

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

SB 466 (Caballero)
Version: March 24, 2025
Hearing Date: April 29, 2025
Fiscal: Yes
Urgency: No
CK

SUBJECT

Drinking water: hexavalent chromium: civil liability: exemption

DIGEST

This bill provides total immunity to a public water system in a civil case related to hexavalent chromium in drinking water during specified time periods.

EXECUTIVE SUMMARY

Hexavalent chromium, also known as chromium-6, is a form of chromium in its highest oxidation state and is a known carcinogen. It can be found in drinking water, industrial processes, and the environment. While chromium also exists in a less toxic, trivalent form, hexavalent chromium is particularly concerning due to its toxicity and carcinogenic properties. It became more widely infamous because of its central role in the 2000 movie *Erin Brockovich*, based on chromium-6 contamination allegedly caused by PG&E and resulting in a \$333 million settlement.

This bill provides total immunity for water districts with respect to civil claims related to chromium-6 while implementing a State Water Resources Control Board (State Water Board)-approved hexavalent chromium maximum contaminant level (MCL) compliance plan, or during the period between when it has submitted a hexavalent chromium MCL compliance plan for approval to the state board and action on the proposed compliance plan by the State Water Board is pending.

This bill is sponsored by the Coachella Valley Water District and the City of Los Banos. This bill is supported by a number of water districts and cities, including the Palmdale Water District and the City of Chino. It is opposed by the Consumer Attorneys of California. This bill passed out of the Environmental Quality Committee on a vote of 8 to 0.

PROPOSED CHANGES TO THE LAW

Existing federal law:

- 1) Establishes the Safe Drinking Water Act (SDWA) of 1974 that does the following:
 - a) Regulates the nation's public drinking water supply.
 - b) Requires the United States Environmental Protection Agency (EPA) to set national health-based standards for drinking water.
 - c) Authorizes states to apply for primary enforcement authority to implement SDWA within their jurisdictions, if they can show that they will adopt standards at least as stringent as the EPA's and ensure compliance.
 - d) Authorizes citizens to enforce compliance with any requirement prescribed by or under SDWA. (42 U.S.C. § 300f et seq.)

Existing state law:

- 2) Establishes the California Safe Drinking Water Act of 1996, which:
 - a) Requires the Office of Environmental Health Hazard Assessment (OEHHA) to perform risk assessments and adopt public health goals (PHGs) for contaminants in drinking water based exclusively on public health considerations.
 - b) Requires the State Water Board, Division of Drinking Water (Division), formerly within the Department of Public Health (DPH), to establish, regulate and enforce primary drinking water standards.
 - c) Authorizes the Division to issue citations for the failure to comply with a requirement of the California Safe Drinking Water Act or any regulation, standard, permit, or order issued thereunder. That citation often contains a specific directive for required corrective action.
 - d) Requires the state to adopt a primary drinking water standard for chromium-6 by January 1, 2004. (Health & Saf. Code §§ 116365, 116365.5, 116271, 116275.)
- 3) Provides, pursuant to State Water Board regulations, the MCL for chromium-6. (C.C.R. § 64431.)
- 4) Provides that every person is responsible, not only for the result of their willful acts, but also for an injury occasioned to another by the person's want of ordinary care or skill in the management of their property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon themselves. (Civ. Code § 1714(a).)

This bill:

- 1) Provides that, notwithstanding the compliance deadlines for achieving the primary drinking water standard for hexavalent chromium, a public water system shall not be held liable in any civil action related to hexavalent chromium in drinking water while implementing a State Water Board-approved hexavalent chromium MCL compliance plan, or during the period between when it has submitted a hexavalent chromium MCL compliance plan for approval to the State Water Board and action on the proposed compliance plan by the Board is pending.
- 2) Provides that nothing therein affects the authority of the State Water Board to enforce the primary drinking water standard for hexavalent chromium.

COMMENTS

1. Civil liability and immunity

As a general rule, California law provides that persons are responsible, not only for the result of their willful acts, but also for an injury occasioned to another by their want of ordinary care or skill in the management of their property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon themselves. (Civ. Code § 1714(a).) Liability has the primary effect of ensuring that some measure of recourse exists for those persons injured by the negligent or willful acts of others; the risk of that liability has the primary effect of ensuring parties act reasonably to avoid harm to those to whom they owe a duty.

Conversely, immunity from liability disincentivizes careful planning and acting on the part of individuals and entities. When one enjoys immunity from civil liability, they are relieved of the responsibility to act with due regard and an appropriate level of care in the conduct of their activities. Immunity provisions are also disfavored because they, by their nature, preclude parties from recovering when they are injured, and force injured parties to absorb losses for which they are not responsible. Liability acts not only to allow a victim to be made whole, but to encourage appropriate compliance with legal requirements.

2. Providing immunity to local water systems

According to the State Water Board:

Hexavalent chromium 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 (OEHHA,

2011). Hexavalent chromium is among the chemicals known to the state to cause cancer [Title 27, California Code of Regulations, Section 27001], pursuant to California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65").

The hexavalent chromium MCL is 0.010 mg/L or 10 µg/L []. The State Water Board is required to set MCLs "as close as feasible to the corresponding public health goal [PHG] placing primary emphasis on the protection of public health," to the extent that it is technologically and economically feasible [Health & Safety Code § 116365(a)]. The PHG for hexavalent chromium (0.02 µg/L) was established in 2011. The rulemaking to establish the hexavalent chromium MCL is effective on October 1, 2024.¹

The Senate Environmental Quality Committee analysis of this bill provides a brief history of chromium-6 regulation in California:

The national drinking water standard for chromium is only established for total chromium, which includes both chromium-3 and chromium-6, and is currently 100 parts per billion (ppb). California is the only state to adopt a more stringent standard than the national standard, and only for chromium-6.

Prior to a recent rulemaking, the state MCL for chromium-6 was 50 ppb. In 2014, the Department of Public Health, the administering agency of the drinking water program at the time, established an MCL of 10 ppb for chromium-6. The Sacramento Superior Court overturned this ruling in 2017 on the grounds that DPH failed to properly comply with the SDWA requirement to consider economic feasibility of water systems to meet this MCL. In 2020, the State Water Board published an economic feasibility analysis for the chromium-6 MCL to meet the SDWA requirement. Then on July 1, 2024, the MCL originally sought to be established in 2014, was adopted.

Public water systems with 10,000 service connections or more will be required to begin compliance monitoring on July 1, 2026, two years after the adoption of this new MCL. This means that water systems will test their waters quarterly, and annually average their results to determine whether the levels of chromium-6 meet the 10 ppb MCL. Water systems with fewer service connections are provided an additional year or two to

¹ *Hexavalent Chromium (Chromium-6)*, State Water Board, https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/Chromium6.html. All internet citations are current as of April 21, 2025.

comply, depending on the number of connections. The sponsors have indicated that there are currently 129 water systems of various sizes experiencing concentrations of chromium-6 that exceed the state-mandated 10 ppb MCL.

If the monitoring results demonstrate that the levels of chromium-6 exceed the MCL, then water systems must submit a compliance plan to the State Water Board within 90 days. Compliance plans must include statements regarding how the water system will comply with the state-mandated MCL, proposed treatment methods, proposed timelines for any construction required to implement the treatment method, and an anticipated submission date if applicable. Any amendments water systems make to their compliance plans are subject to review and approval of the State Water Board (California Code of Regulations, Title 22 § 64432). It is unclear what enforcement mechanisms would be used by the State Water Board to enforce these compliance plans.

The SDWA, along with other relevant predicate statutes, allows for private parties to enforce violations of the applicable laws, including for exceeding MCLs. Given these laws protect against toxins in our drinking water, strong enforcement is seen as a necessary tool to ensure violators, and even lax regulators, can be held to account. “Citizen suits may be brought against any person or agency allegedly in violation of SDWA requirements or against the EPA Administrator for alleged failure to perform any action or duty that is not discretionary.”²

The author and sponsors assert that this third-party litigation could overwhelm the resources of public water systems, even without fault: “While water systems may well be able to assert valid defenses in court to third party suits for failure to comply with the CR-6 MCL, the lawsuits would still require water systems to expend significant ratepayer funds to establish and litigate their defenses.”

This bill responds to this fear by providing total immunity from civil liability in actions against these water systems related to hexavalent chromium in drinking water while the systems are implementing a state board-approved hexavalent chromium MCL compliance plan, or during the period between when it has submitted a hexavalent chromium MCL compliance plan for approval to the state water board and action on the proposed compliance plan by the state board is pending. 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

² Elena H. Humphreys, *Safe Drinking Water Act (SDWA): A Summary of the Act and Its Major Requirements* (July 1, 2021) Congressional Research Service, <https://www.congress.gov/crs-product/RL31243>.

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.

As stated above, immunity from liability tends to strip incentives to act with reasonable care by taking away the consequence of having to pay for any damages caused by doing otherwise. Although the author indicates the intent is to only provide this liability shield to water systems “acting in good faith,” there is no clear requirement in the bill to so limit the provided immunity. Rather, a water system could potentially engage in intentional misconduct related to chromium-6 in the water supply, and still take advantage of the immunity. As stated, this immunity is limited to the period during which the system is implementing a compliance plan, but it does not explicitly require actual compliance with that plan to be afforded the protection. In addition, the immunity applies before the State Water Board even approves the plan.

The bill does make clear that it shall not affect the State Water Board’s authority to enforce the drinking water standard. In response to concerns raised, the author agreed to amendments in the Senate Environmental Quality Committee, to be taken in this Committee, that make clear the enforcement authority of the Board is in no way impacted by this bill, and does not block suit by it. However, the language could still be read to prevent other public prosecutors and entities from bringing relevant actions where necessary.

Writing in opposition, the Consumer Attorneys of California argues:

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. The plain language of the bill states:

“...a public water system shall not be held liable in any civil action related to hexavalent chromium in drinking water while implementing a state board-approved hexavalent chromium maximum contaminant level (MCL) compliance plan, or during the period between when it has submitted a hexavalent chromium MCL compliance plan for approval to the state board and action on the proposed compliance plan by the state board is pending.”

This language does not require compliance, reasonable acts or even good faith. CAOC has always opposed "government standards" defenses and are unaware of any current statute that provides this type of broad immunity simply because a government regulation is pending.

Hexavalent chromium has been recognized as a carcinogen by ingestion (in drinking water) for over two decades. The U.S. Environmental Protection Agency (EPA) and California's Office of Environmental Health Hazard Assessment (OEHHA) classify Cr6 as a probable or known human carcinogen when ingested. In 2000, the case of Hinkley, California, gained national attention through the Erin Brockovich lawsuit, highlighting the potential cancer risk of Cr6 in drinking water. This triggered renewed public and scientific scrutiny of ingestion exposure. . . .

California has historically honored this dual-enforcement structure. Even SB 385 (2015), which allowed extensions of compliance deadlines for hexavalent chromium, did not shield water systems from civil liability. **Yet, SB 466 would do just that— blocking any legal remedy for victims, regardless of the extent of their injuries, so long as the public water system has submitted a compliance plan or is in the process of implementing one.**

To mitigate some of the concerns regarding the breadth of this immunity, the author has agreed to further amendments that make clear the immunity only applies to suits brought by individuals and non-public entities and a clear requirement that the public water system must be in compliance with its Board-approved plan to benefit from the immunity provided:

Amendments

116341. (a) Notwithstanding the compliance deadlines for achieving the primary drinking water standard for hexavalent chromium, a public water system shall not be held liable in any civil action **brought by an individual or entity that is not a governmental agency** related to hexavalent chromium in drinking water while implementing, **and in compliance with,** a state board-approved hexavalent chromium maximum contaminant level (MCL) compliance plan, or during the period between when it has submitted a hexavalent chromium MCL compliance plan for approval to the state board and action on the proposed compliance plan by the state board is pending.

(b) Nothing in this section shall affect the authority of the state board to enforce **any applicable laws or regulations regarding hexavalent chromium.**

The Coachella Valley Water District, a sponsor of the bill, states:

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 \$500 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 the 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.

Writing in support, the Indio Water Authority states:

Water providers do not seek relief from enforcement by the State Water Board (SWRCB) for exceeding the Cr-6 MCL. They do however have great concern about potential litigation following public notice of Cr-6 MCL exceedance.

SB 466 does not permanently shield a water agency from any harm caused and does not affect the State Water Board's enforcement authority. This legal protection would only apply for a limited period when a water provider submits a Cr-6 MCL Compliance Plan and remains in full compliance with the plan that is approved or waiting for approval from the SWRCB.

SUPPORT

City of Los Banos (sponsor)
Coachella Valley Water District (sponsor)
Bighorn Desert View Water Agency
City of Chino
City of Kerman
City of Patterson
City of Sacramento Department of Utilities
City of Vacaville, Department of Public Works
City of Coachella
Community Water Systems Alliance
City of Daly City
Grassland Water District
Indio Water Authority
Joshua Basin Water District

Las Virgenes - Triunfo Joint Powers Authority
Mesa Water District
Myoma Dunes Mutual Water Co.
Palmdale Water District
Quartz Hill Water District
San Joaquin River Club
Soquel Creek Water District
Twentynine Palms Water District
Watsonville Department of Public Works

OPPOSITION

Consumer Attorneys of California

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: SB 1065 (Padilla, 2024) would have authorized the State Water Board to grant an extension for a public water system to achieve compliance with the primary drinking water standard for hexavalent chromium, as provided, including where the water system acted in good faith in attempting to meet the applicable timeline. SB 1065 would have provided that a water system is not in violation of the primary drinking water standard for chromium-6 while implementing a compliance plan approved by the state board. SB 1065 died in the Senate Environmental Quality Committee.

PRIOR VOTES:

Senate Environmental Quality Committee (Ayes 8, Noes 0)
