BEFORE THE

STATE WATER RESOURCES CONTROL BOARD

In the Matter of:  )

)

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 )

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

CHAIR MARCUS: Thanks very much.

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

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

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

This morning, we're beginning the meeting, thank you, with a workshop to deal with 1,2,3-TCP, with the maximum contaminant level proceeding. It is a workshop and so, as is our practice, I need to read a statement for the record.

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

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

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

Please understand that today's public hearing is an opportunity for you to provide comments on the regulations. The State Water Board may not respond to your comments during this hearing, but all of your comments will be responded to in the final regulation documents. And these documents will be made available to the public. The State Water Board anticipates that the final documents will be available in the next month or two.

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

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

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

MR. POLHEMUS: Thank you. Good morning, Chair Marcus, Darrin Polhemus, Deputy Director for the Division of Drinking Water -- I almost said Financial Systems there -- so I'm proud to be here with the staff to do the first MCL before the State Water Board.

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

And with that go ahead, staff.

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

So I just wanted to reiterate what Chair Marcus said previously, the State Water Board is not going to be taking action on the regulations today. This is the public hearing in accordance with the Administrative Procedure Act requirements. The intent of the hearing is to receive public comments. The State Water Board will respond to public comments in their Final Statement of Reasons. And written public comments, again must be submitted to the State Water Board by Friday, April 21st, at 5:00 p.m.

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

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

MR. ROUNDS: All right, so the presentation will start with an overview of the history and background of 1,2,3-TCP, some information on statewide occurrence and the health effects of ingesting it through drinking water. That will be followed by a brief description of the development process for these regulations, and then a description of each proposed regulation. After the conclusion of the presentation, we'll begin taking public comments.

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

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

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

So for the health effects, 1,2,3-TCP is considered to be a carcinogen or a cancer-causing substance. And exposure routes to 1,2,3-TCP through drinking water are from consuming contaminated water or from the inhalation of water vapor that may contain 1,2,3-TCP such as steam from a hot shower.

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

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

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

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

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

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

In addition to what I described, the State Water Board also has a few additional requirements that came into place with this. We're required to perform an external peer review of all the scientific elements of our proposed regulations for 1,2,3-TCP. That was the proposed detection limit for purposes of reporting, the proposed best available technology, our economic estimation method, our risk assessment evaluation and whether or not the proposed MCL was actually health protective.

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

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

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

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

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

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

MR. ROUNDS: We think so.

CHAIR MARCUS: You just can't show it?

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

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

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

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

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

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

Water systems interested in using alternative technologies to the best available technology may be allowed to do so provided that that technology, as I said earlier meets applicable standards, because BATs are not a mandatory form of treatment.

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

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

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

MR. POLHEMUS: This is Darrin Polhemus. I don't have a good sense of percentage overall. I do know that it's very commonly used whenever there's a volatile organic material that we're trying to remove, it's kind of the go-to treatment, as you say, in those instances and very often shows up. It's also, if you think about it, it's very common. It's in your Brita water filter and a lot of the home water filters, so it's in the refrigerator water filters. It's a very common treatment and stable and well known in its guise. But as you say it's costly, so it's not put on unless it's usually needed in some sense.

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

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

MR. ROUNDS: Yeah.

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

MR. ROUNDS: Right, thank you.

All right, so we're also adding some required language into the regulations for the annual consumer confidence reports and public notification language for the health effects and sources of TCP that would be used when water systems are required to do public notification.

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

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

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

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

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

MS. Mitterhofer: When we started working on the regulation package we did reach out to OEHHA to ask if they were currently in the process or had immediate plans, and the information we got was that they didn't have immediate plans to review the PHG. If the PHG was modified in the future we also have an MCL review process in place where we look at MCLs on a yearly basis. And if a PHG was lowered than we could consider lowing the MCL if that was appropriate. And would bring that to the Board.

MS. DODUC: Thank you.

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

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

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

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

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

MS. DAVIS: Good morning.

CHAIR MARCUS: Good morning.

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

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

If we have a concern it's just making sure that there is adequate compliance time for the agencies that are doing their due diligence, to build the granulated activated carbons or the other alternative technologies, to make sure that they are in compliance with the MCL. Particularly for the GAC, the reality is it takes two to three years to actually put together the full design of those systems, get it structured, paid for, implemented.

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

So either take a look at the compliance period, or as an alternative at the very least take a look at SB-385 for the Hexavalent chromium. Because that allowed water agencies who recognized that they could be in violation to have a compliance plan that you approved. They would have proper notifications for the public, proper accommodation for the protection of public health, but it will enable them to go ahead and implement a -- it's a pathway to compliance and not be in violation of the standard. It's a common sense approach, it enables good actors to do the right thing, but do it within a timeframe that actually is realistic given all the things that have to go in to putting together a compliance plan.

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

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

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

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

TUTUY: I'm Tutuy and I'm from Visalia. And on behalf of my 17-year-old daughter that I'm raising and my mother, who recently passed away, have been drinking contaminated water for some time now. And I live on a fixed budget. I don't make more than $600 a month and I pay out about $80 a month to have to buy water. And that's for cooking purposes also, it isn't just drinking.

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

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

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

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

MS. GONZALEZ: (Through Interpreter)

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

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

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

I appreciate the question from Board Member Steven Moore about the relevance of the statistics, because I too am very concerned about these statistics. I'm also speaking on behalf of my aunt, who lives in the City of Arvin. My aunt had one kidney removed and her other kidney only functions at 45 percent and the only mistake that she made was to live and work in the fields. My best friend has been diagnosed with skin cancer, and who was worried about her and making sure that she was limiting her risk from exposure to this cancer-causing chemical?

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

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

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

CHAIR MARCUS: *Muchas Gracias*.

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

MR. CHAVEZ: *Buenos Dias*.

CHAIR MARCUS: *Buenos Dias*.

MR. CHAVEZ: (Through Interpreter)

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

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

Water is vital to every form of life, every single beverage we make whether it's just drinking water, tea, every single one of them use water. And it's absolutely unavoidable to completely stay away from drinking the tap water. So I'm here just to remind you that you're the ones that have the power to help with the situation. You're the ones that have the funding to change with the situation. So many communities would say, "We'd love to do something to do something about it, but we don't have the funds." And you guys can make that funding available to solve this problem.

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

CHAIR MARCUS: *Gracias*.

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

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

I would like the State Water Board to know that it's time to set a limit at five parts per trillion to keep our families safe. It's very important to protect our health and it's time to provide safe and affordable drinking water to our disadvantaged communities. I urge you to protect our communities' health, and it's time for every Californian to have access to safe and affordable drinking water.

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

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

CHAIR MARCUS: Thank you for joining us.

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

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

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

MR. JENSEN: So as you know, my name is Ryan Jensen and as the Community Water Solutions Manager, for Community Water Center, I work with the communities that are impacted. And I know firsthand why we need to set a very health protective MCL for 1,2,3-TCP.

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

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

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

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

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

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

CHAIR MARCUS: Thank you very much.

Mayor Gurrola, thank you for joining us.

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

MAYOR GURROLA: Good morning Madam Chair, Board members, and staff. Thank you for the opportunity to speak before you on this important matter. I represent the City of Arvin and as elected officials, we strive to do the best that we can for our communities. And the City of Arvin, and communities up and down the state, either through the Central Valley or the Inland Empire, have been subject to carcinogens just like 1,2,3-TCP.

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

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

I look forward to working with you after the adoption of this MCL to secure long-term sustainable funding sources and resources to attain safe, affordable and reliable drinking water, not just for the City of Arvin or the region of Kern, but throughout the entire state. And I urge you to adopt, eventually adopt this health protective MCL. Thank you for all your work.

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

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

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

CHAIR MARCUS: Good morning.

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

We do have two key concerns. You actually already heard both of them from Martha from IEUA. The first is the need for a reasonable compliance period. So as was mentioned by staff this morning, the anticipated adoption of this MCL is July or later this year with a compliance deadline of January 2018, which gives our agencies less than six months potentially to get their treatment in place. And even for those that are planning in advance, that's just not enough time probably. And so they may immediately be out of compliance in January, when they take that first sample.

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

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

So our members are definitely interested in working with staff to resolve these issues and discuss how we can move forward as the staff develops final regulations. So thanks and I'm happy to answer questions.

CHAIR MARCUS: Thank you.

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

Hi.

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

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

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

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

CHAIR MARCUS: Okay.

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

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

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

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

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

Our second recommendation deals with respect to the analysis associated with the GAC treatment as the best available technology. The Public Resources Code Section 21-21159 obliges the Board to perform at the time of the adoption of a regulatory standard, an environmental analysis of the reasonably foreseeable methods of compliance. So accordingly, CWA believes that the Initial Statement/Mitigated Negative Declaration should be strengthened to clarify that the environmental analysis does in fact consider the likely environmental impacts of a statewide implementation of GAC as the reasonably foreseeable method of compliance required by the section.

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

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

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

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

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

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

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

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

This is one critical step to remediate a wrong and we encourage the State Water Board to continue to work with DPR, CDFA, OEHHA and others to ensure hazardous fumigants are limited and the state continues to invest in sustainable agriculture, so that we don't have to deal with contamination like this is the future. We applaud the Board for upholding the science behind 1,2,3-TCP and regulating this cancer-causing drinking water contaminant.

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

CHAIR MARCUS: Thank you very much.

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

MS. VENTURA: Good morning.

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

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

CHAIR MARCUS: This was the top priority.

MS. VENTURA I want to really congratulate and thank the Board for making this a priority and for staff for really doing a good job. This has been, as I've said before, a night and day process where it's been a greatly appreciated process. And without a lot of wasting time but doing it deliberately to get it right. So thank you for that.

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

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

I do want to address the issue of the extended compliance interim. We do oppose that, but let me be clear as to why and give you a little bit different perspective. I was very disappointed to hear SB 385 invoked. That was the process that we supported to create a process to extend the compliance period with an oversight by the Board that was passed through the Legislature.

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

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

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

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

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

CHAIR MARCUS: Right.

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

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

CHAIR MARCUS: Thank you very much.

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

MS. KREILING: Hello Chair Marcus and Board members.

CHAIR MARCUS: Hi.

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

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

When we can easily and reliably detect TCP in water at the detection limit; and when the cost to comply is irrelevant, because of the presence of responsible parties; and when the theoretical cost to the states do not change drastically from five parts per trillion to an alternative number, the proposed MCL of five parts per trillion is really the only option. As the Initial Statement of Reasons says clearly reduced exposure to 1,2,3-TCP results in reduced risks to cancer.

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

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

CHAIR MARCUS: Thank you.

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

(Off mic colloquy re: mic issues.)

MS. CADOR: So good morning, my name is Kena Cador. And I am an Equal Justice Works Fellow at the ACLU of Northern California, speaking here today on behalf of the ACLU of California.

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

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

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

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

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

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

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

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

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

Hi. Thanks for joining us.

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

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

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

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

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

Consequently, it is our hope that the adoption of the proposed MCL at five parts per trillion -- a level that is the equivalent of the detection limit for the reporting purposes, and is thus the level that is close as technically feasible to the public health goal -- will promote swift resolution of the 1,2,3-TCP cost recovery lawsuits. And strengthen our ability to hold the responsible parties accountable for the cost of TCP remediation, which in turn will help us achieve our shared goal of installing 1,2,3-TCP treatment with minimal impact on our ratepayers.

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

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

CHAIR MARCUS: Thank you.

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

MR. GRAYER: We don't believe the compliance timeline is an issue. The timeline is very short. I believe it's a January 2018 compliance. That leaves us very little time to purchase the equipment, supplies and material necessary to construct, and build these treatment facilities. Compliance issues, whenever a water supply receives a Notice of Non-compliance, undermines the integrity of the water system's ability to provide safe drinking water. I think the Board should consider expanding or modifying that timeline.

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

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

CHAIR MARCUS: Thank you.

CHAIR MARCUS: Mr. Barraza followed by Mr. Arias followed by Adan Ortega from the California Mutual Water Company Association.

MR. BARRAZA: Good morning. My name is Raul Barraza. I am the General Manager for Arvin Community Services District. We also have 1,2,3-TCP in most of our wells and, of course, this is a huge concern for my District, for my District's Board and our community.

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

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

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

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

CHAIR MARCUS: Thank you very much.

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

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

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

Like I said, we are a -- we have been very upfront with our community about the water. And it has been very painful for us to have to tell even the school, which is just across from my office, to tell them the water that they're drinking is not safe.

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

Thank you.

CHAIR MARCUS: Thank you very much.

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

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

Rather than get into everything I already agree with, I do want to emphasize some points with respect to the compliance period. With disadvantaged communities, an aggressive compliance period can have the effect of further disadvantaging them. Primarily, because it's not just about identifying technologies. It's about scalability. Many technologies depend on a broad ratepayer base in order to be affordable. That's not the case with many small systems and so having a reasonable compliance period that accounts for scalability is an important way of approaching the issue of disadvantaged communities in complying with safe drinking water standards.

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

And so from a very practical perspective it's important to have a reasonable compliance period that takes into account the scalability issues for small systems, especially those that are in disadvantaged communities, because it could have the effect of further disadvantaging them.

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

So thank you very much.

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

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

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

VICE CHAIR MOORE: Okay. Thank you.

CHAIR MARCUS: Hi.

MR. RECK: Good morning.

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

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

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

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

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

MR. RECK: That's fine.

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

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

CHAIR MARCUS: Thank you very much.

Ms. Thompson?

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

I have three comments today and I'll try and be brief. The first is that the state must establish the MCL at five parts per trillion in order to comply with legal requirements of the Health and Safety Code. The Health and Safety Code requires that a contaminant MCL be established as close to the public health goal, and as protective for human health as is technologically and economically feasible. And the proposed MCL of five parts per trillion is generally considered to be the lowest concentration of TCP that can be both reliably and economically detected. And is as close to the public health goal as is technologically and economically feasible and therefore the state does have a legal obligation to adopt at five parts per trillion. And so therefore we support it.

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

CRLA appreciates cost-saving mechanisms generally as they can reduce the chances that extra financial burdens from remediation efforts will be passed on to low-income communities and on to the residents themselves in the form of rate increases. However, this particular proposal to allow water systems to save money by substituting old data comes at the price of endangering the health of residents. 1,2,3-TCP levels can vary drastically across quarters and even across the same quarter across years. We submitted a comment letter with specific data that shows from one of the communities that we work with, quarterly reporting across years. And demonstrates that even within the same quarter across years it can double or triple at any given time.

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

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

(Timer beeps.)

Can I continue?

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

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

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

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

CHAIR MARCUS: Thank you very much.

Ms. Little?

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

CHAIR MARCUS: Hi.

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

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

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

In addition, EWG does not support any extension of the compliance period that's been discussed. Over the years we've been involved in the MCL processes for numerous contaminants. And we've come to find that the existing compliance timing works well, so again we just ask that you proceed with the MCL, the proposed MCL, and do it as soon as possible. Thank you.

CHAIR MARCUS: Thank you very much.

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

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

CHAIR MARCUS: Oh, all right.

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

CHAIR MARCUS: Yeah, go ahead.

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

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

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

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

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

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

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

MS. NIEMEYER: Yeah, of course.

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

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

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

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

MR. POLHEMUS: Absolutely.

VICE CHAIR MOORE: Yes, absolutely. Okay. And we talked a bit about the compliance schedule and that sort of thing. I wonder if there's some misunderstanding out there as far as what staff proposal is in terms of hard compliance time or having a submittal of a study plan or a path to compliance that the regulated entity would provide. You know, could you provide a little insight into what schedule is provided within the proposal, and what flexibility there is to accommodate this pathway to compliance concern?

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

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

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

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

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

VICE CHAIR MOORE: Okay.

MR. POLHEMUS: Yeah, and it's a very -- I mean, I struggle with the question associated with that. Obviously, our MCLs are put in place, so that we have a warning system to warn the public, so that they know what's going on. In this instance, it has a technology that we know will work and is pretty de facto. So it's definitely a different scenario than some of the other ones where we were struggling with what technology to present.

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

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

It's a real challenge that needs to be addressed and there's a simple technological approach. So it's just a matter of us working together at local and state to provide the leverage to get this addressed as soon as possible.

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

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

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

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

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

MS. NIEMEYER: And in the exemption criteria, the difference between the one year and the three year is based upon size of the community. So I believe it's under 3,000 people. There's an ability to have a longer extension.

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

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

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

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

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

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

UNIDENTIFIED SPEAKER: Good point.

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

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

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

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

MR. LAUFFER: And just to clarify, the hearing has now been closed and the Board will transition into the Board meeting this afternoon.

CHAIR MARCUS: Oh, right. Thank you for keeping me appropriate.

(Whereupon, at 10:54 a.m., the public hearing

was adjourned.)

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