

COURT ORDER AND STATUTORY MANDATED DRINKING WATER ACTIONS

Internal deliberative pre-decisional - FOR USE BY 2024 PRESIDENT-ELECT TRANSITION TEAM MEMBERS ONLY

ISSUE SUMMARY:

The Office of Water's Office of Ground Water and Drinking Water has four actions in development with deadlines pursuant a settlement agreement or consent decree.

EPA has settlement agreement deadlines to sign (1) a proposal to revise the National Primary Drinking Water Regulations (NPDWRs) for certain specified microbial and disinfection byproduct contaminant (MDBPs) by July 31, 2025 and (2) a notice of final action on the proposal no later than October 2, 2028.

EPA has a settlement agreement deadline to publish the Sixth Contaminant Candidate List (CCL), as described in Section 1412(b)(1)(B)(i) of the Safe Drinking Water Act, as amended in 1996, no later than November 17, 2026.

EPA has a settlement agreement deadline of August 2, 2027 to determine whether the existing NPDWR for chromium is appropriate for revision based on the EPA's final Integrated Risk Information System ("IRIS") assessment for Hexavalent Chromium, which was completed on August 1, 2024.

EPA has committed to issue a proposed National Primary Drinking Water Regulation for perchlorate by November 21, 2025, and a final regulation by May 21, 2027, as required by court mandated consent decree.

KEY POINTS:

MDBP

- In January 2017, EPA announced the results of the Agency's 3rd Six Year Review of National Primary Drinking Water Regulations. EPA identified the following microbial and disinfection byproduct contaminants as appropriate for revision: Chlorite, Cryptosporidium, Giardia lamblia, Haloacetic Acids (HAA5), Heterotrophic Bacteria, Legionella, Total Trihalomethanes ("TTHM"), Viruses.
- In 2019, Waterkeepers Alliance sued the Agency alleging that (1) EPA failed to perform a nondiscretionary duty under Section 1412(b)(9) of the Safe Drinking Water Act (SDWA) to revise the NPDWRs for the microbial and disinfection byproduct contaminants that EPA identified as appropriate for revision in the Agency's 3rd Six Year Review and (2) EPA unreasonably withheld and delayed proposing and promulgating revised NPDWRs for those contaminants.
- In a 2020 settlement agreement, EPA agreed to sign a proposed NPDWR for MDBPs no later than July 2024 with allowance to extend by 12 months the deadlines for proposal and final action if at EPA's request, the National Drinking Water Advisory Council (NDWAC) established a working group to assist the NDWAC in developing consensus advice and recommendations for EPA on key MDBP issues and potential rule revisions.

- On February 29, 2024, DOJ notified Waterkeeper Alliance’s counsel that EPA is exercising the extensions for the proposal and final action on the MDBP rules. Unless EPA determines that the existing NPDWRS are no longer appropriate for revision, EPA must sign the proposed NPDWR for MDBPs no later than July 31, 2025.
- The NDWAC submitted recommendations to the EPA on December 14, 2023. EPA is using those recommendations to inform development of the proposed MDBP rule revisions.

CCL

- In a 2020 settlement agreement, EPA agreed to sign for publication in the *Federal Register* the Fifth and Sixth Contaminant Candidate Lists (CCL 5 and CCL6) no later than November 17, 2026.
- Section 1412(b)(1) of the Safe Drinking Water Act (SDWA), as amended in 1996, requires the EPA to publish every five years a list of drinking contaminants that are currently not subject to any proposed or promulgated national primary drinking water regulations (NPDWRs). EPA published the final CCL 5 Federal Register notice on November 15, 2022.
- EPA plans to publish the draft CCL 6 in the Federal Register for public comment.
- The CCL itself does not pose a burden or place requirements on the states or public water systems (PWSs). Only after additional data and information are collected are contaminants considered for regulatory determination and rulemaking under the SDWA.

Perchlorate

- In 2011 EPA made a regulatory determination to regulate perchlorate under the SDWA. In determining whether to regulate a contaminant, the EPA applies the criteria mandated by SDWA.
- Following the regulatory determination, Natural Resources Defense Council (NRDC) sued EPA for failure to promulgate a final perchlorate standard by the statutory deadline. SDWA requires EPA to publish a proposed rule and a final rule 24 months and 18 months, respectively, following a positive regulatory determination.
- The parties entered into consent decree (CD), and in accordance with that CD, EPA published a proposed rule in 2019.
- Considering the best available science at the time and the proactive steps that EPA, states and public water systems had taken to reduce perchlorate levels, in 2020 EPA withdrew the regulatory determination and made a determination to not issue a national regulation for perchlorate.
- EPA based the decision to withdraw the regulatory determination on the new EPA health impact analysis prepared in consideration of recommendations from the Science Advisory Board. The analysis showed that the concentrations at which perchlorate may present a public health concern are higher than the concentrations considered in the 2011 regulatory determination.
- In 2023, the D.C. Circuit vacated and remanded EPA’s July 2020 withdrawal of its determination to issue drinking water regulations for perchlorate. On remand, NRDC and EPA agreed to amend the CD to require EPA to publish a proposed perchlorate regulation by November 21, 2025, and a final regulation by May 27, 2027.

Chromium

- EPA promulgated a NPDWR for total chromium in 1991.
- Section 1412(b)(9) of the Safe Drinking Water Act provides that “not less often than every six years” EPA must “review and revise, as appropriate, each national drinking water regulation.”
- In August 2024, the EPA published its Final IRIS Assessment for Hexavalent Chromium (chromium-6).

- The Final IRIS Assessment preliminarily categorizes chromium-6 as a likely carcinogen to humans via the oral exposure pathway.
- EPA is in the process of considering the available information on health effects and exposure to determine if a regulatory revision to the drinking water standard is warranted.
- In a settlement agreement with Waterkeeper Alliance, EPA agreed to make a determination as to whether the existing NPDWR for total Chromium is appropriate for revision no later than three years after the final IRIS assessment is completed.

ONGOING/UPCOMING REVIEWS FOR FY2024:

For the MDBP rulemaking, OGWDW anticipates seeking Early Guidance in fall 2024. EPA plans to consult the Science Advisory Board in fall 2024 to seek scientific peer review on two technical documents.

For the Perchlorate rulemaking effort, EPA initiated consultation activities with public stakeholders, as required by the applicable executive orders in fall 2024.

KEY EXTERNAL STAKEHOLDERS:

<input type="checkbox"/> X Congress	<input checked="" type="checkbox"/> X Industry	<input checked="" type="checkbox"/> X States	<input type="checkbox"/> X Tribes	<input type="checkbox"/> Media	<input type="checkbox"/> X Other Federal Agency
<input type="checkbox"/> X NGO	<input type="checkbox"/> X Local Governments	<input type="checkbox"/> X Public			

MOVING FORWARD:

EPA will continue to progress on these court order and statutory mandated actions in response to the settlement agreement and consent decree.