systems needed  
15 to get the TCP out of the water. Nonetheless, we are  
16 supporting the proposed MCL at five parts per trillion,  
17 because we believe that people should never be forced to  
18 choose between clean water and affordable water.

19           Like other Central Valley water systems who  
20 joined us in our comment letter, we are looking to Dow  
21 and Shell, the companies who well knowingly polluted our  
22 groundwater with their defective pesticide, which contain  
23 an unnecessary ingredient of 1,2,3-TCP, to step up and do  
24 the right thing. And pay for the damage they have  
25 caused.

1           The MCL will help us in our fight against these  
2 companies and help us to bring water that is clean and  
3 affordable to the people of Arvin. Thank you.

4           CHAIR MARCUS: Thank you very much.

5           Mr. Arias followed by Mr. Ortega followed by  
6 Randy Reck from ES.

7           MR. ARIAS: Good morning. My name is Carlos  
8 Arias. I'm the District Manager for Del Rey Community  
9 Services District. And first of all I would like to say  
10 that I'm here to speak for ourselves. We don't have  
11 anybody else speaking for the community. We are a very  
12 poor unincorporated district in Fresno area. And most of  
13 the people who live in our town work in the fields or in  
14 the packinghouses in the area.

15           Del Rey, we thought that we had pretty good  
16 water until we started drilling a little bit deeper wells  
17 to avoid the contaminants in the area. And now we find  
18 out that we have TCP and it's even in the newer wells we  
19 have it. This chemical causes cancer and it's very  
20 unpleasant for me, and frustrating sometimes to have to  
21 tell the people that the water is not good.

22           Like I said, we are a -- we have been very  
23 upfront with our community about the water. And it has  
24 been very painful for us to have to tell even the school,  
25 which is just across from my office, to tell them the

1 water that they're drinking is not safe.

2 We are trying to do the best that we can with  
3 MCLs or not. My idea or our idea is to bring water that  
4 is drinkable to our town, but we know that it's very  
5 expensive. And we need those MCLs to help us bring some  
6 of the costs paid by the responsible parties, and not by  
7 the people who can't actually afford it. It's a very,  
8 very poor community that can't afford to have these  
9 charges on the water bill.

10 Thank you.

11 CHAIR MARCUS: Thank you very much.

12 Hi, good morning. Mr. Ortega followed by Randy  
13 Reck followed by Mariah Thompson from California Rural  
14 Legal Assistance.

15 MR. ORTEGA: Chair Marcus, members of the  
16 Board, thank you for conducting this hearing. I'm here  
17 to register the support of the California Association of  
18 Mutual Water Companies for the proposed MCL. We  
19 represent over 400 mutual water companies around the  
20 state. Some of these represent small systems that are  
21 not-for-profit enterprises that are owned by residents.  
22 And we have considered this such a priority that we have  
23 created a taskforce, it's headed by Van Grayer, on this  
24 issue.

25 Rather than get into everything I already agree

1 with, I do want to emphasize some points with respect to  
2 the compliance period. With disadvantaged communities,  
3 an aggressive compliance period can have the effect of  
4 further disadvantaging them. Primarily, because it's not  
5 just about identifying technologies. It's about  
6 scalability. Many technologies depend on a broad  
7 ratepayer base in order to be affordable. That's not the  
8 case with many small systems and so having a reasonable  
9 compliance period that accounts for scalability is an  
10 important way of approaching the issue of disadvantaged  
11 communities in complying with safe drinking water  
12 standards.

13           And there is a financial consequence to being  
14 tagged with an NOV. To give you the example of  
15 Hexavalent chromium, we have a company in the Coachella  
16 Valley that was tagged with the Notice of Violation.  
17 They were told by the enforcement agent, "Well, that's a  
18 good thing, because now you qualify for a grant from the  
19 state revolving fund in order to address the issue." But  
20 they still had to do a cost share and so when they went  
21 to try to finance their cost share, they were basically  
22 told, "Well, we can't loan you the money, because you  
23 can't pledge the sale of water that's out of compliance  
24 towards repayment of your loan, on the other end."

25           And so from a very practical perspective it's

1 important to have a reasonable compliance period that  
2 takes into account the scalability issues for small  
3 systems, especially those that are in disadvantaged  
4 communities, because it could have the effect of further  
5 disadvantaging them.

6           And so we support the MCL. We don't want any  
7 compromise in the safe drinking water standards, but we  
8 believe that small systems shouldn't be further  
9 disadvantaged when they're trying to comply.

10           So thank you very much.

11           VICE CHAIR MOORE: I appreciate that  
12 discussion. There' a real nuance here of potential  
13 unintended consequences of haste of implementation, but  
14 one question I would have is doesn't a well thought out  
15 compliance strategy and the timeliness thereof compel the  
16 responsible parties to act more quickly than they may  
17 otherwise?

18           MR. ORTEGA: Absolutely, we believe that the  
19 MCL and the establishment of the MCL is critical, because  
20 of the statute of limitations concerning those that have  
21 already been sampling and that understand the impacts.  
22 But under federal guidelines, as I understand it, there  
23 is an automatic five-year compliance for new standards  
24 that are adopted by USEPA.

25           When we look at the dynamics of what's happened

1 with SB 385, for example, on the Hexavalent chrome front,  
2 what we had was a case where there were a lot of systems  
3 struggling to find affordable technologies. When SB 385  
4 kicked in, a lot of the discussion on those affordable  
5 technologies started to take place. And so I think that  
6 if you were to target your approach to small systems, to  
7 disadvantaged communities in a manner that didn't further  
8 disadvantage them you would make headway in dealing with  
9 the issue that we have in California with small systems.

10 VICE CHAIR MOORE: Okay. Thank you.

11 CHAIR MARCUS: Hi.

12 MR. RECK: Good morning.

13 CHAIR MARCUS: Mr. Reck followed by Ms.  
14 Thompson followed by Susan Little from the Environmental  
15 Working Group. Hi.

16 MR. RECK: Hi, thank you for having me this  
17 morning. I'll keep my comments brief. I just want to  
18 say -- oh yeah, excuse me, my name is Randy Reck from the  
19 Environmental Justice Coalition for Water.

20 CHAIR MARCUS: Oh, I just didn't read it right,  
21 sorry.

22 MR. RECK: Oh, yes. I use the abbreviation on  
23 my card, so I apologize.

24 CHAIR MARCUS: Yeah, I just saw it as an "s"  
25 rather than a "j." That's what I thought at first,

1 sorry, I apologize.

2 MR. RECK: That's fine.

3 Yeah, thank you again for having me up and  
4 allowing public comment. And I just want to say thank  
5 you to the Board and to staff for their hard work over  
6 the past months and years on this proposal.

7 And just in brief, EJCW is strongly in favor of  
8 the proposal as proposed. And including the current  
9 compliance schedule, so thank you.

10 CHAIR MARCUS: Thank you very much.

11 Ms. Thompson?

12 MS. THOMPSON: Hi. Good morning. My name is  
13 Mariah Thompson. I am a Staff Attorney with California  
14 Rural Legal Assistance. Thank you for the opportunity to  
15 give comment today. CRLA works throughout California in  
16 rural, disadvantaged communities including with multiple  
17 communities that are directly impacted by TCP. And I  
18 work directly with some residents, for example, in the  
19 community of Del Rey in Fresno County who are directly  
20 impacted by TCP.

21 I have three comments today and I'll try and be  
22 brief. The first is that the state must establish the  
23 MCL at five parts per trillion in order to comply with  
24 legal requirements of the Health and Safety Code. The  
25 Health and Safety Code requires that a contaminant MCL be

1 established as close to the public health goal, and as  
2 protective for human health as is technologically and  
3 economically feasible. And the proposed MCL of five  
4 parts per trillion is generally considered to be the  
5 lowest concentration of TCP that can be both reliably and  
6 economically detected. And is as close to the public  
7 health goal as is technologically and economically  
8 feasible and therefore the state does have a legal  
9 obligation to adopt at five parts per trillion. And so  
10 therefore we support it.

11 Our second comment is that public water systems  
12 that have previously detected contaminants in their water  
13 should not be permitted to substitute past testing data  
14 in their initial MCL reporting requirements. So proposed  
15 changes to 22 CCR 64445 would permit water systems to  
16 substitute existing monitoring data to satisfy the  
17 initial monitoring requirements when a new MCL is  
18 established.

19 CRLA appreciates cost-saving mechanisms  
20 generally as they can reduce the chances that extra  
21 financial burdens from remediation efforts will be passed  
22 on to low-income communities and on to the residents  
23 themselves in the form of rate increases. However, this  
24 particular proposal to allow water systems to save money  
25 by substituting old data comes at the price of

1 endangering the health of residents. 1,2,3-TCP levels  
2 can vary drastically across quarters and even across the  
3 same quarter across years. We submitted a comment letter  
4 with specific data that shows from one of the communities  
5 that we work with, quarterly reporting across years. And  
6 demonstrates that even within the same quarter across  
7 years it can double or triple at any given time.

8           And so allowing systems that have a history of  
9 TCP contamination to substitute past data will not  
10 provide a clear picture of the current status of TCP in  
11 the well systems and in groundwater sources. This can  
12 ultimately lead to underestimating the amount of TCP that  
13 is present in the water systems. And could ultimately  
14 deprive residents of the Notice of Contamination to which  
15 they have a legal right. And of the benefits of  
16 remediation efforts to reduce the levels of the  
17 contaminant in the water.

18           Permitting such a scenario runs counter to the  
19 state's obligations under Health and Safety Code to place  
20 a primary emphasis on the protection for public health  
21 and to take measures to avoid any significant risk to  
22 public health, caused by carcinogenic contaminants. So  
23 in order to strike a balance between protecting the --

24           (Timer beeps.)

25           Can I continue?

1 CHAIR MARCUS: Sure, just wrap it up. That's  
2 all.

3 MS. THOMPSON: -- to strike a balance between  
4 protecting the health of residents in communities with  
5 contaminated groundwater sources. And to relax financial  
6 burdens on disadvantaged communities, the Board should  
7 only permit data substitutions for public water systems  
8 if the systems have actively tested for a contaminant for  
9 previous years, for example, for three years and have not  
10 found a contaminant in their water systems.

11 And then our last comment is that the state  
12 should make sure throughout this process that low-income  
13 communities are not left behind, just based on their low-  
14 income status. There's been a lot of conversation here  
15 today about the human right to water, which guarantees  
16 that residents have a right not only to affordable water,  
17 but to affordable water that is clean.

18 And throughout this process, we recognize that  
19 there are responsible parties that folks have been  
20 talking about a lot today. But we just want the Board to  
21 know that they do have an obligation to make sure that  
22 regardless of what happens with that, communities are not  
23 being left behind based on their low-income status. And  
24 it is likely that state resources will be necessary to  
25 ensure that this right is upheld. Thank you.

1 CHAIR MARCUS: Thank you very much.

2 Ms. Little?

3 MS. LITTLE: Thank you. Hello, Chair Marcus.

4 CHAIR MARCUS: Hi.

5 MS. LITTLE: Thank you very much for having  
6 this hearing, and for the work that your staff has done  
7 to date on this issue. I'm here today on behalf of the  
8 Environmental Working Group, which is a nonprofit  
9 organization dedicated to helping people live healthier  
10 lives and in a healthy environment.

11 The Environmental Working Group fully supports  
12 the proposed MCL of five parts per trillion. We believe  
13 it's a standard that's both protective of human health  
14 and technologically feasible. It is a reasonable  
15 standard to proceed with.

16 TCP, as we know, is a carcinogen and it's  
17 persistent in the environment and already communities  
18 have been exposed to this carcinogen for many decades.  
19 It's time to protect Californians, and protect them as  
20 soon as possible, from this carcinogen.

21 In addition, EWG does not support any extension  
22 of the compliance period that's been discussed. Over the  
23 years we've been involved in the MCL processes for  
24 numerous contaminants. And we've come to find that the  
25 existing compliance timing works well, so again we just

1 ask that you proceed with the MCL, the proposed MCL, and  
2 do it as soon as possible. Thank you.

3 CHAIR MARCUS: Thank you very much.

4 I have a few questions for staff, but mostly  
5 it's just to flag issues to talk about once the comments  
6 come in. I'm going to want to read the comments, but I  
7 want to turn to my colleagues to see if they have any  
8 questions they have not yet asked that they'd like to  
9 ask?

10 VICE CHAIR MOORE: I probably have similar  
11 questions, (indiscernible) --

12 CHAIR MARCUS: Oh, all right.

13 VICE CHAIR MOORE: I'll just offer a couple  
14 then you can pick up.

15 CHAIR MARCUS: Yeah, go ahead.

16 VICE CHAIR MOORE: The question of averaging  
17 non-detect data, that has to be a fairly common issue  
18 with low-level contaminants in our Drinking Water  
19 Program. Does staff have a response to that concern  
20 about what's our practice of averaging non-detect data  
21 with detectable data? Or is it something we're working  
22 on?

23 MR. POLHEMUS: No, it's a standard process, so  
24 non-detects as zero, so any non-detect will be a zero  
25 value that would then be compared if there was a value

1 above five.

2 VICE CHAIR MOORE: Yeah, okay. So that's  
3 something that you don't see as a large impediment?  
4 That's something that we've got a long track record of  
5 addressing.

6 MR. POLHEMUS: It's, yes, correct. It's a very  
7 long track record on that procedure.

8 VICE CHAIR MOORE: I thought that was an  
9 interesting point about the strategy for compliance with  
10 CEQA or environmental review. And how our work in our  
11 process could serve water agencies, water companies, and  
12 disadvantaged communities in terms of the costs of  
13 implementing and complying with CEQA as a select  
14 treatment alternative to implement the MCL. Do you have  
15 any response to that suggestion?

16 MS. NIEMEYER: We have a mitigated Neg Dec. and  
17 it is out for public comment right now. It did look at  
18 GAC as being the technology that would be implemented,  
19 and looked at the potential impacts, environmental  
20 impacts of that, so we did provide that. And I think  
21 that it is thorough and the other entities would be able  
22 to rely upon that.

23 CHAIR MARCUS: All right, but presumably you'll  
24 review the comments and if there are suggestions --

25 MS. NIEMEYER: Yeah, of course.

1 CHAIR MARCUS: -- that could help you'll apply  
2 them?

3 MS. NIEMEYER: Yeah, I wasn't clear if they  
4 were familiar with our document, if they'd had a chance  
5 to look at it. So we'll look forward to seeing those  
6 comments, and if they haven't looked at it, it's  
7 available online. And if they want to look through, if  
8 there's parts that they feel that were missing or haven't  
9 identified as being potential impacts or potential  
10 mitigation we're happy to look at that.

11 MR. POLHEMUS: Yeah, we believe we took it to  
12 the lengths to which we could. Certainly, someone could  
13 point out comments where we might further do it, but  
14 obviously there is a natural point at which it becomes a  
15 local project that has to have local considerations. And  
16 we simply could not do that for all the communities  
17 without going into detail on every single one of them,  
18 which no longer becomes practical or a programmatic  
19 response.

20 VICE CHAIR MOORE: Well good, and that makes  
21 sense. But it will be a synergistic process, because I'm  
22 hearing that we have not thought of everything. And  
23 through the comment process, we can augment our analysis.

24 MR. POLHEMUS: Absolutely.

25 VICE CHAIR MOORE: Yes, absolutely. Okay. And

1 we talked a bit about the compliance schedule and that  
2 sort of thing. I wonder if there's some misunderstanding  
3 out there as far as what staff proposal is in terms of  
4 hard compliance time or having a submittal of a study  
5 plan or a path to compliance that the regulated entity  
6 would provide. You know, could you provide a little  
7 insight into what schedule is provided within the  
8 proposal, and what flexibility there is to accommodate  
9 this pathway to compliance concern?

10 MR. POLHEMUS: Yeah so, one thing to note is  
11 that the testing begins in January of 2018, not  
12 compliance. Then Zach and Conny can correct me if I'm  
13 wrong, but then it takes three quarters of noncompliance  
14 testing before you would then in essence be in  
15 noncompliance. So there's a period built in there,  
16 obviously of some months associated it with it. Plus if  
17 it becomes effective in July, people know it's coming, so  
18 there's six months there and another nine months. So  
19 there's a fair period of time before someone would not be  
20 -- or would be considered out of compliance with their  
21 drinking water MCL standard.

22 MS. NIEMEYER: Well, I was just going to  
23 clarify that it's an annual average, so there is a  
24 potential in January to be out of compliance if you had a  
25 20 in that time period, right in that first testing. But

1 it's a running annual average.

2 VICE CHAIR MOORE: And do you have a response  
3 to the suggestion that we look at the federal approach to  
4 arsenic that had a five-year period of phasing in? That  
5 seems kind of long.

6 MS. NIEMEYER: So we'd be happy to consider  
7 options. SB 385, of course, was something that  
8 Legislature provided, so we'd have to look at if that is  
9 within our abilities to provide something like that. I  
10 don't think it is, but we do have in the Health and  
11 Safety Code -- it's Section 116425 -- the ability to  
12 offer exemptions from about a year to three years  
13 depending on the size of the community.

14 There's hurdles that have to be met. They have  
15 to meet all the requirements, but if they do that is an  
16 option and it's a case by case. For Hex chrome it was  
17 available essentially to everyone. They had to do their  
18 compliance plans, but it was available to everyone. This  
19 is a little more limited. It does require again, those  
20 interim steps in a year essentially, time period. So  
21 it's already in the Health and Safety Code. There's also  
22 essentially compliance orders by the districts to help  
23 set out those interim steps.

24 VICE CHAIR MOORE: Okay.

25 MR. POLHEMUS: Yeah, and it's a very -- I mean,

1 I struggle with the question associated with that.  
2 Obviously, our MCLs are put in place, so that we have a  
3 warning system to warn the public, so that they know  
4 what's going on. In this instance, it has a technology  
5 that we know will work and is pretty de facto. So it's  
6 definitely a different scenario than some of the other  
7 ones where we were struggling with what technology to  
8 present.

9           Certainly we'll look at the comments we get,  
10 associated with how impactful it may be, but it is a  
11 little different scenario. And needs a different  
12 analysis, I think.

13           VICE CHAIR MOORE: It does, and I think I  
14 touched on it and other Board members can weigh in, but  
15 it is a different dynamic than chromium that has a  
16 naturally occurring component. This is a synthesized  
17 chemical. It's a simple three-carbon chain molecule,  
18 very small molecule that's been synthesized. It has  
19 chlorine attached and it does not degrade in the  
20 environmental readily. And because of its size and the  
21 way it moves through water, it's partially soluble. It  
22 gets into the body. It gets in all over the place. It's  
23 insidious as a chemical.

24           It's a real challenge that needs to be  
25 addressed and there's a simple technological approach.

1 So it's just a matter of us working together at local and  
2 state to provide the leverage to get this addressed as  
3 soon as possible.

4 MS. DODUC: I'm just going to piggyback on the  
5 compliance discussion. I actually found very interesting  
6 the comment made by, I believe it was Mr. Ortega, with  
7 respect to the scalability factor. And how a shortened  
8 compliance period might further disadvantage a  
9 disadvantaged community. To what extent has staff  
10 evaluated that scenario?

11 MR. POLHEMUS: You know, I didn't quite  
12 understand his scalability component, so I -- yeah.

13 MS. DODUC: Well, we'll look forward to  
14 receiving more details in his written comments.

15 MS. NIEMEYER: I think his comment had to do  
16 with the cost being spread out over a larger group. So  
17 we did look at that in terms of it's going to cost more  
18 per service connection for smaller communities than it  
19 will for larger. That's the way it is for a lot of the  
20 technologies.

21 MS. DODUC: And I believe Mr. Ortega was  
22 recommending that that be factored somehow, and I would  
23 ask him to include any suggestion in his written comment  
24 to us.

25 MS. NIEMEYER: And in the exemption criteria,

1 the difference between the one year and the three year is  
2 based upon size of the community. So I believe it's  
3 under 3,000 people. There's an ability to have a longer  
4 extension.

5 MS. DODUC: And perhaps that was the intent of  
6 his recommendation. Anyway, we look forward to receiving  
7 your written comments on that.

8 CHAIR MARCUS: Yeah, it's an interesting  
9 question about how you define harm, because delay in  
10 treating a chemical like this -- and I like your  
11 insidious comment -- is also harming the community. And  
12 so I just think this like so many of the other issues  
13 that we're engaged in, in trying to help disadvantaged  
14 communities with the tools we have, in concert with their  
15 own actions dealing with the potentially responsible  
16 parties. I'm sure we'll have an implementation strategy  
17 we need to talk about, which is on there. But delay is  
18 not necessarily help. It's all in how you look at it and  
19 I'm most inclined to listen to the community on that  
20 issue.

21 So the compliance time we'll talk about a  
22 little bit. I'm inclined to do what we always do and  
23 then figure out how to deal with it, but we'll talk about  
24 it. The alternative technology point that Ms. Davis  
25 raised, I'm going to want to read the comments and see

1 what folks really mean.

2 I also, at the staff briefing, want to talk a  
3 little bit about how we can help, as I said, in a broader  
4 picture. And I want to look at the comments and have  
5 some conversation on the reporting issue that was raised  
6 right towards the end, about being able to bring some  
7 limitation on using previous reporting. And that issue  
8 of, I just want to make sure we maximally capture the  
9 issue wherever it is.

10 And also, Ms. Gonzalez earlier this morning  
11 talked about the need for public education on how folks  
12 can protect themselves in the interim that goes beyond  
13 bottled water, but deals with how to open the windows and  
14 that sort of thing. So I want to talk about our role in  
15 being able to try and be helpful in that and if not us,  
16 other agencies' roles we can try to bring in to be of  
17 assistance on this.

18 It's fascinating, it may happen all the time  
19 not having as much of a long experience with the Drinking  
20 Water Program, have you all ever had an MCL that  
21 everybody agreed on the MCL itself and then just talked  
22 about the details? That doesn't happen on the water  
23 side, the clean water side.

24 UNIDENTIFIED SPEAKER: Good point.

25 CHAIR MARCUS: I'm just saying, and I want to

1 note the fact that everybody agreed. And I want to thank  
2 folks for stepping up to do that. I don't want it to  
3 just be taken for granted and I appreciate that a lot of  
4 our work in reviewing the comments and coming to closure  
5 is about the details. And that's a good place to be.  
6 Thank you for all the really good work you've done to  
7 date and some of the heavy lifting in the next month or  
8 so.

9 All right, anything else before we -- okay.  
10 We'll look forward to the briefings and working with you.  
11 It's been a pleasure so far, thank you. Great team of  
12 staff as well as tremendous folks on all sides, so we  
13 will focus on this over the next coming weeks. And thank  
14 you all for taking the time, especially those of you who  
15 came long distances. That will be really important work.

16 Okay. With that I am going to recess the  
17 hearing until noon when we will reconvene. In the  
18 interest of time I will suggest that anyone coming back  
19 from the hearing get their midday sustenance before noon,  
20 because we won't take another break probably unless the  
21 court reporter -- you won't be here for the afternoon. I  
22 didn't offer you one this morning yet, is that all right?  
23 I know, you're an iron man.

24 So we'll see some of you back here at noon and  
25 thanks to the rest of you for joining us.

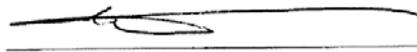


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PETER PETTY  
CER\*\*D-493  
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