State Water Resources Control Board

Division of Drinking Water

**UPDATED INFORMATIVE DIGEST**

**Perchlorate Detection Limit for Purposes of Reporting**

**Sections Affected:** The proposed regulations would affect title 22, division 4. More specifically, this action would add sections: 64400.95 and 64401.57 to article 1 of chapter 12; modify Table 64432-A in chapter 15, article 4; and sections 64443(b) of chapter 15, article 5; 64554(g)(1)(E) of chapter 16, article 2; and 64560(a)(1) of chapter 16, article 3.

**Background and Summary of Existing Relevant Laws:** All public water systems (PWS), as defined in Health and Safety Code (HSC) section 116275, are subject to regulations adopted by the United States Environmental Protection Agency (U.S. EPA) under the Safe Drinking Water Act of 1974, as amended (42 U.S.C. 300f et seq.), as well as by the State Water Resources Control Board (State Water Board) under the California Safe Drinking Water Act (HSC, Div. 104, Pt. 12, Ch. 4, §116270 et seq.). California has been granted primary enforcement responsibility (“primacy”) by U.S. EPA for PWS in California. California has no authority to enforce federal regulations, but only state regulations. Federal laws and regulations require that California, in order to receive and maintain primacy, promulgate regulations that are no less stringent than the federal regulations.

Pursuant to federal primacy requirements and HSC sections 116271, 116275, 116293(b), 116350, 116375, and 116385, the State Water Board has the responsibility and authority to adopt the subject regulations, that include regulations for water quality monitoring frequencies.

California requires community water systems (CWS) and nontransient-noncommunity (NTNC) water systems to sample their drinking water sources and have the samples analyzed for inorganic chemicals to comply with drinking water standards. The perchlorate monitoring requirements are affected by whether there are detections at or below the detection limit for purposes of reporting (DLR). The presence in a source of certain chemicals at or above the DLR requires a PWS to monitor quarterly.

HSC section 116365 imposes requirements on the State Water Board for adoption of primary drinking water standards for the protection of public health. One of those requirements is that the State Water Board adopt a maximum contaminant level (MCL) as close to the contaminant’s public health goal (PHG) as is technologically and economically feasible at the time of adoption, while placing primary emphasis on protection of public health, and to review those MCLs every five years and amend any standard if changes in technology or treatment techniques have occurred that permit a materially greater protection of public health or attainment of the PHG, or there is new scientific evidence that the contaminant may present a materially different risk to public health than was previously determined. PHGs are established by the California Environmental Protection Agency’s (Cal/EPA) Office of Environmental Health Hazard Assessment (OEHHA).

California Code of Regulations, title 22, sections 64443(b), 64554 (g)(1)(E), and 64560(a)(1) currently refer to the terms or section numbers for “Possible Contaminating Activity” and “Source Water Assessment”.

**Description of Regulatory Action:** In February 2015, OEHHA revised the PHG for perchlorate from 0.006 mg/L to 0.001 mg/L. Because of this, the State Water Board is proposing to reduce the DLR from 0.004 to 0.002 mg/L, and then to further reduce the DLR to 0.001 mg/L on January 1, 2024. Data gathered from the monitoring using the lower DLR will allow for improved ability to evaluate the technological and economic feasibility of water treatment to reduce perchlorate levels to concentrations less than the current DLR. The State Water Board could then determine whether, pursuant to HSC subsection 116365(g), it is possible to reduce the MCL to a concentration closer to the PHG. The State Water Board is also proposing to re-adopt definitions for the terms “Possible Contaminating Activity” and “Source Water Assessment”.

The regulatory action initially proposed to lower the perchlorate DLR only from 0.004 mg/L to 0.002 mg/L, as there currently exists sufficient numbers of laboratories able to conduct that analysis. Comments received during the 45-day public comment period led to a modification adding a further reduction in the DLR to 0.001 mg/L that would take effect January 1, 2024, which will allow time for more laboratories to be able to make changes necessary to meet the lower DLR. This change was submitted to the public for a comment period that exceeded the 15-day minimum. The State Water Board adopted the proposed regulations without any further changes on October 6, 2020.

**Comparable Federal Statute and Regulations:** There are no federal regulations or statutes that address the subject of perchlorate in drinking water. The federal Safe Drinking Water Act imposes requirements on each state exercising primary enforcement responsibility (“primacy”) for public water systems and having an approved source water assessment program. Each state’s source water assessment program is adapted to that state’s needs. While U.S. EPA provides guidance, no existing federal regulations or statute provide comparable definitions.