STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF DRINKING WATER
MARCH 3, 2020

ITEM 2

SUBJECT

CONSIDERATION OF A RESOLUTION ADOPTING THE PROPOSED PRIORITIZATION OF DRINKING WATER REGULATIONS FOR CALENDAR YEAR 2020

DISCUSSION

All public water systems, as defined in Health and Safety Code (HSC) section 116275, are subject to regulations adopted by the U.S. 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 public water systems (PWS) in California. California has no authority to enforce federal regulations, and federal laws and regulations require that California, in order to receive and maintain primacy, promulgate regulations for California that are no less stringent than the federal regulations.

The State Water Board is tasked with adopting drinking water regulations and recycled water regulations associated with the protection of public health. These regulations include primary drinking water standards (*e.g*., maximum contaminant levels (MCLs) or treatment techniques), monitoring and reporting requirements, and any other standards related to providing safe drinking water (*e.g*., operator requirements, laboratory accreditation standards, design standards, secondary drinking water standards, pipe separation standards, *etc.*).

Establishing Priorities for Regulatory Development Work

The prioritization of the regulatory development work depends on several factors, including:

1. The enhancement of public health achieved by new or revised regulatory requirements or MCLs;
2. New or revised federal drinking water regulations (MCL, treatment technique addressing a specific contaminant or other requirement);
3. Any statutory mandate to adopt a regulation within a specific timeframe; and
4. Other priorities and staffing resources available for the development and implementation of regulations.

Review of Existing MCLs

HSC section 116270 states California's legislative intent is to establish primary drinking water standards at least as stringent as those established under the federal Safe Drinking Water Act and to establish a program more protective of public health than

minimum federal requirements. HSC subsections 116365(a) and (b) require the State Water Board to set primary drinking water standards as close to the corresponding public health goal (PHG) as technically and economically feasible, placing primary emphasis on the protection of public health.

HSC 116365(g) requires review of each primary drinking water standard at least once every five years. If changes in technology or treatment techniques permit materially greater protection of public health the State Water Board must amend the standard. Existing MCLs were last reviewed in 2018. The results of that review are available at the State Water Board's MCL Review Process webpage.

In 2018, staff conducted a preliminary review of existing MCLs and determined that none of the MCLs meet the criteria for revision based on protection of public health. In conducting the 2018 review, staff found that detection limits for purposes of reporting (DLRs) at concentrations greater than the corresponding PHGs limit their ability to evaluate public exposure to contaminants greater than the PHG but less than current DLR.

Many water systems and laboratories report concentrations only as low as the DLR, Thus there is a lack of data on contaminant occurrence at concentrations below the DLR, but above the PHG. This hinders staff's ability to evaluate whether it is technologically feasible to set the MCL closer to the PHG. Thirty-three current MCLs have associated DLRs set at concentrations greater than their corresponding PHGs.

Staff recommends continuing work to evaluate laboratory capacity for reporting to concentrations below the DLR. As lower reporting levels and adequate laboratory capacity are determined, staff proposes revising DLRs to allow collection of occurrence data to better inform the MCL review process.

Evaluation of Current Priorities for Regulatory Development

1. Hexavalent Chromium

On May 31, 2017, the Superior Court of Sacramento County issued a judgment invalidating the hexavalent chromium maximum contaminant level (MCL) for drinking water. The MCL for hexavalent chromium was deleted from the California Code of Regulations September 11, 2017 and is no longer in effect. The court also ordered the State Water Board to develop a new MCL.

a. Economic Feasibility Workshops

In establishing MCLs, Health and Safety Code section 116365 requires the State Water Board *"…to establish a contaminant's maximum contaminant level (MCL) at a level as close as is technically and economically feasible to its public health goal (PHG)."* The court's primary reason for finding the MCL invalid was that the California Department of Public Health (which was responsible for the drinking water program before it was transferred to the State Water Board) "failed to properly consider the economic feasibility of complying with the MCL." Therefore, determining economic feasibility is foundational to developing a future MCL for hexavalent chromium, and staff is considering what criteria to consider as part of the future MCL development process. An economic feasibility white paper is planned for public release and subsequent workshops in May 2020.

b. Maximum Contaminant Level

Staff are developing a replacement MCL for hexavalent chromium using new information received since the adoption of the previous MCL. Following receipt of public input during the economic feasibility workshops, staff will proceed with considering these comments in the development of a replacement MCL for hexavalent chromium.

2. Lead and Copper Rule

U.S. EPA issued proposed revisions to the Lead and Copper Rule (LCR) on November 13, 2019. The public comment period for the proposed revisions ends February 12, 2020. It is not known when the final version of the revised rule might be issued but staff is evaluating the proposed revisions. In the meantime, staff will be focusing on the following priority work:

a. Short-Term Revisions

In December 2018, State Water Board and U.S. EPA Region 9 completed independent, parallel crosswalks (gap analyses) of the Lead and Copper Rule, including both the 2004 Minor Revisions and the 2007 Short-Term Revisions. Staff propose to modify Title 22 of the California Code of Regulations to incorporate the federal Short-Term Revisions. This would more quickly provide the public the benefit of the federal public education requirements and results of consumer tap lead samples.

b. Revised Lead Detection Limit for Purposes of Reporting (DLR)

Preliminary results from a survey of California ELAP certified laboratories indicate that the DLR for lead may be lowered from 5 ppb (µg/l) to 1 ppb without sacrificing laboratory capacity. This review is still in progress, but staff anticipate proposing DLR revisions for lead and several other metals for Board consideration in 2020.

c. Assistance to Department of Social Services for Daycare Regulations

AB 2370 (Chapter 676, Statutes of 2018) added section 1597.16 to the Health and Safety Code, requiring licensed child day care centers located in buildings constructed before 2010 to conduct initial sampling of drinking water for lead contamination between January 1, 2020 and January 1, 2023, and to repeat lead sampling every five years from the date of the initial test. The analytical results of these tests must be submitted electronically to the State Water Board. If the results show elevated levels of lead, the State Water Board must report to the results to the Department of Social Services (DSS).

d. Lead and Copper Rule Revision

DDW is working to identify and develop potential new regulatory requirements to increase public health protection. Potential new regulatory requirements would likely be based on U.S. EPA's proposed revisions to the federal rule. The revisions could include elements such as proactive lead service line replacement programs, additional public education and outreach, and additional monitoring.

Non-Rulemaking Lead Activities

In addition to regulation development, DDW continues to be engaged in non-regulatory efforts to evaluate and minimize lead exposure, including:

a. Continuing to implement a program for schools to test for lead in faucets and drinking fountains.

b. Tracking compliance with California Assembly Bill 746 adopted in October 12, 2017, which requires that by July 1, 2019 all community water system test lead levels in drinking water at California public, K-12 school sites.

3. Tracking implementation of SB 1398, which requires public water systems to compile an inventory of known lead user service lines. SB 1398 also requires that by July 1, 2020, a public water system with areas that may have lead user service lines do one of the following if it identifies lead user service lines or lines that may contain lead:

a. a community water system that has identified known lead user service lines in use in its distribution system must provide a timeline for replacement of known lead user service lines in use in its distribution system to the state board.

b. a community water system that has identified areas that may have lead user service lines in use in its distribution must do both of the following:"=

i. Provide to the state board its determination as to whether there are any lead user service lines in use in those areas of its distribution system and provide a timeline to the state board for replacement of those lead user service lines that the community water system has identified.

ii. Provide its findings as to whether there are any areas for which it cannot determine the content of the user service lines and a timeline to the state board for replacement of the user service lines whose content cannot be determined.

4. Revised Total Coliform Rule (RTCR)

Public water systems have had to comply with the federal RTCR since April 1, 2016, as well as California's existing regulations. DDW has been working on a proposed revision to our regulations that largely mirror the federal rule. The most significant difference in the proposed revised regulations will be elimination of the total coliform MCL and replacing it with a 'Find and Fix' approach, which is what is included in the federal rule and involves conducting assessments and correcting deficiencies. The proposed state RTCR will propose to be more stringent than the federal RTCR in a few areas; for example, although the federal rule allows reduction of monitoring frequency for bacteriological monitoring from quarterly to annually for certain small water systems, California's proposal does not allow this reduction. DDW is currently implementing the federal RTCR, alongside the existing state TCR. DDW plans to notice the draft regulations for public comment in spring 2020.

5. **Direct Potable Reuse (DPR)**
   Under the provisions of Assembly Bill 574 (AB 574), the State Water Board is required to adopt uniform water recycling criteria fdirect potable reuse through raw water augmentation by December 31, 2023. AB 574 requires that the State Water Board convene an expert panel to review the proposed criteria and adopt a finding as to whether, in its expert opinion, the proposed criteria would adequately protect public health. DDW continues work on an overall approach to regulating DPR projects, with a continued need for research and establishment of an expert panel.

6. **Cross-Connection and Backflow Protection Control Regulations**
   Assembly Bill 1671 added section 116407 to the Health and Safety Code and requires that on or before January 1, 2020, the State Water Board adopt standards for backflow protection and cross-connection control and authorizes the State Water Board to do so through the adoption of a policy handbook. A stakeholder workshop to solicit input is scheduled for February 20, 2020. Two public workshops on the draft policy handbook are planned for May 2020, with Board adoption anticipated in late summer 2020.

7. **Environmental Laboratory Accreditation Program (ELAP) Regulations**
   ELAP is responsible for the accreditation of laboratories conducting environmental testing for regulatory compliance in California. A noticed of proposed rulemaking was posted in October 2019 on the proposed regulations to amend and update standards for accreditation of environmental testing laboratories. A public hearing on the proposed regulations was held on December 18, 2019, with an adoption scheduled for the Board's March 17, 2020 meeting.

8. **Primacy Package Applications**
   There is a backlog of approximately 18 primacy packages, some dating back to pre-1997. This is a high priority for U.S. EPA and DDW is coordinating with U.S. EPA to reduce the backlog. DDW completed two of the outstanding crosswalks in 2016 (LT1 and LT2). Adoption of California's Revised Total Coliform Rule and Lead and Copper Rule Short-Term Revisions is proposed for 2020, with primacy applications to U.S. EPA to follow. U.S. EPA Region IX has provided comments on submitted primacy packages for its Consumer Confidence Report, Public Notification, Administrative Penalty Authority, and Public Water System definition rules.

9. **Revised Perchlorate DLR**
   This work is being performed pursuant to direction from the State Water Board given at its July 5, 2017 meeting. At that time, the State Water Board approved DDW's recommendation to consider the revision of the DLR for perchlorate. DDW partnered with an ELTAC subcommittee to query laboratories about their perchlorate analysis capabilities and their sample capacity. The summary of the survey responses demonstrated an ability to lower the DLR without sacrificing capacity, but not to a level equal to or less than the PHG at this time. This review is complete. The proposed revision to the DLR is slated for Board consideration in June 2020.

10. **Microplastics**
    Microplastics are new and emerging contaminants of concern, not regulated in drinking water at the federal level. There is very limited research on both the occurrence of microplastics in drinking water supplies and any potential health effects. In 2018, the Senate and Assembly approved SB 1422, adding section 116376 to the Health and Safety Code and requiring the State Water Board to take actions by July 1, 2020, to adopt a definition of microplastics in drinking water.

11. Water Quality Standards for On-site Treatment and Reuse

Effective January 1, 2019, Article 8 was added to Chapter 7 of Division 7 of the Water Code (13558 et seq.), requiring the State Water Board, on or before December 1, 2022, to adopt regulations for risk-based water quality standards for the on-site treatment and reuse of non-potable water for non-potable end uses in multi-family residential, commercial, and mixed-use buildings. This work is currently underway.

12. Electronic Reporting of Drinking Water Quality Data

DDW is developing revised regulations requiring electronic submittal of drinking water analytical results to be reported in a format compliant with U.S. EPA's Cross Media Electronic Reporting Regulation (CROMERR). The proposed regulations would be contained in California Code of Regulations, Title 22, division 4, Chapter 15, Article 19, and would revise the format and form for reporting electronically delivered water quality data. Proposed revisions to the existing regulation are planned for public notice and comment in mid-2020.

13. Investigation of Per- and Polyflouroalkyl Substances (PFAS)

DDW issued interim Notification and Response Levels for perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) in July 2018. In August 2019, based on a recommendation from the Office of Environmental Health Hazard Assessment (OEHHA), DDW updated the Notification Levels and requested that OEHHA develop Public Health Goals for these compounds. In February 2020 DDW lowered the Response Levels for PFOA and PFOS and requested that OEHHA consider making Notification Level recommendations for seven other PFAS compounds found through water system monitoring. DDW continues to investigate the extent of contamination of these and other PFAS materials in drinking water sources throughout the state. This information will be used to determine whether DDW should request the Office of Environmental Health Hazzard Assessment to develop PHGs for additional PFAS compounds.

POLICY ISSUE

Should the State Water Board adopt the proposed resolution setting priorities for and guiding staff development of regulations?

FISCAL IMPACT

There is no fiscal impact and no funds are being requested.

REGIONAL BOARD IMPACT

None.

STAFF RECOMMENDATION

The State Water Board should adopt the proposed Resolution.