

December 5, 2022

Dr. Mary Bassett
Commissioner
New York State Department of Health
Corning Tower, Empire State Plaza
Albany, NY 12237

Re: Public Comment from Clean Water Advocates Regarding NYS DOH's Proposed Regulations on Toxic PFAS in Drinking Water

Dear Commissioner Bassett,

We appreciate the opportunity to submit comments on the New York State Department of Health's ("DOH" or the "Department") proposed regulations to establish Maximum Contaminant Levels ("MCLs") and Notification Levels ("NLs") for twenty-three per- and polyfluoroalkyl substances ("PFAS") in drinking water. PFAS pose one of the greatest threats to drinking water and public health in New York. Bold action is needed to get these toxic chemicals out of our water and notify the public about any risks to their health.

Unfortunately, the proposed regulations are simply not adequate to protect New Yorkers' health. The proposed MCLs and NLs are not in line with the latest science, and in some instances are weaker than what states like Massachusetts, Maine, Rhode Island, and Michigan have established or are preparing to establish. They would cede New York's status as a national leader on PFAS at a time when our leadership is more important than ever.

We urge you to establish PFAS standards at the lowest level technologically feasible and protective of human health based on the best available science, and regulate this dangerous group of chemicals as a class. Specifically, we urge you to:

1. Lower New York's perfluorooctanoic acid ("PFOA") and perfluorooctane sulfonate ("PFOS") MCLs of 10 ppt each. Set MCLs as close to 2 ppt as technologically feasible, and no higher than 4 ppt;
2. Lower the proposed MCLs of 10 ppt each for perfluorohexane sulfonate ("PFHxS"), perfluoroheptanoic acid ("PFHpA"), perfluorononanoic acid ("PFNA"), and perfluorodecanoic acid ("PFDA"). Based on their similarities to PFOA and PFOS, set MCLs as close to 2 ppt as technologically feasible, and no higher than 4 ppt;
3. Establish an MCL for GenX, rather than an NL as proposed. Set the MCL at the lowest technologically feasible level, and no higher than 10 ppt;
4. Lower the proposed combined PFAS MCL of 30 ppt. Set the most stringent combined MCL in the nation, for the 7 PFAS listed above, lower than 20 ppt and at the lowest technologically feasible level for any of the 7 PFAS;
5. Lower the proposed combined NLs of 30 ppt for 6 PFAS and 100 ppt for 13 PFAS. Set a single combined NL lower than 20 ppt and at the lowest technologically feasible level for any of the 19 PFAS;
6. Review the above PFAS standards at least once every 3 years. As detection capabilities for PFAS improve, DOH should lower these standards towards 0 ppt. DOH should also invest resources into furthering advancements in detection technology; and

7. Strengthen proposed testing and notification requirements for MCLs and NLs, to ensure Public Water Systems (“PWSs”) conduct swift, regular, and comprehensive monitoring and that New Yorkers are directly notified about exceedances.

PFAS are a class of bioaccumulative, persistent, and toxic chemicals. Exposure to PFAS has been linked to liver disease, immune system damage, kidney and testicular cancer, and other harmful illnesses. We have seen the damage these chemicals have caused in Hoosick Falls, Newburgh, Long Island, and many other parts of our state.

In June, the U.S. Environmental Protection Agency (“EPA”) released new Health Advisory Levels (“HALs”) for two PFAS, PFOA and PFOS, declaring that there is essentially no safe level of exposure to those chemicals. Instead of acting on this groundbreaking determination and the most up to date scientific evidence, DOH failed to propose lowering New York’s current MCLs for PFOA and PFOS, which are hundreds of times higher than EPA’s advisories, and did not strengthen newly-proposed standards for other, similar PFAS.

Without stronger standards, there are likely over a million New Yorkers currently exposed to dangerous levels of PFAS who will not have their drinking water cleaned up. Their health will continue to be put at risk when they turn on the tap.

We are also concerned by DOH’s proposal to, for the first time, implement the Emerging Contaminant Monitoring Act (“ECMA”), which will establish important precedents for future testing of toxic chemicals. Under the proposal, PWSs could take as long as three years to collect a single sample that would determine whether their drinking water exceeds the NLs. New Yorkers have already waited years for this testing; they should not have to wait any longer to learn if there are concerning levels of PFAS in their water.

In addition, DOH’s proposal would, in certain circumstances, allow PWSs to bury NL exceedances in lengthy, technical Annual Water Quality Reports (“AWQRs”). An NL exceedance is a serious issue. Whenever it occurs, PWSs should be required to send a separate letter in the mail to every one of their customers. That is how other potential threats to our drinking water are treated – PFAS should be no different. We urge DOH to remove this loophole and be fully transparent with the public about what’s in their water.

On November 4, New Yorkers voted overwhelmingly in favor of the \$4.2 billion Clean Water, Clean Air, and Green Jobs Environmental Bond Act. A year ago, voters approved adding a right to clean water, clean air, and a healthful environment to our state’s constitution by even greater margins. A vast, bipartisan majority of New Yorkers, from Long Island to Buffalo, have consistently declared that they want stronger environmental protections, not weaker ones. We urge you to listen to these New Yorkers, as well as PFAS-impacted communities and scientists across the nation, and enact the most health-protective PFAS standards.

New York has more funding than ever to enact stronger protections against PFAS, with hundreds of millions in grants available through the Clean Water Infrastructure Act (“CWIA”), federal Bipartisan Infrastructure Law, and Environmental Bond Act to help PWSs install treatment technology. It may be a long time before our state has access to such a confluence of resources again. We urge you to seize the opportunity presented by these historic investments to eliminate PFAS pollution and keep drinking

water affordable for all. New tools to hold polluters accountable will also help ensure that they, and not the public, pay the costs of contamination.

Once enacted, these regulations will likely be in place for years or decades to come. It is imperative that you set the strongest possible standards now and prevent New Yorkers' continued exposure to these "forever chemicals." As New York will be the first state to regulate many of these PFAS, DOH's standards will set a powerful precedent for how other states and the federal government should protect the public from these toxic chemicals.

Every New Yorker deserves clean drinking water. It is both technologically feasible and morally imperative to strengthen the proposed PFAS standards in your final regulations and ensure dangerous contamination is eliminated. Thank you for your consideration of these comments.

Sincerely,

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