



Drinking Water Standards: How Fast is Fast Enough to Finalize the Chromium-6 MCL?

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The race to adopt a final primary drinking water standard for hexavalent chromium ("Cr-6") is on. Exactly how long the California Department of Public Health ("DPH") has to complete its work to finalize the Cr-6 maximum contaminant limit ("MCL") is the subject of the pending court case against DPH filed by the NRDC. On October 31, 2013, Judge Evelio Grillo held a compliance hearing in *Natural Resources Defense Council, Inc. v. California Department of Health* in order to take testimony from the DPH Standards and Technology Unit Chief regarding the anticipated time for DPH to finalize a Cr-6 MCL. Under direct and cross-examination, DPH revealed that approximately 18,000 communications had been submitted by members of the public during the public comment period and hearings. The number of comments on the draft Cr-6 MCL amounts to approximately 5 times as many communications received in the rulemaking to set an MCL for perchlorate. Comments range in form and content from 1-page form letter-type comments to technical engineering studies questioning the underlying feasibility analysis conducted by DPH to set the draft Cr-6 MCL. DPH estimated that it would take the maximum time allowable under the Administrative Procedures Act ("APA") to finalize the Cr-6 MCL - or August 2014. DPH based this projection on a comparison to the 11 months it took to complete the MCL for perchlorate, for which DPH received considerably fewer comments.

While NRDC argued that DPH could and should be doing more to expedite their administrative process (by, for example, assigning more staff to the project), DPH cautioned the court that if the agency did not have adequate time to perform its duty to respond to public comment in setting a final standard, the state's Office of Administrative Law could disapprove the results and further delay the adoption of a Cr-6 MCL by as much as a year. Judge Grillo declined to rule on the matter at the hearing and decided, instead, to send the parties to settlement conference to see if a timetable agreeable to both sides could be ascertained. If no settlement is reached, we would expect to see a further court ruling on whether to impose an expedited timetable for DPH to finalize the Cr-6 MCL issued on or around December 2, 2013.