May 31, 2024

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 urge you to continue taking nation-leading action to protect New Yorkers' drinking water from toxic PFAS chemicals. Now that the US Environmental Protection Agency (EPA) has finalized historic new regulations to get these forever chemicals out of our water, we ask that you put forward a plan at the next meeting of the NYS Drinking Water Quality Council (DWQC) to build on EPA's announcement and provide even more safeguards for New Yorkers' health.

In April, EPA established the first-ever federal limits on PFAS in drinking water, a monumental action that will lead to cleaner water for an estimated 100 million Americans. These new protections would not have been possible without the advocacy of countless PFAS-impacted communities and the leadership of New York and other states in setting state-level PFAS drinking water limits years before, proving that these policies are feasible and necessary.

Now New York must continue leading the way on guaranteeing every New Yorker toxic-free water when they turn on the tap. Given New York's head start in addressing PFAS in drinking water, we urge you to establish protections against more PFAS on a faster timetable than EPA. Specifically, we ask that you:

1. Implement EPA's Maximum Contaminant Levels (MCLs) on 5 PFAS chemicals (PFOA, PFOS, PFNA, PFHxS, and GenX) and Hazard Index (HI) on 4 PFAS chemicals (PFNA, PFHxS, GenX, and PFBS) no later than two years from now rather than five years, ensuring that New Yorkers are provided cleaner water more quickly.

2. Establish additional PFAS MCLs and add these PFAS to the HI, given the well-researched dangers of PFAS chemicals not included in EPA's regulations. Set enforceable limits on at least PFHpA and PFDA at levels no higher than 10 ppt.

3. Implement the PFAS notification plan recommended by DWQC last November, ensuring that New Yorkers are informed anytime PFAS are detected in their water.

4. Do not weaken current NYS Department of Health (DOH) procedures for determining PFAS MCL exceedances, which have worked well for four years. DOH has the legal authority to retain stronger procedures when determining exceedances than EPA.

More information on each of these requests can be found in the technical addendum attached to this letter. Now that EPA has concluded that there is no safe level of exposure to at least some PFAS, it is more urgent than ever to keep New Yorkers, especially our most vulnerable populations, safe from these forever chemicals. We look forward to working with you so that regulations are proposed as soon as possible to keep us moving towards a PFAS-free New York.

Sincerely,

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Newburgh Clean Water Project

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Tracy Frisch
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Clean Air Action Network of Glens Falls

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Congregational Secretary
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Technical Addendum

1. Implement EPA's Maximum Contaminant Levels (MCLs) on 5 PFAS chemicals (PFOA, PFOS, PFNA, PFHxS, and GenX) and Hazard Index (HI) on 4 PFAS chemicals (PFNA, PFHxS, GenX, and PFBS) no later than two years from now rather than five years, ensuring that New Yorkers are provided cleaner water more quickly.

We fully support the suite of PFAS protections that EPA finalized in April. EPA determined that there is no safe level of exposure to PFOA and PFOS and set Maximum Contaminant Level Goals (MCLGs) of 0 parts per trillion (ppt) each. EPA then set individual MCLs for PFOA and PFOS of 4 ppt each, the lowest level at which EPA believes these MCLs can currently be feasibly set. EPA also finalized both MCLs and MCLGs for PFNA, PFHxS, and GenX at 10 ppt each. Finally, EPA established a Hazard Index composed of 4 PFAS (PFNA, PFHxS, GenX, and PFBS), in recognition that multiple PFAS can be present in drinking water and that cumulative exposure can lead to increased health risks.

There is no time to waste in getting PFAS out of our drinking water. Millions of New Yorkers, served by an estimated 300 water utilities, are currently exposed to PFOA and PFOS at levels above 4 ppt but below the state's current 10 ppt MCLs. The longer that these New Yorkers are exposed to this toxic contamination, the greater their risk of developing harmful illnesses. EPA has conservatively estimated that the health benefits of their MCLs and HI amount to $1.5 billion annually. Every year that New Yorkers are exposed to PFAS when they turn on the tap is another year that they will be burdened with avoidable costs to their health.

Unfortunately, EPA is providing water utilities an unusually lengthy amount of time to come into compliance with their PFAS MCLs and HI. Water utilities are given three years to conduct a year's worth of initial PFAS testing. After those three years, water utilities will begin providing public notification for any monitoring violations. EPA's MCLs and HI will only come into effect after five years; water utilities will only have to notify their customers of an MCL or HI exceedance in April 2029, if they have not installed new treatment technology or found a new water source to address high PFAS levels by that time.

This extended timeframe for implementation is simply unnecessary here in New York, given that water utilities and DOH have been implementing and complying with our current PFOA and PFOS MCLs for nearly four years. Water utilities are familiar with how to conduct PFAS sampling, which laboratories to use, and how to communicate with their customers about PFAS, either through their Annual Water Quality Reports or separate notifications. DOH is also familiar with collecting statewide testing data, addressing MCL exceedances and violations, and working with over 250 water utilities to design and bring online new treatment technology or identify a new water source.

Moreover, there is precedent for making PFAS MCLs effective immediately upon enactment. DOH took this approach when they established PFOA and PFOS MCLs in August 2020. Under those regulations, DOH required all water utilities to begin testing for PFAS within 6 months, with water utilities reporting any MCL exceedances detected to customers and embarking on a process to return to compliance. The only exceptions were for water utilities that had pre-approved deferrals from DOH and had been proactive in identifying high PFAS levels in their drinking water, but even these utilities were still required to notify their customers regularly and develop a timetable to reduce their contamination.

We urge you to establish the fastest timeframe in the nation for implementing EPA's MCLs and HI, making them effective no later than April 2026 rather than April 2029. This provides DOH more than enough time to propose and finalize new regulations adopting these drinking water standards, and provides plenty of notice to water utilities that they should begin preparations now to identify the labor, materials, and funding needed to address a likely MCL or HI exceedance.

Fortunately, you can make additional funding available to help water utilities accelerate getting PFAS out of drinking water and ensure that a faster implementation is a success. New York has already been a leader in providing grants to water utilities to address PFAS and 1,4-dioxane MCL exceedances, with over $400 million in Water Infrastructure Improvement Act funding jump-starting more than 100 projects across the state. With the inclusion of an additional $500 million in Clean Water Infrastructure Act funding in this year's

state budget, bringing New York's total investment in the program to a historic $5.5 billion, you can provide additional WIIA grants to ensure that needed clean water upgrades are affordable for water utilities and ratepayers.

2. Establish additional PFAS MCLs and add these PFAS to the HI, given the well-researched dangers of PFAS chemicals not included in EPA's regulations. Set enforceable limits on at least PFHpA and PFDA at levels no higher than 10 ppt.

While EPA finalized drinking water limits on 6 PFAS chemicals, there are close to two dozen additional PFAS chemicals that can be detected in drinking water via EPA-approved methods. Most of these PFAS have been investigated for harmful health effects, as can be identified in the PFAS-Tox Database. It is critical to set additional PFAS MCLs and incorporate those PFAS into the HI where the scientific evidence demonstrates a risk to public health from exposure.

Specifically, we urge you to set MCLs for at least PFHpA and PFDA no higher than 10 ppt and incorporate them into the HI, to ensure that remediation occurs wherever these two PFAS chemicals are found at dangerous concentrations. You had previously proposed establishing MCLs of 10 ppt for PFHpA and PFDA in October 2022, given their similar characteristics to PFOA and PFOS. These MCLs would match the health-protectiveness of the 10 ppt MCLs and MCLGs that EPA set for PFNA, PFHxS, and GenX, and incorporation into the HI would be simple as well, given that the HI is designed to easily add chemicals to its calculation of cumulative exposure.

As the science on PFAS continues to evolve, it will be important to regularly review and update these PFAS regulations and continue moving New York towards a class-based approach to protecting drinking water and public health from these toxic chemicals.

3. Implement the PFAS notification plan recommended by DWQC last November, ensuring that New Yorkers are informed anytime PFAS are detected in their water.

In November 2023, DWQC recommended that DOH establish 23 PFAS chemicals as "emerging contaminants." This landmark recommendation will produce New York's first list of emerging contaminants since the adoption of the Emerging Contaminant Monitoring Act in 2017. Under DWQC's plan, water utilities will be required to regularly test for 23 PFAS chemicals and mail a notice to their customers anytime any of the PFAS are detected above their Method Detection Limit (usually around or below 1 ppt). The notices will inform landlords that they are required to share the information with tenants within 10 days.

This PFAS notification plan is complementary to EPA's PFAS MCLs and HI, and will be the most comprehensive effort by any state in the nation to raise awareness about the ubiquity of PFAS in drinking water. All New Yorkers have a right to know what's in their water.

We urge you to implement DWQC's PFAS notification plan simultaneously with new PFAS MCLs and the HI, as part of the same rulemaking package. It will be simpler and more efficient for water utilities to conduct monitoring that allows them to comply with the full suite of PFAS Notification Levels, MCLs, and HI.

In addition, we recommend requiring water utilities to include the detection levels of PFAS covered by MCLs or the HI in their emerging contaminant notices, to provide New Yorkers a comprehensive account of the PFAS detected in their drinking water. The notices should include the MCLs and MCLGs set for those PFAS. This would complement, and not replace, notification for MCL and HI exceedances.

Finally, DOH must still determine what the Notification Level communications to customers actually say. We urge you to model language off of the health effects language in EPA's final regulation as well as the recommendations we made in our August 2023 letter to you.

4. Do not weaken current DOH procedures for determining PFAS MCL exceedances, which have worked well for four years. DOH has the legal authority to retain stronger procedures when determining exceedances than EPA.

EPA's method of determining when water utilities exceed PFAS MCLs is weaker than the method DOH has used over the last four years. EPA's method would result in less frequent and less rigorous MCL exceedance reviews, forcing New Yorkers to wait longer to find out if there are concerning levels of PFAS in their water and slowing down the process of remediating the problem. There is also a risk that some MCL exceedances under DOH's method would not be considered exceedances under EPA's method, ultimately depriving New Yorkers in those communities of cleaner water.

Given states' authority to set stronger drinking water protections than the federal government under the Safe Drinking Water Act, we urge you not to weaken New York's current protections against PFAS and retain the following DOH procedures:

a. DOH should continue using sampling data from a single quarter to determine MCL exceedances, rather than requiring a year's worth of quarterly data.

Under EPA's method, water utilities use running annual averages to determine PFAS MCL exceedances. A water utility must collect at least four consecutive quarters of PFAS sampling data and average the results before EPA determines if the utility exceeds the MCLs.

This varies dramatically from DOH's current method, which determines MCL exceedances on the basis of a single quarter's sampling data. Under DOH's method, if a water utility sample is above the MCL, the water utility is required to collect between one and three additional samples within 30 days. If the average of those samples is above the MCL, the water utility must notify the public and begin taking corrective action. This procedure applies to all organic chemicals regulated by DOH, not just PFOA and PFOS.

If you adopt EPA's procedure, New Yorkers would have to wait over nine additional months before learning about harmful levels of PFAS in their water. This delay would also slow the process of water utilities being required to begin installing new treatment technology or identify a new water source.

b. DOH should continue using the Method Detection Limit (MDL) to determine whether or not a sample will be given a quantifiable value during MCL exceedance calculations, rather than only counting samples if they are above EPA's Practical Quantitation Levels (PQLs).

Under EPA's method, only sampling results above EPA's PQLs are given a quantifiable value during MCL exceedance calculations. For example, EPA's PQLs for PFOA and PFOS are 4 ppt each; therefore, a PFOA value of 2.9 ppt and a PFOS value of 3.8 ppt would each be considered as 0 ppt during MCL exceedance calculations.

This again varies dramatically from DOH's current method, where any sample above a laboratory's MDL is included in MCL exceedance calculation. The MDL of most PFAS chemicals is around or below 1 ppt, meaning that a PFOA value of 2.9 ppt and a PFOS value of 3.8 ppt would both be used during MCL exceedance calculations.

If you adopt EPA's procedure, many water utilities may not exceed the PFAS MCLs despite detecting concerning levels of PFAS, leaving New Yorkers exposed to that dangerous contamination. This outcome would be especially alarming for any PFOA and PFOS exposure, given that EPA has determined that there is no safe level of exposure to those two chemicals.

The following scenario, presenting a hypothetical water utility's four quarters worth of PFOA sampling, clarifies how the use of MDLs vs PQLs could determine whether or not New Yorkers receive cleaner drinking water:

- Under DOH's method: (5.3 ppt + **3.7 ppt** + 4.2 ppt + 5.0 ppt) / 4 = 4.6 ppt = **MCL exceedance**

- Under EPA's method: (5.3 ppt + **0 ppt** + 4.2 ppt + 5.0 ppt) / 4 = 3.6 ppt = **NO MCL exceedance**

DOH has already proven that the use of samples above MDLs during MCL exceedance calculations does not sacrifice analytical quality or the integrity of MCL exceedances. DOH's MDL policy applies to all regulated organic chemicals, not just PFOA and PFOS. Importantly, DOH applies its MDL policy even for other organic chemicals whose MCLs are set at EPA's PQLs, including benzo(a)pyrene, di(2-ethylhexyl)phthalate, hexachlorobenzene, and vinyl chloride. Since DOH has shown that sampling results above MDLs can be used without leading to "false" MCL exceedances, we urge you not to change this procedure for PFOA, PFOS, or the other PFAS.