

State Water Resources Control Board – Division of Drinking Water Hexavalent Chromium MCL Compliance Period Implementation Criteria

I BACKGROUND

Senate Bill 385 was signed by the Governor on September 4, 2015 and was chaptered on that date. It was an urgency bill and therefore the new law became effective immediately. This bill added Section 116431 to Chapter 4, Part 12, Division 104 of the California Health and Safety Code. Please see below for complete text of the new section 116431. The primary purpose of this bill was to provide public water systems, with sources that produce water with hexavalent chromium concentration above the State's adopted maximum contaminant level (MCL), time to come into compliance without being deemed in violation of the MCL. Per express terms of Section 116431, the time period for achieving compliance may not, in any case, extend beyond January 1, 2020; and provisions of the new section 116431 remain in effect only until said date of January 1, 2020.

The basic premise of this new section of law is that a public water system must submit its plan for achieving compliance within the shortest period of time, obtain state board approval of the Compliance Plan, and carry out the plan in a timely manner.

The State Water Resources Control Board (state board) hereby establishes criteria to implement the provisions of Health & Safety Code, section 116431.

II AUTHORITY FOR CRITERIA

Health & Safety Code, section 116431 includes:

“(g) The state board may implement, interpret, or make specific the provisions of this section by means of criteria, published on its Internet Web site. This action by the state board shall not be subject to the rulemaking requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).”

A public water system which intends to apply for a time period for achieving compliance with the state's maximum contaminant level for hexavalent chromium is required to comply with these criteria in addition to all applicable requirements of CHSC, section 116431.

The authority granted to the Board pursuant to SB 385 (CHSC Section 116431) will be exercised by the Division and by the local primacy agencies (LPA) with jurisdiction over the public water system.

III DEFINITIONS

As used in these criteria, the following terms are defined as follows:

“Approval” or “Approved” means Division action taken in writing and signed by the appropriate Division District Engineer or LPA representative to indicate its agreement with a public water system's proposed Compliance Plan or revised Compliance Plan or Status Report.

“CCR” means California Code of Regulations.

“CHSC” means California Health and Safety Code.

“Compliance Order” means an order issued by the Division or LPA in accordance with CHSC Section 116655.

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“Compliance Period” means the time period covered in a Compliance Plan.

“Compliance Plan” means a public water system’s written plan for achieving compliance with the MCL, including designated tasks and timeline and schedule for completing each task.

“Division” or “DDW” mean the State Water Resources Control Board’s Division of Drinking Water.

“Earliest feasible date” means the date proposed by a public water system and approved by the Division, as the earliest date by which the public water system can reasonably expect, based on factors presented in the public water system’s Compliance Plan, to achieve compliance with the MCL; in no case may such date be after January 1, 2020.

“LPA” or “Local Primacy Agency” has the meaning set forth in CHSC, section 116275(r).

“MCL” means the maximum contaminant level for hexavalent chromium established in 22 CCR 64431 & 64432.

“Shortest Period of Time” means the time period proposed by a public water system and approved by the Division, as the shortest period of time it will take that public water system to achieve compliance with the MCL; in no case may such time period extend beyond January 1, 2020.

“Status Report” means a written report submitted by a public water system to the Division which addresses the public water system’s progress towards achieving compliance with the MCL, as measured against the approved Compliance Plan

IV SUBMITTALS

Everything required by these criteria, to be submitted or re-submitted by a public water system, shall be submitted in writing by a person who has the legal authority to act for the public water system in matters before the state board or LPA. The person signing the Compliance Plan for a public water system must include language that certifies he/she has authority to act for the public water system. The Compliance Plan must be mailed or personally delivered to the appropriate Division District Office, to the attention of the District Engineer, if the water system is regulated by the Division. If the water system is regulated by a LPA, it shall be mailed or personally delivered to the appropriate LPA and also to the appropriate Division District Office.

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V. REQUEST

- a. A public water system with a MCL violation, determined pursuant to 22 CCR 64431 and 64432, or a public water system that anticipates it will have a MCL violation, may request that the Division/LPA grant a period of time for the public water system to achieve compliance with the MCL. Such request must:
 1. Be submitted in writing to the appropriate Division District Office, to the attention of that District Engineer, and/or appropriate LPA office. If the water system is regulated by a LPA, the request must also be submitted to the appropriate Division District Office;
 2. Be signed by the person who has the legal authority to act for the public water system in matters before the state board or LPA; and
 3. Include a proposed Compliance Plan.

- b. In the event the state board or an LPA has issued the public water system a compliance order for violation of the MCL, once its Compliance Plan has been approved:
 1. The public water system will not be deemed in violation of the MCL effective as of the date of the public water system's submittal of a request meeting the requirements of subdivision (a) and the violation will be removed by Division/LPA records;
 2. The public water system is not required to give public notice pursuant to 22 CCR 64463.4 and 64465;
 3. The public water system is required to give public notice pursuant to CHSC section 116431 and as directed by these criteria.

- c. In the event a public water system is currently in violation of the MCL determined pursuant to 22 CCR 64431 and 64432, and neither the Division nor an LPA has issued a compliance order, to avoid the issuance of an order, the public water system may submit a letter of intent to the Division/LPA not later than **MARCH 31, 2016**. The letter of intent must:
 1. State the water system's intent to submit a Compliance Plan and request a hexavalent chromium MCL Compliance Period; and
 2. Provide a firm date by which the public water system will submit a Compliance Plan meeting the requirements of subdivision (a) of V and subdivisions (a) and (b) of VI. This submittal date must be on or before **JUNE 30, 2016**.

- d. In the event a public water system becomes in violation of the MCL after June 30, 2016:
 1. If it intends to submit a compliance plan in accordance with Section 116432, it must notify the appropriate Division District Office or LPA office of its intent to do so as soon as possible. Based on the system's specific circumstances, the system will then be given a deadline in writing for submission of its compliance plan.
 2. Submission of the compliance plan must meet all the requirements of these criteria. The schedule for compliance included in the plan must clearly demonstrate compliance will be achieved by January 1, 2020. Failure to submit the compliance plan by the required deadline may result in formal enforcement action being taken against the water system.
 3. Until a compliance plan has been submitted and approved, the water system must give public notice pursuant to 22 CCR 64463.4 and 64465. Once the plan has been approved, public

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notice pursuant to 22 CCR 64463.4 and 64465 may be discontinued and replaced with public notice pursuant to CHSC section 116431 and as directed by these criteria.

VI COMPLIANCE PLAN

- a. A Compliance Plan, in addition to satisfying the requirements of CHSC Section 116431(b) must include:
 1. A description of actions the public water system is taking and will take to comply with the MCL. Milestone dates must be given for completion of each of these actions. The actions may include, but are not limited to:
 - A. Feasibility study
 - B. Design including treatment options
 - C. Environmental review
 - D. Funding
 - E. Land acquisition – if needed (including compliance with federal Uniform Relocation Act (applicable federal statutes) if state board Drinking Water State Revolving Fund is targeted for funding
 - F. Construction contracting
 - G. Construction
 - H. Testing
 2. The dates by which the required public notices required by Section 116432(c) will be delivered to its customers at least twice each calendar year, a proposed method of delivery that will ensure each customer receives each notice, and the proposed content of each notice in accordance with the requirements in this criteria.
- b. Major tasks included in the plan must be broken down into subtasks, with corresponding begin and completion dates, in sufficient detail to assess, on a quarterly basis, a public water system's progress toward achieving compliance with the MCL. This information must be presented in a narrative form to describe each task/subtask in detail as well as a project schedule chart which shows task/subtask milestones as well as begin and completion dates for each task/subtask.
- c. During the period of time prior to Compliance Plan submittal, a water system with a MCL violation must provide quarterly public notification to its customers as required by CCR Sections 64463.4(b)(2), and except as provided in subdivision (c) of V, may be subject to enforcement action by the Division or appropriate LPA for violation of the MCL. As of the date a public water system submits a Compliance Plan it will not be deemed in violation of the MCL while the proposed Compliance Plan is being reviewed and evaluated by the appropriate Division district office or LPA to determine if it is adequate to achieve compliance by the earliest feasible date.
- d. If directed to do so, by written comments from the Division/LPA, a public water system must revise its initially submitted Compliance Plan and resubmit it. A revised Compliance Plan must:
 1. adequately address all written comments provided by the Division/LPA; and
 2. be submitted on or before the date specified by the Division/LPA.

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- e. A public water system may submit draft revisions for review and comment by the Division/LPA prior to its submittal of a final revised Compliance Plan; any draft revised plan must be submitted not later than 20 working days prior to the date established by the Division/LPA in its written comments to the initial proposed Compliance Plan.
- f. A public water system's failure to submit a final revised Compliance Plan which, as determined by the Division/LPA, adequately addresses all deficiencies or concerns addressed by the Division/LPA in its written comments on the initial proposed Compliance Plan on or before the date established by the Division/LPA in such written comments, will eliminate the public water system's ability to be granted a period of time for compliance with the MCL pursuant to CHSC 116431.
- g. The Division/LPA is authorized to direct revisions to a previously approved Compliance Plan or to disapprove a Compliance Plan at any time it determines that the actions and timelines addressed in the Compliance Plan are inadequate to achieve compliance by the earliest feasible date. If the Division/LPA directs a public water system to revise a previously approved compliance plan, it will have 60 days to make the revision and resubmit the plan. If the system fails to revise and resubmit or the resubmitted compliance plan is not approved, the public water system may be deemed in violation of the MCL.
- h. If directed by the Division/LPA to revise a previously approved Compliance Plan, the provisions of subdivisions (d) – (f) shall apply.

VII STATUS REPORTS

- a. A public water system granted a hexavalent chromium MCL Compliance Period must submit an initial status report on or before the 10th day of the first month in the calendar quarter following the first full calendar quarter after the Compliance Plan was approved by the Division/LPA. Subsequent reports must be submitted to the appropriate Division District Office or LPA Office on or before the 10th day of the first month in each calendar quarter and contain the status of all Compliance Plan activity which took place in the previous calendar quarter. Each status report must provide:
 - 1. A description of the work completed on each task/subtask identified in the compliance plan since the last status report,
 - 2. The percentage of completion for each task/subtask,
 - 3. A description of any factors which could prevent the system from achieving compliance by the date specified in the approved compliance plan,
 - 4. Any requests for revision of the approved compliance plan found necessary to achieve compliance with the hexavalent chromium MCL by the earliest feasible date, and
 - 5. Results of all hexavalent chromium source monitoring and running annual average determinations completed since the last status report.

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- b. If the Division/LPA disapproves a status report and provides written comments/directions to a public water system, it must revise its status report and resubmit it within 60 days of receipt of the written notice of the Division/LPA's written notice of disapproval. A public water system may submit draft revisions for review by the Division/LPA prior to its submittal of a final revised Status Report. Any draft revised report must be submitted not later than twenty (20) working days prior to the date established by the Division/LPA in its written comments.
- c. A public water system's failure to timely submit a revised Status Report as directed by the Division/LPA will terminate the public water system's Compliance Period, eliminate the public water system's eligibility to be granted an additional Compliance Period, and the public water system may be deemed in violation of the MCL.
- d. A public water system directed to revise and resubmit a status report may submit draft revisions to the Division/LPA not later than twenty (20) days prior to the 60 day time limit.

VIII SOURCE MONITORING

During any Compliance Period granted pursuant to CHSC 116431, the public water system shall:

- a. Monitor all sources that produce water that contain hexavalent chromium concentrations in excess of the MCL on a quarterly basis.
- b. Determine the running annual arithmetic average, computed each calendar quarter using quarterly arithmetic averages of all samples collected and report them to the Division/LPA on a quarterly basis by the 10th day of the first month of each calendar quarter for the previous four quarter period.
- c. Report the results of hexavalent chromium source monitoring and running annual average determinations in each quarterly status report

IX PUBLIC NOTICE

- a. Section 116431(c) requires each public water system granted a compliance period shall provide written notice regarding its approved compliance plan to persons it serves, a minimum of two times per year. This notice must include:
 - 1. That the public water system is implementing the compliance plan approved by the Division/LPA,
 - 2. A summary of the compliance plan including the task/subtask milestones and scheduled completion dates. As an alternative, upon approval of the DDW, the notice may include a summary of the actions in the compliance plan needed to comply with the drinking water MCL for hexavalent chromium.
 - 3. A description of the work completed on each task/subtask identified in the compliance plan since the last report, the percentage of completion for each task/subtask, a description of any factors which could prevent the system from achieving compliance by the date specified in the approved compliance plan, and any requests for revision of the approved compliance plan

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found necessary to achieve compliance with the hexavalent chromium MCL by the earliest feasible date.

As an alternative, upon approval of the DDW, for notices after the initial notice, an update providing information demonstrating progress to complete the actions identified in the compliance plan. This update shall include information describing any requests to revise an approved compliance plan submitted to the DDW since providing the prior notice. It shall also include a link to a web site that contains all the water system's status reports submitted the DDW to date.

4. Be printed in English, Spanish, and in the language spoken by any non-English-speaking group that exceeds 10 percent of the persons served by the public water system. It must contain a telephone number or address where residents may contact the public water system for assistance.
5. Information on where the persons served by the water system have access to alternative drinking water.
6. Basic information on hexavalent chromium, including the results of the four most recent quarterly sample results for each source which exceeds the MCL plus the running annual hexavalent chromium average of each source for quarters since the last report to the Division/LPA, the MCL for hexavalent chromium, and the possible effects of hexavalent chromium on human health as specified in Appendix 64465-D of Section 64465 of Title 22 of the California Code of Regulations.

As an alternative, provide basic information on hexavalent chromium, including the range of hexavalent chromium levels and highest individual source running annual average hexavalent chromium level for sources exceeding the MCL, as well as a link to a web site that contains all hexavalent chromium results data for sources that exceed the MCL. Information on possible health effects of hexavalent chromium on human health as specified in Appendix 64465-D of Section 64465 of Title 22 of the California Code of Regulations must also be provided.

- b. Unless otherwise approved by the State Board, each public water system that is granted a compliance period must use the template provided by the Division/LPA to give the required notice to persons it serves. It is available from the local Division District Office and LPA Office and at the link:

http://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/documents/lawbook/sb385_hex_chromium_pub_notice_temp.pdf

For those water systems choosing to provide alternative information described in subsections a.3. and a.5. above, the public notice format shall be reviewed and approved by the State Board. A copy of each public notice issued to the persons served by a public water system granted a compliance period, must be submitted to the Division/LPA within 10 days of being distributed to the water system customers.

X CRITERIA REVISIONS

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The state board reserves the right, at any time, to make revisions to these criteria as it deems appropriate and necessary and repost them on its web site.

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HSC section 116431 provides:

- (a) At the request of any public water system that prepares and submits a compliance plan to the state board, the state board may grant a period of time to achieve compliance with the primary drinking water standard for hexavalent chromium by the state board's written approval of the compliance plan.
- (b) (1) A compliance plan shall include all of the following:
 - (A) A compelling reason why it is not feasible for the system to presently comply with the primary drinking water standard for hexavalent chromium.
 - (B) A summary of the public water system's review of available funding sources, the best available technology or technologies for treatment, and other options to achieve and maintain compliance with the primary drinking water standard for hexavalent chromium by the earliest feasible date.
 - (C) A description of the actions the public water system is taking and will take by milestone dates to comply with the primary drinking water standard for hexavalent chromium by the earliest feasible date. The actions may include, but are not limited to, planning, designing, permitting, financing, constructing, testing, and activating treatment facilities or other capital improvements. The compliance plan shall include the public water system's best estimate of the funding required for compliance and the actions that the public water system will take to secure the funding. In no event shall the earliest feasible date extend beyond January 1, 2020.
- (2) The state board may do either of the following:
 - (A) Approve a compliance plan.
 - (B) Provide written comments on the compliance plan to the public water system. The comments may include requiring the public water system's compliance, prior to January 1, 2020, with the primary drinking water standard for hexavalent chromium if the earliest feasible date, based on review of the compliance plan and based on the public water system's specific circumstances identified in the plan, is prior to January 1, 2020. If the state board provides written comments, the public water system may submit a revised compliance plan that the state board may approve if the plan timely and adequately addresses any and all written comments provided by the state board.
- (c) The public water system shall provide written notice regarding the compliance plan to the persons served by the public water system at least two times per year. The written notice shall meet the translation requirements provided in subdivision (h) of Section 116450 and shall include notice of all of the following:

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- (1) That the public water system is implementing the compliance plan that has been approved by the state board and that demonstrates the public water system is taking the needed feasible actions to comply with the primary drinking water standard for hexavalent chromium. The notice shall summarize those actions in a form and manner determined by the state board. For notices after the initial notice, the public water system shall update information demonstrating progress implementing the compliance plan.

- (2) That the persons served by the public water system have access to alternative drinking water and that the public water system shall provide information on that drinking water. The notice shall identify where that information may be obtained.

- (3) Basic information describing hexavalent chromium, including the level found in drinking water provided by the public water system, the maximum contaminant level for hexavalent chromium, and the possible effects of hexavalent chromium on human health as specified in Appendix 64465-D of Section 64465 of Title 22 of the California Code of Regulations.

- (d) Following the state board's approval of the compliance plan, the public water system shall submit a written status report to the state board, at a frequency and by a deadline or deadlines set by the state board, for the state board's approval, that updates the status of actions specified in the state board-approved compliance plan and that specifies any changes to the compliance plan that are needed to achieve compliance with the primary drinking water standard for hexavalent chromium by the earliest feasible date. State board approval of a written status report that includes proposed changes to the compliance plan shall be deemed approval of the proposed changes to the compliance plan and the resulting revised plan.

- (e) A public water system shall not be deemed in violation of the primary drinking water standard for hexavalent chromium while implementing an approved compliance plan. A public water system that has submitted a compliance plan for approval shall not be deemed in violation of the primary drinking water standard for hexavalent chromium while state board action on the proposed and submitted compliance plan is pending.

- (f) (1) At any time, the state board may direct revisions to a compliance plan or disapprove a compliance plan if the state board determines that the actions and timelines addressed in the compliance plan are inadequate to achieve compliance by the earliest feasible date. At any time, the state board may disapprove a written status report if the state board determines that the written status report fails to demonstrate that the public water system is complying with the approved compliance plan by the milestone dates. In these instances, the state board shall provide the public water system with written notice specifying the reason for the required revisions or disapproval and the deficiencies that shall be addressed in a resubmitted compliance plan or written status report.

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- (2) A previously approved compliance plan that the state board requires to be revised, or a written status report that is disapproved by the state board, may be revised and resubmitted by the public water system for state board approval within 60 days of receipt of the notice required by paragraph (1). During the 60 days, a public water system shall not be deemed in violation of the primary drinking water standard for hexavalent chromium. A public water system shall not be granted a period of time to achieve compliance with the primary drinking water standard for hexavalent chromium if the public water system fails to submit a revised compliance plan or revised written status report within 60 days of receiving the notice, or submits a revised compliance plan or revised written status report that is subsequently disapproved.
- (3) A compliance plan approved by the state board pursuant to this section shall continue in effect until the earliest feasible compliance date, as specified by the compliance plan, or until the water system fails to retain state board approval of the compliance plan.
- (g) The state board may implement, interpret, or make specific the provisions of this section by means of criteria, published on its Internet Web site. This action by the state board shall not be subject to the rulemaking requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).
- (h) This section does not affect the state's requirements for establishing drinking water standards for contaminants in drinking water. This section does not apply to any contaminants other than hexavalent chromium. This section is intended to address the specific circumstance that, for some public water systems, compliance with the state's hexavalent chromium drinking water standard requires the design, financing, and construction of capital improvements. These major compliance actions necessitate a period of time for compliance.
- (i) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.
(Added by Stats. 2015, Ch. 272, Sec. 1. Effective September 4, 2015. Repealed as of January 1, 2020, by its own provisions.)