



April 10, 2017

Via U.S. Mail and Email

State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814
Email: commentletters@waterboards.ca.gov

Re: Setting A Maximum Contaminant Level for 1,2,3-Trichloropropane of 5 parts per trillion

Dear Members of the Board:

The American Civil Liberties Union of California (“ACLU of CA”) writes in support of the State Water Resources Control Board’s (State Board) proposed regulation SBDDW-17-001; to establish a maximum contaminant level (“MCL”) of 5 parts per trillion (ppt) for 1,2,3-Trichloropropane (“TCP”). This Board has detected 1,2,3-TCP, a contaminant associated with serious health consequences, in water sources throughout the state. At least 60% of contaminations were located in the agriculture-rich Central Valley.¹ If the Board fails to adopt a California state-level MCL, marginalized and vulnerable populations will be disproportionately impacted. Accordingly, the ACLU of CA supports this Board’s decision to adopt a 5 ppt standard for 1,2,3-TCP, which will adequately protect the health and safety of all Californians.

Adoption of a Standard for 1,2,3-TCP is Overdue

The State of California has been aware of the health risks associated with long-term exposure to 1,2,3-TCP for over two decades. As required by the California Safe Drinking Water and Toxic Enforcement Act (Proposition 65), in 1992 1,2,3-TCP was added to the list of chemicals known to the state to cause cancer. Almost twenty years later, in 2009, the California Office of Environmental Health Hazard Assessment (OEHHA) finally established a public health goal (PHG) for this dangerous contaminant based on a rigorous analysis of relevant scientific information.

Over the last several years, local community groups, affected water systems, and environmental justice groups have expressed concerns about continuing health effects caused by 1,2,3-TCP in water sources. Since May 2016, this Board has discussed proposed regulations at meetings in Bakersfield, Fresno, Sacramento and Visalia. These discussions evidence a prioritization of the

¹ California State Water Resources Control Board, “Summary of 1,2,3-TCP Detections,” http://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/123TCP.shtml (last retrieved April 4, 2017).

harsh realities of continued exposure to 1,2,3-TCP and the State's obligation to establish an MCL.

History of 1,2,3-TCP in California

1,2,3-TCP is a manmade chemical typically found at industrial or hazardous waste sites. It has been used as a cleaning and degreasing solvent, in addition to being associated with pesticide products. To date, 1,2,3-TCP has contaminated at least 562 drinking water sources in California.

Instances of contamination can be traced back to corporate practices prior to the 1980s, when earlier manufactured pesticides were applied extensively to farmland. Beginning in the 1950s through the 1970s, farms and agribusiness in California used dichloropropane-dichloropropene ("D-D") and dichloropropenes ("Telone") as soil fumigants to protect against nematodes. Scientific studies have revealed that 1,2,3-TCP was not a necessary ingredient for actively defending against nematodes; and was essentially a byproduct that led to water contamination without any productive use.

Even though pesticides containing 1,2,3-TCP have not been used for many years, the contaminant remains in the drinking water of many communities throughout California. The chemical makeup of 1,2,3-TCP makes it more likely to leach from soil into groundwater. This is especially true throughout agricultural regions in the Central Valley and Imperial County. Without any state or federal intervention requiring filtration or other systems of regulation, 1,2,3-TCP contamination will persist and affect residents' drinking water.

1,2,3-TCP Contamination Has a Disproportionate Impact on Communities of Color

Contamination has been detected primarily in rural areas of the state. Affected water sources are as far north as Butte County and as far south as San Diego County, but Fresno, Kern, Los Angeles, and Tulare Counties have the highest numbers of 1,2,3-TCP affected sources. Additionally, the contamination sites in these respective counties affect a disproportionate number of residents of color.

According to data from this Board, as of June 2016, the majority of affected water sources detected in Kern, Los Angeles and Tulare Counties were concentrated in just a few cities.² In Kern County, 94.8% of contaminated water sources were located in the City of Bakersfield (45.5% Hispanic or Latino), the City of Shafter (80.3% Hispanic or Latino), and the City of Wasco (76.7% Hispanic or Latino). In Los Angeles County, where only 48.4% of residents are Hispanic or Latino, 56.7% of contaminated water sources were located in the City of Burbank, where 58.3% of residents are Hispanic or Latino.

² See California State Water Resources Control Board, "Sources with two or more reported 1,2,3-TCP Detections" http://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/documents/123-tcp/123tcpforweb.xlsx (last visited Apr. 4, 2017).

Finally, in Tulare County, 89.6% of contaminated water sources were located in the City of Visalia (46.0% Hispanic or Latino), the City of Tulare (57.5% Hispanic or Latino), and the census designated place of Ivanhoe (81.0% Hispanic or Latino).

Failure to Regulate 1,2,3-TCP in the Water is a Public Health Concern

Long-term exposure to 1,2,3-TCP can result in serious health consequences. The short-term effects of high exposure include irritation to the skin, nose, eyes, and throat, and drowsiness.³ Long-term effects include increased risk of developing cancer as well as liver and kidney damage. In addition to being added to California's list of contaminants known to cause cancer, the U. S. District Court for the Eastern District of California has recognized 1,2,3-TCP as a carcinogen.⁴

Exposure occurs primarily through drinking or cooking with contaminated water, or through inhaling its steam while showering or washing dishes.⁵ Although OEHHA established a public health goal (PHG) representing the level at which 1,2,3-TCP in drinking water does not pose a significant risk to health over a lifetime of exposure, the standard is not legally enforceable and does little to mitigate the health concerns of community residents. Establishing a state-level MCL for 1,2,3-TCP is a necessary next step.

The Board Must Set the Maximum Contaminant Level at 5 Parts Per Trillion

Given the dangers of 1,2,3-TCP, an enforceable drinking water standard is imperative. Currently, water providers are not required to treat 1,2,3-TCP contaminated water. Consumers can continue to be exposed, and without an enforceable maximum contaminant level, it is difficult to hold the responsible parties accountable. The decision of the Board to move forward on setting a standard is a valuable step in the right direction.

The State Water Resources Control Board is required to establish a contaminant's MCL at a level as close to the defined PHG as is technologically and economically feasible.⁶ The current PHG for 1,2,3-TCP, as determined by OEHHA in 2009, is 0.0000007 milligrams per liter (mg/L) or 0.7 ppt. We write in support of this Board's proposal to set an MCL of 0.000005 mg/L or 5 ppt; the strictest detection and treatment standard currently possible given existing technology. Given the presence of 1,2,3-TCP in water sources throughout the state, there is a serious need to set strict MCL standards and thereby provide all Californians with access to safe drinking water.

³ *Id.*

⁴ *City of Fresno v. U.S.*, 709 F.Supp.2d 888, 925 (E.D. Cal. 2010).

⁵ Clean Water Action, "1,2,3-Trichloropropane (1,2,3-TCP),"

http://www.cleanwateraction.org/sites/default/files/CA_Fact_Sheet_TCP_05.04.16a.pdf. (last visited Apr. 4, 2017).

⁶ Cal. Health & Safety Code Section 116365(a).

Additionally, the analysis conducted by this Board supports the economic feasibility of implementing this standard.⁷

Conclusion

Regulating 1,2,3-TCP is a public health issue. Prolonged exposure increases the risk of cancer and may lead to kidney and liver damage in addition to depression of the central nervous system. In California, the historical use of dangerous pesticides containing 1,2,3-TCP has made agricultural communities more vulnerable to exposure. Additionally, water source contamination disproportionately impacts communities of color. These factors make clear that California is long overdue for setting a maximum contaminant level.

The State Water Resources Control Board has an obligation to set an enforceable standard that will protect all Californians. Information provided by this Board supports a maximum contaminant level of 5 ppt as economically feasible. Additionally, 5 ppt is the most protective standard that is currently technologically possible.⁸ The ACLU of CA supports the adoption of the most stringent standard possible. The cost of not doing so is too great. Thank you for your consideration.

If you have any questions, please do not hesitate to contact me at (559)554-2994 ext.205 or kcador@aclunc.org.

Sincerely,



Kena C. Cadour

Equal Justice Works Fellow, Sponsored by Apple Inc. and O'Melveny & Myers
ACLU of Northern California

⁷ State Water Resources Control Board, "Initial Statement of Reasons 1,2,3-Trichloropropane Maximum Contaminant Level Regulations," (February 2017), http://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/documents/123-tcp/sbddw17_001/isor.pdf.

⁸ State Water Resources Control Board, "123 TCP MCL Slide Presentation," http://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/documents/123-tcp/tcp_mcl_presentation.pdf at slide 21 (last visited Apr. 4, 2017); Clean Water Action, "1,2,3-Trichloropropane (1,2,3-TCP)" http://www.cleanwateraction.org/sites/default/files/CA_Fact_Sheet_TCP_05.04.16a.pdf at 2 (last visited Apr. 4, 2017).