Perchlorate/Safe Drinking Water Act: U.S. Environmental Protection Agency Proposes National Primary Drinking Water Regulation



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The United States Environmental Protection Agency ("EPA") published in the January 6th Federal Register a National Primary Drinking Water Regulation ("NPDWR") for perchlorate under the Safe Drinking Water Act ("SDWA"). See 91 Fed. Reg. 398.

The proposed rule includes a request for comments and a notification of public hearing.

Perchlorate is often utilized in signal flares, munitions, fireworks, airbag initiators for vehicles, and solid rocket propellants. However, it can occur naturally in arid regions such as the Southwestern United States. It has been a focus of EPA review for many years.

The SDWA is the federal law that protects drinking water supplies. The statute requires that EPA identify drinking water contaminants. The agency is then then required to develop rules that either set maximum permissible levels for the contaminants or establish protocols to treat the water to minimize the levels of the contaminants. All owners or operators of SDWA regulated public water systems are required to comply with the primary (health-related) standards.

NPDWRs can be relevant in other circumstances. For example, they are often referenced in the investigation, remediation, or corrective action activities. Therefore, many stakeholders besides drinking water suppliers have an interest when EPA is considering setting an NPDWR for a contaminant.

EPA notes that it was required to propose an NPDWR by the D.C. Circuit Court of Appeals in NRDC v. Regan in 2023. The D.C. Circuit had vacated and remanded EPA's July 2020 withdrawal of its determination to issue a drinking water regulation for perchlorate.

The Appellate Court held that EPA lacked authority under the SDWA to withdraw a determination to regulate a contaminant and was therefore required to proceed to regulate, despite new and additional data and analyses that change the scientific underpinnings of the original regulatory determination.

EPA is proposing a health-based Maximum Contaminant Level Goal ("MCLG") of 0.02 mg/L. The agency is co-proposing enforceable Maximum Contaminant Level for perchlorate at 0.02 mg/L 0.04 mg/L, or 0.08 mg/L.

The proposal also includes requirements for water systems to:

- Conduct monitoring for perchlorate in drinking water.
- Take mitigation actions if the level exceeds the MCL.

- Provide information about perchlorate to their consumers through public notification consumer confidence reports.
- Report to their respective primacy agency.

Note that EPA's Administrator is stated to have determined that the benefits of the proposed rule would not justify the cost. However, EPA further states that it is nevertheless required to issue an NPDWR and MCLG in response to the previously referenced appellate decision.

A copy of the Federal Register notice can be found here.