

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

Title 22

Justifications for Revisions Without Regulatory Effect

I. Section 64426.8

California Code of Regulations, title 22, section 64426.8 sets forth the actions that must be taken by a public water system when a bacteriological quality treatment technique trigger is exceeded, when a sanitary defect is found through an assessment conducted in response to a bacteriological quality treatment technique trigger exceedance, and when a public water system violates reporting requirements of this section. Section 64426.8, subdivision (d), contains a typographical error that incorrectly specifies public notification pursuant to section “64464.7” rather than section “64463.7”. While section 64463.7 sets forth the requirements for a Tier 3 Public Notice, Title 22 of the California Code of Regulations does not contain a section 64464.7.

The State Water Board proposes to amend section 64426.8 to refer to the correct regulatory section.

II. Sections 64481 and 64558

On June 20, 2014, Senate Bill 861 (Budget Act of 2014) was approved and filed by the Governor and chaptered by the Secretary of State (Chapter 35, Statutes of 2014). Among other things, SB 861 transferred the authority, duties, powers, purposes, functions, responsibilities, and jurisdiction concerning California’s drinking water program from the California Department of Public Health (CDPH) to the State Water Resources Control Board (State Water Board; identified as “State Board” in statute and regulations).

In a 2015 proposed rulemaking (SBDDW-15-01 Drinking Water Title 22 – Section 100), changes were made to regulations to include the addition of a definition for “State Board”, revise applicable sections to refer to “State Board” rather than “Department”, and update authority notes. On June 2, 2015, the Office of Administrative Law issued a Notice of Approval for Changes Without Regulatory Effect (OAL File No. 2015-0420-05 N) for the above regulatory action.

A review of the changes made to refer to “State Board” rather than “Department” shows there are two instances where the changes are incorrect. The State Water Board proposes to amend the regulations to refer to the correct regulatory agency and authority. The proposed amendments are discussed in more detail below.

A. Section 64481

California Code of Regulations, title 22, section 64481 sets forth the information that must be included in consumer confidence reports public water systems send their customers. Section 64481, subdivision (i)(3), incorrectly states “State Board

regulations also establish limits for contaminants in bottled water that provide the same protection for public health.”

The State Water Board does not establish limits for contaminants in bottled water. The State Water Board does not propose to change the referenced regulatory agency back to “Department” because CDPH does not adopt regulations to establish limits for contaminants in bottled water. Rather, those limits are established by the United States Food and Drug Administration (FDA) and, in California, by the Sherman Food, Drug, and Cosmetic Law (California Health and Safety Code, Division 105, Part 5, Chapter 5, Article 12). The State Water Board proposes to amend section 64481 so that information provided by consumer confidence reports reflects the fact that the FDA and California law govern limits for contaminants in bottled water.

B. Section 64558

California Code of Regulations, title 22, section 64558 provides that the State Water Board may require a public water system to submit a “source capacity study” and sets forth the information a study must contain. Subdivision (c) provides that “[w]ater systems that have submitted an Urban Water Management Plan to the State Board of Water Resources pursuant to Water Code Part 2.6 commencing with section 10610, may submit a copy of that report in lieu of some or all of the requirements” of a source capacity study. There is no State Board of Water Resources. Subdivision (c) refers to the Department of Water Resources. Water Code section 10644, subdivision (a), requires urban water suppliers to submit an urban water management plan to the “department,” defined by section 22 of the Water Code to mean the Department of Water Resources. The State Water Board proposes to amend section 64558 to correctly reference the Department of Water Resources.

III. Section 64650

California Code of Regulations, title 22, section 64650 sets forth state requirements for surface water treatment. In 2012, CDPH proposed a rulemaking (DPH-09-014) to amend section 64650 by incorporating by reference the U.S. Environmental Protection Agency’s Long Term 2 Enhanced Surface Water Treatment Rule (EPA Rule). The Office of Administrative Law approved the proposed rulemaking by a May 22, 2013, Notice of Approval for Regulatory Action (OAL File No. 2013-0415-03 S). Under section 64650, CDPH administered the incorporated EPA Rule requirements.

As described above, on June 20, 2014, Senate Bill 861 (Budget Act of 2014) was approved and filed by the Governor and chaptered by the Secretary of State (Chapter 35, Statutes of 2014). Among other things, SB 861 transferred the authority to administer requirements of the incorporated EPA Rule from CDPH to the State Water Board. A review of the EPA Rule changes incorporated by reference shows that there are six instances where “EPA” should have been replaced with “State Board” to reference the correct regulatory agency. These changes concern

requirements for sanitary surveys performed by the State Water Board. The State Water Board proposes to amend section 64650 to refer to the correct regulatory agency via a new section 64650(f)(1)(I) and redesignate subparagraphs accordingly.

Pursuant to California Code of Regulations (CCR), Title 1, section 100, this filing is to amend the following sections of CCR, Title 22.

- Amend section 64426.8 – To correct referenced regulatory section to read “64463.7” rather than “64464.7”.
- Amend Section 64481 – To correct referenced regulatory agency and authority to read “U.S. Food and Drug Administration” and “and California law”, respectively, rather than the referenced regulatory agency of “State Board.”
- Amend Section 64558 – To correct referenced regulatory agency to read “Department” (of Water Resources) rather than “State Board” (of Water Resources).
- Amend Section 64650 – To correct referenced regulatory agency to read “State Board” rather than “EPA” and redesignate subparagraphs accordingly.

Documents Relied Upon

- CDPH, 2013. DPH-09-014, Long Term 1 and 2 Enhanced Surface Water Treatment Rules, Regulation Text, pp. 10 through 12, California Department of Public Health, filed 5/22/2013, operative 7/1/2013.
- CDPH, 2017. California Department of Public Health, Food and Drug Branch, Water – Frequently Asked Questions, page last updated 10/10/2017. <https://www.cdph.ca.gov/Programs/CEH/DFDCS/Pages/FDBPrograms/FoodSafetyProgram/WaterFAQs.aspx>.
- SWRCB, 2015. SBDDW-15-01, Drinking Water Title 22 – Section 100, Regulation Text, pp. 100 and 127, State Water Resources Control Board, filed 6/2/2015.
- SWRCB, 2021. SBDDW-20-002, Revised Total Coliform Rule Regulation Text, p. 31, State Water Resources Control Board, filed 5/28/2021.
- USEPA, 2006. “National Primary Drinking Water Regulations: Long Term 2 Enhanced Surface Water Treatment Rule,” 40 CFR 141.700 and 141.723, 71 Fed. Reg. 770 and 785 (January 5, 2006)”.
- USFDA, 2018. Bottled Water/Carbonated Soft Drinks Guidance Documents & Regulatory Information, content current as of: 02/20/2018, <https://www.fda.gov/food/guidance-documents-regulatory-information-topic-food-and-dietary-supplements/bottled-watercarbonated-soft-drinks-guidance-documents-regulatory-information>.