Perchlorate/Safe Drinking Water Act: Association of Metropolitan Water Agencies Comments on EPA Proposed Primary Drinking Water Regulation



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The Association of Metropolitan Water Agencies ("AMWA") submitted March 9th comments to the United States Environmental Protection Agency ("EPA") regarding the agency's proposed Safe Drinking Water Act National Primary Drinking Water Regulation ("NPDWR") for perchlorate.

EPA published in the January 6th Federal Register the proposed NPDWR for perchlorate. See 91 Fed. Reg. 398.

AMWA describes itself as an organization of the largest publicly owned drinking water systems in the United States. Its membership serves more than 160 million people across the United States with safe drinking water.

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.

EPA noted in proposing the NPDWR that it was required to do so by the District of Columbia 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.

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.

AMWA notes that since the D.C. Circuit decision that resulted requirement for EPA to proceed with a perchlorate NPDWR, the association provided feedback to EPA in its federalism consultation process, highlighting concerns with the agency's health effects model for perchlorate; arguing that EPA's occurrence estimates do not demonstrate a meaningful opportunity for public health risk reduction through an NPDWR at the proposed MCLs.

The association states it is also encouraging the use of monitoring and sampling requirements that minimize costs and burdens to water systems while maintaining public health protections.

AMWA initially provides as "feedback" to EPA the following:

- Agrees with EPA's assertion in the preamble to the proposed rule that, according to the Agency's occurrence estimates and benefit cost analysis, perchlorate does not meet necessary criteria under the Safe Drinking Water Act for promulgating an NPDWR.
- As the Agency must promulgate a NPDWR nonetheless, the Association recommends EPA adopt an MCLG, as well as an enforceable MCL, of 20 µg/L, the lowest of EPA's proposed MCLs. Adopting such a standard may support systems in states with lower perchlorate standards by reducing out-of-state perchlorate contamination and aligns with SDWA's mandate to establish an MCL as close as is feasible to the MCLG.
- Appreciates EPA's efforts to minimize monitoring burdens through its initial compliance monitoring requirements and recommends the Agency follow a modified monitoring schedule that better aligns with the Standardized Monitoring Framework (SMF) for inorganic contaminants (IOCs).
- Encourages EPA to ensure that public health notification requirements provide meaningful information to the public and are commensurate with the risk and populations affected by perchlorate.

Additional components of AMWA's comments include:

- Shortcomings in establishing the NPDWR.
- Occurrence data and benefit cost analysis.
- Concerns with EPA's health effects model for perchlorate.
- Recommendations for enforceable MCL.
- Monitoring and compliance recommendations.
- Initial compliance monitoring and historical monitoring data.
- Trigger Level.
- Proposed SMF Cycle.
- Frequency flexibility.
- Exceedance.
- Clarity for compliance monitoring in states with perchlorate drinking water regulations.
- Public notification and consumer confidence report requirements.
- Public Notification.
- Proposed health effects language.
- Additional Considerations

By way of conclusion, AMWA notes in part that nine states have established drinking water regulations, health advisories, or other measures for perchlorate in drinking water since EPA included perchlorate in UCMR1. The association argues that such actions along with remediation efforts aimed at reducing perchlorate in the environment have contributed to a clear decline in levels of the contaminant in surface and drinking water nationwide.

A copy of the AMWA comments can be found here.