Perchlorate/Safe Drinking Water Act: Association of State Drinking Water Administrators Comments on Proposed MCL

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The Association of State Drinking Water Administrators ("ASDWA") submitted August 26th comments to the Environmental Protection Agency ('EPA") on the agency's proposed Safe Drinking Water Act ("SDWA") regulation for perchlorate.

EPA in a June 26th Federal Register Notice proposed both a health-based Maximum Contaminant Level Goal ("MCLG") and an enforceable Maximum Contaminant Level ("MCL") for perchlorate. See 84 Fed. Reg. 30524.

EPA regulates pursuant to the SDWA contaminants in public drinking water systems that may have an adverse effect on human health. A focus of the SDWA is the establishment of national standards for water quality in public drinking water systems. The statute requires that the agency publish a list every five years of contaminants not already subject to regulation, but nonetheless known or anticipated to occur in public water systems.

EPA describes perchlorate as a:

. . . negatively charged inorganic ion that is comprised of one chlorine atom bound to four oxygen atoms (ClO4-), which is highly stable and mobile in the aqueous environment. Perchlorate comes from both natural and manmade sources. It is formed naturally via atmospheric processes and can be found within mineral deposits in certain geographical areas. It is also produced in the United States, and the most common compounds include ammonium perchlorate and potassium perchlorate used primarily as oxidizers in solid fuels to power rockets, missiles, and fireworks. For the general population, most perchlorate exposure is through the ingestion of contaminated food or drinking water.

Section 1412(b)(1)(a) of the SDWA addresses EPA's authority to establish National Primary Drinking Water Regulations for contaminants. The agency states that it has determined perchlorate met the statute's three criteria for regulating a contaminant, which include:

1. may have an adverse effect on the health of persons,
2. contaminant is known to occur or there is substantial likelihood that the contaminant will occur in public water systems with a frequency and at levels of public health concern, and
3. in the sole judgment of the Administrator, regulation of such contaminant presents a meaningful opportunity for health-risk reduction for persons served by public water systems.

ASDWA describes itself in its August 26th comments as the:

. . . independent, nonpartisan, national organization representing the collective interests of the drinking water program administrators in the 50 states, five territories, the District of Columbia, and the Navajo Nation who implement the Safe Drinking Water Act (SDWA) every day to ensure the protection of public health and the economy.

ASDWA comments state by way of introduction that the organization recognizes:

. . . that EPA has taken a different regulatory approach for this proposal by proposing a MCLG and MCL of 56 µg/L, as well as MCL options of 18 µg/L and 90 µg/L. EPA used a similar approach for its proposal for the arsenic regulation in 2000, as EPA took comments on four proposed MCLs in that proposal. For perchlorate, EPA has also proposed an option for a negative regulatory determination based on new information indicating perchlorate does not occur with a frequency at levels of public health concern and there may not be a meaningful opportunity for risk reduction through a national drinking water regulation, as required by the Safe Drinking Water Act (SDWA).

ASDWA states its Board decided not to take a position on whether to regulate perchlorate. However, it further states that if EPA decides to regulate the contaminant then certain issues should be addressed such as:

- Monitoring waivers
- Initial monitoring
- Monitoring costs
- MCL exceedances
- System applicability
- Occurrence data
- Cost burden

The ASDWA comments also include the suggestion that EPA did not take into account occurrence data (and treatment costs) for states such as California and Massachusetts that have developed their own state-level standard. It further notes that a potential concern in terms of future rulemakings based on such approach with a failure to consider such states means rules will be based on a smaller number of states with the inability to require monitoring or to establish state-level standards.

A copy of the comments can be downloaded here.