Chromium 6: From the Code to the Courts... and Back Again

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This past summer, with a little prodding from the Alameda County Superior Court in *Natural Resources Defense Council, Inc. v. California Department of Health*, the California Department of Public Health met the California Legislature's long-deferred statutory directive to adopt a maximum contaminant limit ("MCL") for Chromium 6. But the Legislature is not pausing to pat itself on the back for a job well done. Instead, the Legislature is looking to address a problem generated by the very accomplishment it long sought, because adoption of the 10 ppb (parts per billion) Chromium 6 MCL set in motion a timeline for MCL compliance that public water systems across the state are struggling to meet.

Senate Bill 385, introduced by Senator Ben Hueso, would authorize the State Water Resources Control Board (the "Board") to grant a public water system a variance from the primary drinking water standard for Chromium 6 if that system develops and implements a Board-approved plan to come into compliance with the MCL. The compliance plan would describe the public water system's plans to comply with the Chromium 6 MCL at the "earliest feasible date," including strategies to fund its compliance efforts and plans to construct treatment facilities.

The bill would empower public water systems to initiate aggressive, but achievable plans to come into compliance with the Chromium 6 MCL, without compromising consumer safety or diverting limited resources to potential litigation or enforcement actions. Senator Hueso has already secured coauthors from both sides of the aisle and in both legislative houses in advance of the bill's April 15th hearing date in the Senate Environmental Quality Committee.

When developing strategies to fund compliance efforts and construct treatment facilities, water systems should be mindful of the need to comply with the National Contingency Plan ("NCP"). The NCP is a comprehensive set of regulations setting forth the procedures to be followed for addressing the release of hazardous substances. Among other things, compliance with the NCP requires a "CERCLA quality clean-up"

that: (1) protects human health and the environment; (2) utilizes permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable; (3) is cost-effective; (4) satisfies Applicable and Relevant or Appropriate Requirements ("ARARs"); and (5) provides meaningful public participation.

Compliance with the NCP is necessary for public water systems to preserve their cost recovery claims against those parties responsible for the contamination under CERCLA. This ensures that the cost burden of the clean-up effort falls on those parties responsible for the pollution, not the customers of the public water system.

Nossaman attorneys are available to assist public water systems in their compliance with the NCP, and in developing strategies to remediate Chromium 6 contamination in a manner that preserves cost recovery claims for the benefit of impacted public water systems and their customers.

Nossaman is also available to help clients secure grant funding for Chromium 6 compliance programs.