

Date of Hearing: July 1, 2025

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Damon Connolly, Chair
SB 466 (Caballero) – As Amended

SENATE VOTE: 37-0

SUBJECT: Drinking water: hexavalent chromium: civil liability: exemption

SUMMARY: Exempts public water systems from liability in any civil action related to hexavalent chromium (Chrom 6) in drinking water under certain conditions. Specifically, **this bill:**

- 1) Exempts public water systems from liability in any civil action brought by an individual or entity that is not a governmental agency related to chrome 6 in drinking water, while implementing and in compliance with a State Water Resources Control Board (State Water Board)-approved chrome 6 maximum contaminant level (MCL) compliance plan, or during the period between when it has submitted a chrome 6 MCL compliance plan for approval to the State Water Board and action on the proposed compliance plan by the State Water Board is pending.
- 2) Provides that the exemption from civil action in this bill only applies to a public water system that meets the total chromium MCL enforceable standard for drinking water in California.
- 3) Provides that the exemption from civil action in this bill only applies through the duration of a State Water Board approved chrome 6 MCL compliance plan schedule.
- 4) Provides that the exemption from civil action in this bill will not apply if a chrome 6 MCL compliance plan is rejected by the State Water Board.
- 5) Provides that this bill does not affect the authority of the State Water Board or the Attorney General to enforce any applicable law or regulation regarding hexavalent chromium, including a State Water Board approved chrome 6 MCL compliance plan.

EXISTING LAW:

- 1) Authorizes, pursuant to the federal Safe Drinking Water Act (SDWA), the United States Environmental Protection Agency (US EPA) to set standards for drinking water quality and to oversee the states, localities, and water suppliers that implement those standards. (42 United States Code (USC) § 300(f), et seq.)
- 2) Establishes the California SDWA and requires the State Water Board to maintain a drinking water program. (Health and Safety Code (HSC) § 116270, et seq.)
- 3) Defines, under the California SDWA, "primary drinking water standards" to mean:
 - a) Maximum Contaminant Levels (MCLs) that may have an adverse effect on human health;
 - b) Specific treatment techniques adopted by the State Water Board in lieu of MCLs; or,

- c) The monitoring and reporting requirements specified in regulations, adopted by the State Water Board, that pertain to MCLs. (HSC § 116275(c))
- 4) Requires the Office of Environmental Health Hazard Assessment (OEHHA) to prepare and publish an assessment of the risks to public health posed by each contaminant for which the State Water Board proposes a primary drinking water standard, as provided. (HSC § 116365, et seq.)
- 5) Requires the risk assessment, prepared by OEHHA, to contain an estimate of the level of the contaminant in drinking water that is not anticipated to cause or contribute to adverse health effects, or that does not pose any significant risk to public health, also known as the Public Health Goal (PHG) for the contaminant. (HSC § 116365, et seq.)
- 6) Requires the State Water Board to consider specified criteria when it adopts a primary drinking water standard, including the PHG for the contaminant published by OEHHA. (HSC § 116365, et seq.)
- 7) Declares that it is the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. (Water Code § 106.3)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "SB 466 provides narrow legal protections for water systems that are actively working to comply with an approved or pending Chromium-6 Maximum Contaminant Level (Cr-6 MCL) Compliance Plan, recognizing the complexities and financial challenges water systems face as they implement the necessary steps to address Chromium-6 contamination.

This bill is a reasonable temporary measure to protect water providers acting in good faith to comply with the Cr-6 MCL, from unnecessary litigation, allowing them to stay focused on their mission of providing safe and affordable drinking water to the communities they serve."

Human right to water: Through enactment of AB 685 (Eng, Chapter 524, Statutes of 2012), California became the first state with a Human Right to Water law. AB 685 establishes a state policy that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitation. Water supply issues; contaminants; costs of treatment and distribution systems; climate change; the number and nature of small public water systems, especially in disadvantaged communities; and many other factors continue to challenge progress in implementing the Human Right to Water.

California's general approach to regulating water quality: With a growing population of more than 39 million people, a limited supply of fresh water, and a range of impacts on both terrestrial and marine habitats and resources, the protection of water for beneficial uses is of paramount concern for all Californians. Water quality is a concern for all bodies of freshwater, both surface water and groundwater, and can be impacted by a variety of chemical and biological factors that are regulated by a number of local, state, and federal agencies.

In California, the state manages contaminants with negative health implications using a regulatory process that typically begins with the development of a PHG and ends with the establishment, implementation, and enforcement of a primary MCL. A PHG is the concentration of a contaminant in drinking water that is estimated to pose no significant health risk to individuals consuming the water on a daily basis over a lifetime. OEHHA scientists perform extensive reviews of the available literature on a drinking water contaminant to set PHGs based on the most sensitive health effects. The final PHG values then serve as guideposts to the State Water Board in setting a primary MCL. A drinking water contaminant's MCL must be established at a level as close to its PHG as is technologically and economically feasible. While primary MCLs place emphasis on public health, they must also account for factors such as detectability, treatability, and cost of treatment. Once the State Water Board establishes an MCL through the regulatory process, public water systems must meet it within the prescribed compliance period, though the State Water Board is not required to provide such a compliance period upon adoption of an MCL.

Federal and state regulation of contaminants in drinking water: To regulate drinking water contaminants that pose significant health risks, the State Water Board can begin the process by requesting that OEHHA establish a PHG. PHGs are concentrations of drinking water contaminants that pose no significant health risk if consumed for a lifetime, based on current risk assessment principles, practices, and methods. OEHHA can establish PHGs for contaminants regulated under existing drinking water standards (also called MCLs), and for contaminants that do not yet, but may in the future, have MCLs.

PHGs are not regulatory standards. However, state law requires the State Water Board to set MCLs for contaminants as close to the corresponding PHG as is economically and technologically feasible. To establish a PHG, OEHHA scientists first compile all relevant scientific information available, which includes studies of the chemical's effects on laboratory animals and studies of humans who have been exposed to the chemical. The scientists use data from these studies to perform a health risk assessment, in which they determine the levels of the contaminant in drinking water that could be associated with various adverse health effects. When calculating a PHG, OEHHA uses all the information it has compiled to identify the level of the chemical in drinking water that would not cause significant adverse health effects in people who drink that water every day for 70 years. OEHHA must also consider any evidence of immediate and severe health effects when setting the PHG.

Once OEHHA establishes a PHG, the State Water Board determines whether an MCL (or an updated MCL) should be considered. If the State Water Board determines that an MCL should be considered, it then conducts an in-depth risk management analysis and, if appropriate, initiates the regulatory process for adopting an MCL, enforceable under the California SDWA.

Similarly, under the federal SDWA, the US EPA can establish national primary drinking water regulations, which are legally enforceable standards and treatment techniques that apply to public water systems. These standards are established to protect public health by limiting the levels of contaminants in drinking water. Like most states, California has been granted "primacy" by the US EPA, which grants the State Water Board the authority to implement and enforce the federal SDWA, including national primary drinking water regulations, at the state level. For the State Water Board to maintain its primacy authority, California must have statutes, regulations, and an implementation program for public water system supervision that are no less stringent than those under the federal SDWA.

Chrom 6: Chrom 6) is a heavy metal that has been used in industrial applications and found naturally occurring throughout the environment. While chromium can exist in a nontoxic, trivalent form, the hexavalent form has been shown to be carcinogenic and toxic to the liver. Chrom 6 is among the chemicals known to the state to cause cancer, pursuant to California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"). Human exposure to Chrom 6 is through inhalation by breathing polluted air, ingestion by drinking contaminated water, or dermal contact by touching contaminated soil. Research has shown that Chrom 6 can cross the placenta barrier – passing from mother to baby. In 2023, the California Air Resources Board adopted a rule to phase out Chrom 6 at industrial facilities, noting that there was "no known safe level of exposure" to Chrom 6.

History of Chrom 6 regulation in California: Following is a brief history of regulatory activities related to Chrom 6 in drinking in California:

- 1) In 1999, as part of its activities associated with the development of PHGs, OEHHA evaluated total chromium and established a 2.5-micrograms/liter ($\mu\text{g/L}$) PHG for total chromium (PDF), reflecting a view that Chrom 6, a component of total chromium, poses a cancer risk when ingested. Following OEHHA's PHG for total chromium, the California Department of Health Services (CDHS, predecessor to the California Department of Public Health (CDPH)) identified chromium as a contaminant for possible MCL review. CDHS also announced it would include Chrom 6 among the unregulated chemicals requiring monitoring.
- 2) In 2000, the Governor signed SB 2127 (Schiff, Chapter 868, Statutes of 2000) which required CDHS to determine the levels of Chrom 6 in drinking water supplied by public water systems in the San Fernando Basin aquifer, and, in consultation with OEHHA, assess the associated exposures and risks to the public.
- 3) In 2001, CDHS requested OEHHA to prepare a PHG for Chrom 6 (a PHG was needed for the development of an MCL specific to Chrom 6). The Governor signed SB 351 (Ortiz Chapter 602, Statutes of 2001) requiring CDHS to adopt a Chrom 6 MCL by January 1, 2004.
- 5) In 2007, the National Toxicology Program's reports on the carcinogenesis of Chrom 6 in drinking water—which found there to be sufficient evidence of carcinogenicity in rodents—were reviewed and approved by the Board of Scientific Counselors Technical Reports Review Subcommittee.
- 6) In 2011, OEHHA released the final PHG for Chrom 6 along with a PHG fact sheet.
- 7) In 2013, CDPH proposed an MCL for Chrom 6.
- 8) In 2014, the MCL for Chrom 6 was approved by the Office of Administrative law and became effective.
- 9) In 2015, the Governor signed SB 385 (Hueso, Chapter 272, Statutes of 2015), which authorized the State Water Board to grant a public water system additional time to meet the drinking water standard for Chrom 6 by approving a compliance plan. This statute had a provision that repealed it on January 1, 2020.

- 10) In 2017, Superior Court of Sacramento County invalidated the chrom 6 MCL and ordered the State Water Board to adopt a new MCL, in the court case California Manufacturers and Technology Association, et al. v. California Department of Public Health et al. (Super. Ct. Sacramento County, 2017, No. 34-2014-80001850).
- 11) In 2023, the State Water Board started the formal rulemaking process for establishing an MCL of 10 µg/L with the publication of the Notice of Proposed Rulemaking.
- 12) In 2024, the State Water Board adopted the Hexavalent Chromium MCL Regulation with an effective date of October 1, 2024.

Chrom 6 MCL: The State Water Board's MCL for Chrom 6 is 0.010 milligrams/L or 10 µg/L, which became effective on October 1, 2024. The State Water Board is required to set MCLs as close as feasible to the corresponding PHG placing primary emphasis on the protection of public health, to the extent that it is technologically and economically feasible. The PHG for Chrom 6 (0.02 µg/L) was established by OEHHA in 2011.

Public water systems will be required to comply with the MCL based on the schedule below:

- 1) 10,000 service connections or more: October 1, 2026;
- 2) 1,000 to 9,999 service connections: October 1, 2027; and,
- 3) Less than 1,000 service connections: October 1, 2028

Compliance with the Chrom 6 MCL is assessed the same way as the MCLs of other inorganic chemicals: using "a running annual average; if any one sample would cause the annual average to exceed the MCL, the system is immediately in violation. If a system takes more than one sample in a quarter, the average of all the results for that quarter shall be used when calculating the running annual average. If a system fails to complete four consecutive quarters of monitoring, the running annual average shall be based on an average of the available data." If a system exceeds the MCL before their applicable compliance date, they will not be in violation of the MCL, but they will be required to submit a Hexavalent Chromium Compliance Plan. If a system exceeds the MCL after the applicable compliance date, they would be in violation of the MCL, but do not have to submit a Hexavalent Chromium Compliance Plan.

Compliance Plan for Chrom 6 MCL: The Hexavalent Chromium MCL Compliance Plan is a description from any system with a source exceeding the MCL before their applicable compliance date. These plans are required to include the proposed method for compliance with the MCL, the date by which the system plans to submit the final plans and specifications for any construction, the dates by which the system plans to start and complete any construction, and the date by which the system plans to complete a treatment operations plan. Dates do not need to be included if they are not applicable (for example, if no construction is planned). While these plans can be amended as needed, the approved plans and the dates within are enforceable. The compliance plan must be submitted no later than 90 days after a system was notified of the laboratory result that identified a Chrom 6 MCL exceedance. A compliance plan will be approved if it contains all applicable elements and is sufficient to demonstrate how the system will comply with the Chrom 6 MCL.

Total Chromium regulation: Prior to October 1, 2024 (the effective date of 2023-24 Hexavalent Chromium MCL Regulation), hexavalent chromium had been regulated under the total

chromium MCL of 50 µg/L. California's total chromium MCL was established in 1977 with the adoption of a "National Interim Drinking Water Standard" for chromium to address exposures to Chrom 6, the more toxic form of chromium. Trivalent chromium (chromium-3) is a required nutrient.

The US EPA adopted the same 50 µg/L MCL for total chromium, but in 1991 raised that federal MCL to 100 µg/L. California did not follow US EPA's change and still has a total chromium MCL of 50 µg/L. The total chromium MCL will continue to exist as an enforceable standard.

This bill: SB 466 exempts public water systems from liability in any civil action, related to Chrom 6 in drinking water under certain conditions. This bill is aiming to strike a balance for a number of public water systems: achieve the Chrom 6 MCL with a compliance plan approved by the State Water Board and gain protection from civil action by non-government entities for issues relating to chrome 6 in drinking water. There are a number of mainly smaller public drinking water systems that are not only looking at the cost of compliance with the MCL, which includes construction costs, but also having to increase rates on their ratepayers. The goal of the bill is to provide public water systems with a level of protection from litigation while the water systems focus on complying with Chrom 6 MCL. Reducing Chrom 6 levels in drinking water is important given its health implications, and given the potential for climate change to increase exposure risk (specifically wildfires, which can increase the release of Chrom 6 into the environment by heating up naturally occurring trivalent chromium).

Further discussion: In 2015, facing a similar chrome 6 MCL (at that time being proposed by the Department of Public Health), the Legislature enacted SB 385 (Hueso, Chapter 272, Statutes of 2015). SB 385 authorized the State Water Board to grant a public water system additional time to meet the drinking water standard for Chrom 6 by approving a compliance plan. Additionally, SB 385 did not contain a shield from civil action (as contained in this bill); instead it stated that a water system shall not be deemed in violation of the MCL while implementing a State Water Board approved compliance plan. SB 385 had a provision that repealed it on January 1, 2020 and is no longer law. As this bill moves through the process, it might be helpful to look at how and if the provisions of SB 385 could apply to today's chrome 6 MCL.

Arguments in support: According to the Coachella Valley Water District (CVWD),

"This bill provides a period of relief from the threat of litigation while implementing a state-approved compliance plan to reduce Hexavalent Chromium ("Chromium-6") in drinking water to meet the new maximum contaminate level (MCL) of 10 parts per billion (ppb), which took effect this year.

This bill is necessary because the new Chromium-6 regulations are unlike previous regulatory requirements. Federal environmental regulations and previous state regulations typically allow five years to comply with a new MCL. The new Chromium-6 regulations, however, allow large water districts only two years to comply. CVWD is expected to spend over \$350 million to design, seek approvals, drill new domestic water wells, construct pipelines and build multiple water treatment facilities to meet the new Chromium-6 MCL. As required by regulation, CVWD will submit a compliance plan to the State Water Board for approval recognizing that it is physically impossible to construct all the necessary facilities to comply with the new Chromium-6 MCL in two years.

The other unusual requirement of the new Chromium-6 regulations is that public notices must be sent to every customer informing them that their drinking water exceeds the MCL for Chromium-6 as soon as the agencies know it will violate the MCL *in the future*. Despite having two years to comply with the new regulation, CVWD will be required to send out the notices this year.

It is equally important to point out what SB 466 does not do. It does not protect anyone responsible for Chromium-6 contamination. This bill only gives a limited period of relief to water agencies while implementing complex solutions to comply with the new Chromium-6 MCL. SB 466 also does not take away anyone's legal claims; it only provides a temporary window of protection to water agencies that bear no responsibility for the presence of Chromium-6 in their drinking water supply."

Arguments in opposition: According to the Consumer Attorneys of California, writing oppose unless amended,

"SB 466 creates a preemptive and absolute blanket shield from civil liability for public water systems that may be responsible for negligence as related to drinking water with hexavalent chromium (Cr6) if they are implementing—or even awaiting approval of—a compliance plan approved by the State Water Resources Control Board.

While we appreciate the intent that there would not be protections if there was a failure to comply, the bill's premises and language is concerning for Consumer Attorneys. If toxins are in our water, there should be accountability for the known cancers and harms they cause.

We recommend that the current immunity language be deleted and replaced with language such as that adopted by the Legislature in 2015 SB 385 that states:

"A public water system shall not be deemed in violation of the primary drinking water standard for hexavalent chromium while implementing an approved compliance plan. A public water system that has submitted a compliance plan for approval shall not be deemed in violation of the primary drinking water standard for hexavalent chromium while state board action on the proposed and submitted compliance plan is pending."

We believe the above clarifying amendments are necessary to align the author's intent to the language of the bill. The current language eliminates potential lawsuits by a citizen who has cancer or other harm. We respectfully request that the bill be amended to protect individuals that are harmed."

Double-referral: Should this bill pass this committee, it will be re-referred to the Assembly Judiciary Committee.

Related legislation:

- 1) SB 1065 (Padilla, 2024). Would have authorized, until January 1, 2029, the State Water Board to grant an extension of up to three years beyond any compliance period established by the State Water Board to achieve compliance with the chrome 6 MCL. Would have prohibited a public water system from being deemed in violation of the MCL for chrome 6

while implementing a State Water Board approved compliance plan. This bill was held in the Senate Environmental Quality Committee.

- 2) AB 2041 (E. Garcia, 2022). Would have required the State Water Board to work with public water systems it has determined may not be able to comply with a future primary drinking water standard without receiving financial assistance to develop a compliance plan for those water systems. This bill was held on the suspense file in the Assembly Appropriations Committee.
- 3) AB 588 (E. Garcia, 2021). Would have required the State Water Board to identify a compliance period or periods, when it adopts a primary drinking water standard, of not less than 30 days and no more than 3 years, and to consider specified criteria when identifying the compliance period. Would have required the State Water Board to take actions necessary to assist specified water systems to achieve compliance within any compliance period established. This bill was held in the Assembly Environmental Safety and Toxic Materials Committee.
- 4) AB 756 (C. Garcia, Chapter 162, Statutes of 2019). Authorizes the State Water Board to order one or more public water systems to monitor for per- and polyfluoroalkyl substances (PFAS) and requires municipalities to notify consumers if PFAS is detected above notification levels.
- 5) SB 385 (Hueso, Chapter 272, Statutes of 2015). Authorized the State Water Board to grant a public water system additional time to meet the drinking water standard for Chrom 6 by approving a compliance plan. This statute had a provision that repealed it on January 1, 2020.
- 6) SB 351 (Ortiz, Chapter 602, Statutes of 2001). Required the State Department of Health Services to adopt a primary drinking water standard for Chrom 6 by January 1, 2004. Required a report on the progress of developing the standard to the Legislature by January 1, 2003.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of California Water Agencies
Bighorn Desert View Water Agency
California Groundwater Coalition
California Municipal Utilities Association
City of Chino
City of Daly City
City of Kerman
City of Los Baños
City of Patterson
City of Vacaville, Department of Public Works
City of Watsonville
Coachella Valley Water District

Community Water Systems Alliance
Desert Valleys Builders Association
Eastern Municipal Water District
Grassland Water District
Indio Water Authority
Joshua Basin Water District
Las Virgenes, Triunfo Joint Powers Authority
League of California Cities
Mesa Water District
Mission Springs Water District
Myoma Dunes Mutual Water Co.
Palmdale Water District
Quartz Hill Water District
San Bernardino County
San Joaquin River Club
Soquel Creek Water District
Twentynine Palms Water District
Watsonville Department of Public Works
Western Municipal Water District

Opposition

California River Watch
Consumer Attorneys of California

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