



When a "Date Certain" for a Chromium 6 MCL isn't Exactly Certain

01.30.2014

An Update on Natural Resources Defense Council, Inc. v. California Department of Health

On Friday, January 24, 2014, pursuant to authorization provided in the Alameda County Superior Court's December 17, 2013 order directing issuance of a writ of mandate, Natural Resources Defense Council ("NRDC") submitted a proposed writ and proposed judgment commanding the California Department of Public Health ("CDPH") to submit a final primary drinking water standard for hexavalent chromium ("Chromium 6") by a date certain – well, sort of.

Although the court was unmoved by the plea of CDPH to allow it the maximum time permitted under the Administrative Procedures Act ("APA"), or August 2014, the proposed judgment maintains some measure of uncertainty as to the exact timetable for adoption of the Chromium 6 standard. If no additional 15-day public comment period is triggered by a revision of the regulation, including CDPH's Initial Statement of Reasons, CDPH must submit its final regulatory package to the Office of Administrative Law ("OAL") by April 15, 2014. If a second public comment period is required, the deadline would be pushed to June 15, 2014.

The court will retain jurisdiction to enforce the final judgment and has ordered the parties to appear at a future compliance hearing on March 17, 2014. It may be more clear at that time whether a further iteration of the proposed regulations will be circulated for further public comment, triggering the later of the two alternative deadlines for CDPH to finalize the MCL.

Nossaman attorneys Mari Lane and Alfred Smith have been following this case extensively, and are pleased to discuss potential impacts this decision may have on your water resources and operations.