



August 26, 2019

U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

**Re: Proposed National Primary Drinking Water Regulation: Perchlorate
Docket No. EPA-HQ-OW-2018-0780**

Dear Docket:

The Association of State Drinking Water Administrators (ASDWA) is 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 supports and represents the collective interests of the states, territories, and the Navajo Nation in their administration of national drinking water program requirements within their states or territories. The following ASDWA comments are intended to broadly address the proposed rule, but they do not necessarily reflect the concerns of individual states.

ASDWA appreciates the opportunity to provide comments to EPA on the proposed perchlorate rule, as it is an important rulemaking. This proposal has been over 21 years in the making, with perchlorate being listed on the First Contaminant Candidate List (CCL1) in 1998 and included in the First Unregulated Contaminant Monitoring Rule (UCMR1) in 1999. ASDWA commends EPA for continuing to make regulatory progress throughout those 21 years, and for its focus on developing a better understanding of the challenging health effects data to use in its development of a perchlorate proposal.

ASDWA 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).

The regulatory development process for perchlorate has been reworked several times since the late 1990s, as EPA proposed a negative regulatory determination in 2008 and then reversed that proposal with a positive regulatory determination in 2011. In the June 26th *Federal Register* (84 FR 30524), EPA published an option for a negative regulatory determination that would reverse the 2011 determination. Since the listing of perchlorate on CCL1 in 1998, two of ASDWA's members (California and Massachusetts) have developed their own state-level perchlorate standard for drinking water. Nevada is also using the interim health advisory as a groundwater cleanup action level for ongoing industrial cleanup actions in Henderson, Nevada.

In the proposal, EPA did not take into the account the occurrence data (and the resultant treatment costs) for the states (California and Massachusetts) that have developed their own state-level perchlorate standard. One potential concern for future rulemakings based on this approach is, if the Agency continues to exclude states with state-level standards, future rules could be based on a smaller and smaller number of states with the inability to require monitoring or to establish state-level standards.

The ASDWA Board has decided to not take a position on whether to regulate perchlorate or not. The final decision on whether to regulate perchlorate or not is in the "sole judgment of the Administrator" and it is hard to argue one way or the other with that judgment call.

However, if EPA decides to move forward with a final regulation for perchlorate, ASDWA recommends that EPA consider the following items for the final regulation and implementation:

- **Monitoring waivers:** If EPA decides to move forward with a perchlorate regulation, monitoring waivers need to be a significant component of the regulation, as approximately 2/3 of the estimated burden is for monitoring costs. Another significant component of the estimated burden is administrative costs for states, and it should be noted that waiver processes are resource-intensive, and an additional estimate would need to be developed for the increased state administrative burden for waivers. Some states review monitoring waivers by each sampling point, not by each eligible system as calculated in the proposed rule. For those states that review waivers for each sampling point, 8 hours of state review time per eligible system is a gross underestimate. ASDWA recommends that EPA increase its estimate for the states' burden for monitoring waivers. EPA also needs to recognize that any regulatory strategy to reduce the monitoring burden by the water systems through waivers creates additional administrative burden for the states with the review of all the waivers. Additionally, as currently written, 141.23(c)(3)-(6) only requires states to consider previous monitoring history, variation in the results, and system changes in determining waiver eligibility. EPA's occurrence data states that perchlorate is highly mobile and persistent, and exposure can be from man-made sources. Using these sources of exposure in monitoring waivers determinations are not adequately covered in 141.23(c)(3)-(6). EPA would need to update this section of the rules and develop monitoring waiver guidance for states to include potential sources of perchlorate contamination, provide GIS source mapping for potential contaminant locations, when to void a waiver, and how to

address new potential sources of contamination (e.g., new munitions site). Each primacy agency should be able to create their own waiver language that would be approved by the EPA Region. For example, the past cyanide waiver language (based on no industrial uses of cyanide) in 141.23(c)(2) could potentially be modified for perchlorate.

- **Initial monitoring:** If EPA decides to move forward with a perchlorate regulation, then ASDWA recommends four quarters of initial monitoring, to be consistent with the standardized monitoring framework for other inorganic contaminants.
- **Monitoring costs:** As mentioned above, approximately 2/3 of the estimated burden is for monitoring costs. It should be noted that some states conduct the monitoring for water systems, and these costs should be included in the states' burden in the final regulation. More information is needed to determine which states collect and analyze samples for what size systems, but approximately 8-10 states collect and analyze some or all of compliance monitoring samples. EPA should work with ASDWA during the development of the final economic analysis to determine the appropriate split of monitoring costs between the states and the water systems.
- **MCL exceedances:** If EPA decides to move forward with a perchlorate regulation, then the proposed language for addressing MCL exceedances needs to be updated. As proposed, addressing perchlorate MCL exceedances and providing appropriate public notification in a timely manner would be difficult for states to enforce. Under the proposal, if the level of perchlorate exceeds the MCL, a confirmation sample must be collected within 2 weeks of notification of results and compliance with the MCL is determined based on the average of the initial and confirmation samples. However, if the average exceeds the MCL, Tier 1 public notification is required; which is within 24 hours after learning of the violation. Table 2 to 141.201 defines a Tier 1 public notice as "NPDWR violations and situations with significant potential to have serious adverse effects on human health as a result of short-term exposure." Therefore, EPA has proposed an acute MCL for perchlorate that is incongruous with the monitoring requirements of other Tier 1 contaminants. Allowing 2 weeks for an MCL confirmation sample but requiring 24-hour public notice is confusing and ill-advised. EPA would need to update the timeline for confirmation sample collection to follow other Tier 1 MCL exceedances. In addition, EPA did not propose updates to Subpart Q – Public Notification of Drinking Water Violations Table 1 to 141.202—VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING A TIER 1 PUBLIC NOTICE restricting states' ability to enforce the Tier 1 requirement. As this is a federal regulation, Table 1 to 141.202 would need to be updated to include perchlorate MCL violations.
- **System Applicability:** Based on the above discussion on 24-hour public notice, it appears to be inconsistent to not have the perchlorate regulation apply to Transient Non-Community (TNC) systems. If EPA decides to move forward with a perchlorate regulation, the EPA should provide justification for not including TNCs.
- **Occurrence data:** Some states have concerns with using the UCMR1 monitoring data that is almost 20 years old. Some states believe this data under-represents national occurrence. Some states have discovered high levels of perchlorate in small systems that were not required to monitor during UCMR1. These small system detections occurred primarily due to aged hypochlorite. Seasonal systems where the hypochlorite

is stored in the off-season also detected high levels of perchlorate. Additionally, many seasonal systems are transient water systems that would not be required to monitor under the proposed rule although an acute MCL level is proposed.

- **Cost burden:** If EPA decides to move forward with a perchlorate regulation, this would be the first regulation with a negative cost-benefit. ASDWA recommends that EPA minimize the negative cost-benefit by evaluating options to reduce both the states' administrative burden (noting our previous comment on states' review of monitoring waivers) and the monitoring costs for states and water systems. As part of its evaluation of the perchlorate proposal, ASDWA asked states to estimate the number of staff hours required to read and understand the rule and to develop a primacy package for perchlorate, as well as a loading percentage for state staff wages. ASDWA received responses from 20 states and the average for both the hours and the loading percentage is in the range of EPA's estimates in its Information Collection Request (ICR) for the proposed perchlorate regulation. However, it should be noted that the primacy package for a potential perchlorate regulation would be relatively simple, as it is a single number for a single contaminant. The state burden for the development and approval of a primacy package (and for training of state staff) for a more complex rule like the Long-Term Revisions to the Lead and Copper Rule (LT-LCR) will be significantly higher.

If EPA's final decision is a negative regulatory determination, other states may find there is an opportunity for significant public health protection and determine the need for a state-level standard. Such states would have to follow their own administrative processes for a state-level standard, and EPA should consider helping states with these processes. For example, EPA could help states with exposure assessments, evaluation of analytical methods, and/or treatment technology evaluations.

If EPA's final decision is a negative regulatory determination, then EPA needs to consider the Agency's options for the interim health advisory of 15 µg/L for perchlorate dating back to December 2008. Leaving this health advisory in place after a negative regulatory determination would create confusion for the water systems, primacy agencies and the public. While a health advisory is not a legally enforceable standard, a number is a number to the public. The expected or anticipated actions due to a water system having any water samples over any health advisory have shifted over the past four years, since the publication of health advisories for two cyanobacterial toxins in 2015. The publication of final health advisories in 2016 for perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) continued to add to the uncertainties for water systems and primacy agencies on what the appropriate actions should be when sample results are over the health advisories.

If EPA's final decision is a negative regulatory determination, then EPA needs to develop additional guidance and/or re-publicize existing technical information on the appropriate management of hypochlorite, as degradation of hypochlorite can contribute to perchlorate exposure. If EPA decides to move forward with a final regulation for perchlorate, ASDWA recommends that EPA discuss the potential exposure from hypochlorite degradation and the appropriate risk management in the final perchlorate regulation.

ASDWA appreciates the opportunity to comment on these important drinking water issues. If you have any questions about these comments or would like the states to provide additional input on the underlying issues, please feel free to email me at aroberson@asdwa.org or give me a call at (703) 812-9507.

Sincerely,



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Executive Director
Association of State Drinking Water Administrators (ASDWA)

cc: David Ross – EPA OW
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