

August 14, 2023

Hon. Kathy Hochul  
Governor of New York State  
NY State Capitol  
Albany, NY 12224

Dr. James McDonald  
Commissioner of the NYS Department of Health  
Corning Tower, Empire State Plaza  
Albany NY, 12210

Dear Governor Hochul and Commissioner McDonald,

We write to commend you and the NYS Department of Health (DOH) for proposing a [bold and nation-leading plan](#) to notify New Yorkers about toxic PFAS in their water at the most recent meeting of the NYS Drinking Water Quality Council (the Council). We fully support establishing Notification Levels for PFAS chemicals at their EPA-designated Minimum Reporting Levels. Millions of New Yorkers will be informed about their exposure to contamination when they turn on the tap.

The effectiveness and success of this proposal will greatly depend on the details of its implementation. The Council asked DOH to provide additional information on the frequency of testing, the content of notifications, and more at the next Council meeting. DOH must get these details right; otherwise, New Yorkers will not be accurately informed about the extent of their PFAS exposure and populations like renters will remain in the dark about what's in their water. We urge DOH to make this water transparency initiative as robust and health-protective as possible by:

1. Establishing Notification Levels of 4 ppt each for PFOA and PFOS;
2. Accurately informing New Yorkers about the health effects of PFAS, including the risks of exposure to a mix of PFAS;
3. Requiring frequent and comprehensive testing. Water utilities should test at least quarterly for a year, and testing should occur at both the entry point to the distribution system and each water source; and
4. Requiring water utilities to mail notices to everyone served by their system, including renters, and to notify the media and local community institutions.

In addition, we urge you to publicly support stronger cleanup standards, including Maximum Contaminant Levels, for PFAS. Testing and notification are essential first steps, but given the dangers that these chemicals pose to human health, detected contamination must be eliminated as soon as possible. We appreciated DOH's recent [comments](#) that once EPA finalizes their proposed federal cleanup standards on 6 PFAS, you would consider adopting those standards with a faster effective date here in New York. We strongly urge you to do so.

## **1. Establish Notification Levels of 4 ppt each for PFOA and PFOS.**

DOH proposed Notification Levels for 23 PFAS chemicals, but PFOA and PFOS, two of the most frequently-detected PFAS in New York, were left off the list. In 2020, DOH established Maximum Contaminant Levels (MCLs) for PFOA and PFOS which require all water utilities to test for these chemicals. If a utility detects more than 10 parts per trillion (ppt) of either PFOA or PFOS, they are required to directly notify their customers as well as take corrective action to reduce the public's exposure.

The US Environmental Protection Agency (EPA), however, has determined that exposure to PFOA or PFOS below 10 ppt poses a threat to human health. EPA concluded that there is no safe level of PFOA or PFOS and has proposed federal MCLs of 4 ppt each for these chemicals in drinking water.<sup>1</sup>

Under DOH's proposal, if a New Yorker has between 4 and 10 ppt of PFOA or PFOS in their water, their water utility will not be required to directly inform them about that dangerous contamination. We have identified over 1 million New Yorkers who have more than 4 ppt of PFOA or PFOS in their water living in places like [Long Island](#), Peekskill, South Glens Falls, and others. These New Yorkers should not have to wait until EPA finalizes their proposed PFOA and PFOS MCLs to know that these cancer-causing chemicals are in their water.

Without establishing Notification Levels for PFOA and PFOS, the notices that New Yorkers receive about other PFAS in their water will be woefully incomplete. For example, a New Yorker may receive a letter in the mail about the 3 ppt of PFHxS and the 4 ppt of PFNA in their water, but that letter would not be required to include the 8 ppt of PFOA and the 9 ppt of PFOS that the water utility also detected. DOH must correct this and establish Notification Levels no higher than 4 ppt for PFOA and PFOS; public notices must give New Yorkers as complete a picture as possible about their PFAS exposure.

## **2. Accurately inform New Yorkers about the health effects of PFAS, including the risks of exposure to a mix of PFAS.**

The language that DOH requires utilities to include in notices is incredibly important. In these notices, DOH should communicate that it has determined that the class of PFAS chemicals poses a risk to human health, and that DOH has decided to take a precautionary approach and notify New Yorkers about their exposure to PFAS whenever these chemicals are reliably detected. This is especially important given that for some PFAS, there is no safe level of exposure.

The above is how DOH should describe what a Notification Level exceedance means; DOH must avoid making blanket statements, unsupported by science, that PFAS Notification Level

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<sup>1</sup> 4 ppt is EPA's Minimum Reporting Level for PFOA and PFOS, the lowest level that EPA has determined the vast majority of laboratories can reliably detect.

exceedances do not pose any risk to human health. This would mislead New Yorkers about the [wealth of science](#) that has identified harmful health effects associated with almost every PFAS covered by a Notification Level.

The following information should be included in every PFAS notice. Some of this information is derived from a PFOA MCL exceedance [notification](#) used by Livingston Township, NJ:

- A section on what PFAS are and the health risks of exposure.
  - PFAS are a class of over [12,000](#) chemicals that share similar properties and characteristics, including extreme persistence in the environment, the potential to build up in the human body, and links to similar harmful health effects.
  - PFAS have been used in a wide array of manufacturing processes and consumer products, including non-stick pans, food packaging, clothing, carpets, and firefighting foam. Industry continues to use many PFAS today, despite knowing the health risks posed by these chemicals.
  - Because PFAS are linked to similar harmful health effects, exposure to multiple PFAS at the same time increases the risk to your health. It is important to know the total level of PFAS you are exposed to.
  - PFAS have been linked to a long list of harmful health effects, including cancer; effects on the liver, immune system, thyroid, and on developing fetuses; increases in cholesterol, triglycerides and uric acid; and reproductive and development abnormalities.
  - Certain populations are especially sensitive to PFAS exposure, including infants, pregnant people, and the immunocompromised.
- A section on Notification Levels, including the specific level of each PFAS that exceeded a Notification Level.
- A section on what the water utility and DOH are doing to respond to the identified contamination, including proactive measures that will be taken to reduce the public's exposure.
- A section that provides practical advice for residents, including: information on home water treatment devices; that anyone concerned about their health should consult with their personal healthcare provider; and that boiling water will not remove PFAS.
- A section with links to additional resources that expand on the information provided in the notice, including further state and federal documents about the health effects of PFAS.

In addition, wherever water utilities exceed a Notification Level for one of the 6 PFAS that EPA has proposed regulating at the federal level, the notice should include whether or not the water utility exceeds EPA's proposed federal standard. The notice should also include that EPA has determined that there is no safe level of exposure to PFOA or PFOS. Finally, the notice should make clear that EPA's decision to regulate 6 PFAS does not mean that those are the only PFAS that pose risks to human health and drinking water.

**3. Require frequent and comprehensive testing. Water utilities should test at least quarterly for a year, and testing should occur at both the entry point to the distribution system and each water source.**

In its initial regulatory proposal back in September, DOH proposed requiring water utilities to conduct only a single test for the PFAS covered by Notification Levels. This single test was to occur at the entry point to the utility's distribution system (EPDS). If the result exceeded a Notification Level, the utility was required to test annually thereafter.

This previously proposed testing schedule is not sufficient to accurately gauge PFAS contamination in New York's water. Unfortunately, PFAS contamination of our environment is ongoing, and given the high mobility of these chemicals in water, it is possible that a utility that detects low levels of PFAS after one test may detect higher PFAS levels later that year. A one-time test won't capture increasing levels of contamination. It is also common for there to be fluctuations in PFAS pollution levels, depending on the source of contamination, seasonal changes in water flow, and other factors.

DOH should require quarterly PFAS testing for at least one year, with further testing requirements based on the level of contamination detected. This is how DOH regulates other new contaminants in drinking water, including how it regulated PFOA and PFOS. Quarterly PFAS test results would aid DOH in deciding whether these chemicals need further regulations through MCLs. MCL violations are calculated by averaging multiple testing results; having a suite of PFAS testing data from each water utility will help DOH identify which systems are most likely to exceed an enforceable cleanup standard.

Finally, where testing occurs is just as important as how frequently it occurs. Some utilities use multiple drinking water wells, or a mix of surface water and groundwater sources. Pinpointing which sources are contaminated by PFAS are critical for treatment and cleanup efforts. DOH has required previous testing for PFOA and PFOS to occur at each water source. In addition, testing at the EPDS provides valuable information about PFAS levels in the finished and treated water flowing directly to customer's taps.

We urge DOH to require testing at both the EPDS as well as at each water source, with an exceedance occurring whenever any of these tests detect PFAS above DOH's Notification Levels. DOH can make funding available through New York's multi-billion dollar Clean Water Infrastructure Act to help small and disadvantaged water utilities who may be in need of assistance with testing costs.

**4. Require water utilities to mail notices to everyone served by their system, including renters, and to notify the media and local community institutions.**

New Yorkers who drink water every single day in their community have a right to know if they are being exposed to toxic chemicals. Currently, however, water utilities are only required to mail notifications about water quality to bill-paying customers. Since many

renters in New York do not directly pay a water bill, they are often kept in the dark about what's in their water. DOH should require water utilities to mail notices about PFAS Notification Level exceedances to all dwellings/households in their service area, inclusive of bill-paying customers and renters.

Water utilities may argue that their databases only contain addresses for billed customers, and that they are logistically unable to reach renters through direct mailings. However, a significant number of water utilities, which serve the vast majority of New Yorkers, are owned and operated by local governments who have access to address information for the dwellings/households under their jurisdiction. It should be feasible for water utilities to work with their respective local governments to access property address information where they deliver drinking water, without any personal information or privacy being compromised.

In addition, DOH should require water utilities to provide notices of Notification Level exceedances to local print, television, and online media. Media notification is a standard procedure after other drinking water standard exceedances; Notification Level exceedances should be treated no differently. Water utilities should also be required to distribute notices to local community institutions like local libraries and recreation centers as well as local leaders like mayors, city councils, and others.

Finally, we strongly urge DOH not to allow water utilities to solely notify the public about Notification Level exceedances through their Annual Water Quality Report (AWQR). In its initial regulatory proposal back in September, DOH proposed that utilities could satisfy public notification requirements by including information about Notification Level exceedances in their AWQR, if the AWQR was provided to customers within 90 days of the determination of an exceedance. This provided utilities a loophole to avoid sending a separate notice to their customers about elevated levels of PFAS in their drinking water.

No other public notice issued for any other drinking water standard exceedance is allowed to be included in an AWQR rather than separately provided to customers. A Notification Level exceedance is a serious issue; burying it in a lengthy, technical AWQR conveys the opposite to the public. Such a policy would not align with the intent of New York's Emerging Contaminant Monitoring Act, which established the concept of Notification Levels. We urge DOH not to re-propose this loophole.

## **Conclusion**

DOH's latest proposal to tackle our state's PFAS crisis is a landmark for water transparency. If adopted, it would be the most comprehensive notification program for these toxic "forever chemicals" in the nation. No other state is considering regulating so many PFAS at such health-protective levels in drinking water.

These will be the first Notification Levels that New York establishes for any contaminant, which will set a precedent for addressing additional unregulated pollutants in our water. We

hope that DOH will adopt the recommendations we have made, and we look forward to working with you to ensure that every New Yorker knows what's in their water.

Sincerely,

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