

September 12, 2022

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

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

Dear Governor Hochul and Commissioner Bassett,

We write to urge you to immediately publish draft regulations establishing new and stronger drinking water standards on toxic PFAS chemicals. The NYS Department of Health (DOH) was required by state law to publish such regulations by June 19; DOH has now missed that deadline by almost three months. The longer the delay, the longer that New Yorkers will be exposed to harmful contamination when they turn on the tap.

Based on a groundbreaking new analysis from US EPA, it is imperative that you lower New York's Maximum Contaminant Levels (MCLs) for PFOA and PFOS, as well as strengthen standards on additional PFAS recommended by the NYS Drinking Water Quality Council (the Council) last May. Since the Council's last meeting, EPA's assessments show that there is **no safe level of exposure** to PFOA or PFOS, and that GenX is much more dangerous than previously acknowledged.

New York must bolster its efforts to protect public health from these "forever chemicals." The current PFOA and PFOS MCLs of 10 parts per trillion (ppt), as well as the Council's proposals for new PFAS standards detailed below, are too high to ensure clean water for every New Yorker. **There are at least 440,000 New Yorkers drinking polluted water who would not benefit from the current or currently proposed standards.** There would be no requirements for their dangerous contamination to be cleaned up.

Specifically, we ask that you:

1. Lower New York's MCLs for PFOA and PFOS to the **lowest technologically feasible level**: as close to 2 ppt as possible, and no higher than 4 ppt;
2. Lower the Council's proposed MCLs of 10 ppt each for PFHxS, PFHpA, PFNA, and PFDA. Based on their similarities to PFOA and PFOS, set these MCLs as close to 2 ppt as possible, and no higher than 4 ppt;
3. Establish an MCL for GenX, rather than a notification level as proposed by the Council. Set the MCL as close to 2 ppt as possible, and no higher than 4 ppt;
4. Set the strongest combined MCL for the PFAS listed above in the nation, lower than 20 ppt and at the lowest technologically feasible level for any of the 7 PFAS;
5. Lower the combined notification levels of 30 ppt for six PFAS and 100 ppt for thirteen PFAS proposed by the Council. Set a single combined notification level lower than 20 ppt and at the lowest technologically feasible level for any of the 19 PFAS; and

- Require the department to 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.

You can protect drinking water quality while also ensuring that water is affordable for all. Thanks to billions in funding through the state's Clean Water Infrastructure Act and \$150 million for emerging contaminant testing and treatment through the federal Bipartisan Infrastructure Law, water utilities can access the resources to install treatment technology to remove PFAS without drastically raising rates on their customers. New tools to hold polluters accountable will also help ensure that they, and not the public, pay the costs of contamination.

You have a tremendous opportunity to be the first state to take action based on EPA's new analysis and show the nation that New York continues to be committed to getting PFAS out of our water. Our current drinking water standards set the pace for national action on this issue; it is essential that this leadership continues. As New York will be the first state to regulate many of these PFAS, your standards will set a powerful precedent for how other states and the federal government should protect the public from these toxic chemicals.

Background

On May 2nd, the Council recommended that DOH adopt the following drinking water standards for 23 PFAS chemicals. The Council did not recommend lowering New York's current MCLs for PFOA and PFOS. Under [Section 1112](#), Subdivision 13 of the Public Health Law, DOH was required to promulgate draft regulations establishing these new drinking water standards by June 19; as of the sending of this letter, DOH still has not done so.

Council Recommendation	PFAS Covered
Individual MCLs of 10 ppt	PFNA, PFHxS, PFHpA, PFDA
Combined MCL (level to be determined)	PFOA, PFOS, PFNA, PFHxS, PFHpA, PFDA
Combined Notification Level of 30 ppt	GenX, PFHpS, PFUnA, PFDoA, 9Cl-PF3ONS, 11Cl-PF3OUdS
Combined Notification Level of 100 ppt	PFBA, PFBS, PFPeA, PFPeS, PFHxA, ADONA, 4:2FTS, 6:2FTS, 8:2FTS, NFDHA, PFEESA, PFMPA, PFMBA

All community water systems and non-transient non-community water systems, regardless of size, are required to test for contaminants with an MCL or notification level. If a water system violates an MCL, the system is required to directly notify their customers and take corrective action to reduce exposure, often through installing treatment technology. Notification levels only require water systems to directly notify their customers if violated; as New York determines whether to set MCLs for contaminants with notification levels, delivering a letter in the mail to customers about what's in their water is a proactive way to ensure communities are fully informed of any risks to public health and can take immediate action on their own to restore clean water.

On June 15, a month after the Council's meeting, EPA [released](#) new Health Advisory Levels (HALs) for 4 PFAS. HALs are non-enforceable guidelines for how much of a chemical in drinking water is

safe. EPA proposed a HAL of 0.004 ppt for PFOA, 0.02 ppt for PFOS, 10 ppt for GenX, and 2,000 ppt for PFBS. EPA's PFOA and PFOS HALs closely mirror California's non-enforceable Public Health Goals of 0.007 ppt for PFOA and 1 ppt for PFOS, first [published](#) in July 2021.

The Need for Stronger, Health-Based MCLs

This new analysis shows the urgent need to revolutionize how New York regulates PFAS chemicals. EPA's HALs for PFOA and PFOS are over 1,000 times lower than the current federal guidance of 70 ppt, and far below even the level that these chemicals can be reliably quantified in drinking water (2 ppt).

EPA's announcement is especially alarming for communities that have detected PFOA or PFOS in their drinking water but have not exceeded New York's MCLs. **There is now no doubt that these communities are legally exposed to unacceptable levels of PFAS contamination.** Water systems that have detected between 2 and 10 ppt of these chemicals have not been required to directly notify customers about the contamination, and have not been required to clean up their water. Yet the science now clearly shows that their customers face an increased risk of developing illnesses like immune disruption, cancer, liver and cholesterol effects, and more by drinking their water.

Moreover, EPA's science on PFOA and PFOS provides strong support for completely removing other, similar PFAS from drinking water. DOH has stated how toxicologically similar PFHpA, PFHxS, PFNA, and PFDA are to PFOA and PFOS, and that these four PFAS were chosen for MCLs because of those similarities. The Council's proposed MCLs of 10 ppt for each of these four PFAS, the same level as the current PFOA and PFOS MCLs, signal their similar risk potential.

With no acceptable level of exposure to PFOA or PFOS, there is now also no acceptable level of exposure to PFHpA, PFHxS, PFNA, or PFDA. The National Academies of Sciences, Engineering, and Medicine (NASEM) recently released a [report](#) providing further evidence of the dangers of these PFAS at the lowest levels of exposure. According to the report, which included a review of PFHxS, PFNA, and PFDA, patients with blood test results as low as 2 ng/mL may face the potential for adverse effects, especially in sensitive populations.

The Council's proposed MCLs for the 4 PFAS must be revised, just as New York's current MCLs for PFOA and PFOS must be revised. We urge you to utilize the [statutory criteria](#) in the Environmental Conservation Law which was the basis for the setting of Soil Cleanup Objectives for State Superfund and Brownfield sites, such as taking into account sensitive populations and utilizing a one-in-a-million cancer risk.

PFOA, PFOS, PFNA, PFHxS, PFHpA, and PFDA must all be regulated at the lowest possible level. Wherever these PFAS are reliably detected, water systems should be required to eliminate them from drinking water.

An examination of a sample of 2021 Annual Water Quality Reports (AWQRs) reveals that **at least 440,000 New Yorkers are currently drinking polluted water and need stronger PFAS standards.** The following systems did not report a PFOA or PFOS MCL violation on their AWQR, and therefore have not been required to remove their significant PFAS contamination. All of these systems detected PFOA at levels at least 1,000 times higher than EPA's HAL, or detected PFOS at levels at least 100 times higher than EPA's HAL. The following levels are the maximum detected by each water system in 2021, and have been rounded for readability:

Water System	Population Served	PFOA (2021)	PFOS (2021)	Other PFAS Reported (2021)
Village of Ossining (Indian Brook Reservoir)	30,000	7 ppt	3 ppt	PFHpA (2 ppt), PFNA (2 ppt), PFHxA (2 ppt), PFHxS (1 ppt), PFBS (1 ppt)
Peekskill City	24,272	6 ppt	3 ppt	
Newburgh Water District	23,000	4 ppt	4 ppt	
Vestal Water District (Wellfield #4)	20,950	1 ppt	8 ppt	
United Wappinger Water District (Hilltop Wellfield)	14,000	5 ppt	8 ppt	
Mount Kisco Village (Leonard Park Wells)	9,600	5 ppt	2 ppt	PFBS (5 ppt), PFHxA (2 ppt), PFHpA (2 ppt), PFHxS (1 ppt)
Bedford Water District	9,056	3 ppt	4 ppt	PFHxS (6 ppt), PFHxA (2 ppt), PFBS (1 ppt), PFHpA (1 ppt)
Chenango Water District (Applewood Well)	9,000	5 ppt	3 ppt	PFBS (5 ppt), PFHxA (5 ppt), PFHpA (2 ppt)
Croton-on-Hudson Village	8,000	7 ppt	8 ppt	PFBS (8 ppt), PFHxS (5 ppt), PFHxA (2 ppt), PFNA (2 ppt)
South Glens Falls Village	3,900	6 ppt	7 ppt	PFHxA (5 ppt), PFHpA (3 ppt), PFHxS (2 ppt)
Village of Delhi	3,833	5 ppt	5 ppt	
Village of Sidney	3,800	5 ppt	4 ppt	
Brinkerhoff Water District	3,788	9 ppt	9 ppt	
Chester Village	3,448	6 ppt	2 ppt	
Greenwood Lake Village	3,083	6 ppt	7 ppt	
Wolcott Village (Springs Plant)	2,200	Non-Detect	Non-Detect	PFHxS (9 ppt) , PFBS (3 ppt), PFHxA (2 ppt)
Rotterdam Water Districts 3 and 4	1,900	5 ppt	6 ppt	
Town of Warwick Westside Water District	1,700	7 ppt	7 ppt	PFBA (3 ppt), PFBS (3 ppt), PFPeA (2 ppt), PFHxA (2 ppt), PFHxS (2 ppt), PFNA (1 ppt), PFHpA (1 ppt)
Carmel Water District 8	1,600	9 ppt	3 ppt	

It is important to note that the 170,000 New Yorkers served by the above water systems (plus the 270,000 New Yorkers served by Suez/Veolia Company described below, for a total of 440,000) are an underestimate of the New Yorkers exposed to harmful PFAS contamination. It is impossible to review the full suite of 2,500 water system AWQRs to determine their PFAS levels; many of these AWQRs, including systems like Newfield, Fallsburg, Millerton, and Hunter, are not even available online. Moreover, the amount of contamination in the chart is also an underestimate; many of these systems may have detected other PFAS beyond PFOA and PFOS but did not report them, or may not have tested for the full suite of 29 PFAS currently detectable with US EPA methods.

The scale of New Yorkers exposed to dangerous contamination shows the urgent need to strengthen the state's current and currently proposed PFAS standards.

Obligation to Strengthen GenX Standard

You have a statutory obligation to strengthen the Council's proposed standard for GenX (also known as HFPO-DA), which is a PFAS chemical that has been used as a regrettable substitute for PFOA in manufacturing. In May, the Council proposed that GenX be covered by a combined notification level of 30 ppt, along with 5 other PFAS. In June, EPA proposed a GenX HAL of 10 ppt.

If adopted, the Council's proposal would violate [Section 1112](#) of the Public Health Law, Subdivision 6, which requires that any notification level "shall be equal to or lower than any federal lifetime health advisory level." A notification level no higher than 10 ppt therefore must be set.

However, based on the links between GenX exposure and harm to the liver, the kidney, immune system, and more, we urge you to go beyond this minimum requirement and instead set an MCL for GenX, at the same level as the 6 PFAS mentioned above. It is important that New Yorkers receive the same protections from GenX that they receive for the 6 PFAS above.

Detection Capabilities

The lowest level at which nearly all laboratories can report PFOA, PFOS, PFNA, PFHpA, PFHxS, PFDA, and GenX is 2 ppt; some labs can report even lower than 2 ppt. At the last Council [meeting](#), Dr. Patrick Parsons from DOH's Wadsworth Laboratory argued that setting MCLs at the level of detection could lead to an erroneous MCL violation due to errors in the sampling results. If DOH wishes to use this claim as evidence not to establish PFAS MCLs at 2 ppt, we would urge DOH to publicly state the lowest level at which MCLs could be actually set.

There is certainly no doubt that it is feasible to set PFAS MCLs below 10 ppt. Michigan, for example, has for several years enforced an MCL of 6 ppt on PFNA, currently the lowest individual MCL on a PFAS chemical in the nation. Moreover, under DOH regulations, a single sample from a water system exceeding an MCL does not immediately trigger an MCL violation. A water system must collect additional samples, and if the average of those samples still exceeds the MCL, only then does a violation occur. This added precaution significantly reduces the risk that a water system would be forced to unnecessarily install treatment technology.

Ultimately, the Wadsworth presentation did not cast any doubt that 4 ppt, double the reporting limit, was a technologically sound level for an MCL. **We therefore urge you to set individual MCLs for these 7 PFAS as close to 2 ppt as possible, and no higher than 4 ppt.**

A Combined PFAS MCL

The Council recommended that a combined PFAS MCL be adopted, but did not recommend a specific level at which it should be set, leaving that decision up to you. Under a combined MCL, the individual levels of each PFAS covered by the combined MCL are added together to determine if there is an exceedance.

Three Northeastern states have set or are in the process of setting a combined MCL of 20 ppt: Vermont, Massachusetts, and Maine. Vermont's combined MCL covers 5 PFAS (PFOA, PFOS, PFNA, PFHxS, and PFHpA), and Maine and Massachusetts's combined MCLs cover or will cover 6 PFAS (PFOA, PFOS, PFNA, PFHxS, PFHpA, and PFDA), the same six that the Council recommended be covered by a combined MCL in New York.

We urge you to set the most health-protective combined MCL in the nation, below 20 ppt, and at the lowest level technologically feasible for any of the 7 PFAS we recommend for MCLs. In Rockland County, many wells operated by the Suez/Veolia Water Company have detected a total of those 7 PFAS below 20 ppt. None of these wells have exceeded DOH's MCLs of 10 ppt each for PFOA and PFOS, nor would they exceed the proposed MCLs of 10 ppt each for PFNA, PFHxS, PFHpA, and PFDA. Every day that New Yorkers served by these wells continue to be exposed to these toxic chemicals in their water, the greater the risk to their health:

Suez/Veolia Well Number	Combined Level of PFOA, PFOS, PFNA, PFHxS, PFHpA, PFDA, and GenX	Total PFAS
#78	18 ppt (PFOA, PFOS, PFNA, PFHpA)	32 ppt (PFOA, PFOS, PFNA, PFHpA, PFBS, PFHxA)
#97	18 ppt (PFOA, PFOS, PFNA)	20 ppt (PFOA, PFOS, PFNA, PFHxA)
#28	17 ppt (PFOA, PFOS, PFHpA)	24 ppt (PFOA, PFOS, PFHpA, PFHxA, PFBS)
#106	16 ppt (PFOA, PFOS, PFNA, PFHpA)	21 ppt (PFOA, PFOS, PFNA, PFHpA, PFBS, PFHxA)
#66	15 ppt (PFOA, PFOS, PFHpA, PFHxS)	17 ppt (PFOA, PFOS, PFHpA, PFHxS, PFHxA)
#55	13 ppt (PFOA, PFOS, PFHpA)	17 ppt (PFOA, PFOS, PFHpA, PFHxA)

Addressing Short and Long-Term Costs of PFAS

It is important to note that strengthening the proposed MCLs would place additional compliance costs on only a fraction of New York's approximately 2,500 community and non-transient non-community water systems. Even accepting that stronger MCLs would lead to corrective action by more water systems, **New York has the resources at its disposal to ensure that these systems can install treatment without drastically raising rates on their customers.**

Thanks to the federal Bipartisan Infrastructure Law, New York is set to receive approximately \$150 million over the next five years to test and treat emerging contaminants in drinking water, with a

special focus on PFAS. This, plus the historic investment of \$4.5 billion that New York has made in the Clean Water Infrastructure Act over the last several years, ensures that you can establish the most health-protective PFAS MCLs while keeping water affordable for all.

We are pleased that you recently made [\\$225 million](#) in state water infrastructure grants, which can be used to install PFAS removal technology, as well as the first [\\$30 million](#) of Bipartisan Infrastructure Law funds, available to local governments this year. We hope you will continue making state and federal funds available for this important issue, and increase appropriations for water infrastructure improvements in the next state budget and budgets to come.

Along with state and federal grants, EPA is creating new tools to hold polluters accountable for the costs of contamination. EPA recently [proposed](#) designating PFOA and PFOS as hazardous substances, which will allow New York pollution zones to be listed as federal Superfund sites. By unlocking federal resources to conduct cleanup and make polluters pay, EPA's action will reduce the financial burden placed on New York water utilities from PFAS.

Finally, new evidence has demonstrated that the long-term costs of exposure to PFAS vastly outweigh the short-term costs of drinking water cleanup. A study published in the journal *Exposure and Health* in July calculated that the health costs of exposure to PFOA and PFOS alone ranged between [\\$5.5 billion and \\$63 billion a year](#), depending on how many health effects were considered. The study's findings are quite conservative; other PFAS were not evaluated, and a number of health effects linked to PFOA and PFOS were not included in the analysis. These costs provide compelling evidence for the need for New York to adopt the most health-protective standards on these chemicals.

The Need for Stronger, Health-Based Notification Levels

Wherever PFAS are reliably detected in the drinking water, the public deserves to know about it. We are concerned, however, that most New Yorkers exposed to the 19 PFAS to be designated as "emerging contaminants" will not receive a letter in the mail directly informing them that these chemicals are in their water under the standards that the Council has recommended.

The danger that PFAS chemicals pose as a class makes it imperative for you to set a single combined notification level for these 19 PFAS, rather than two combined notification levels. Scientists have [concluded](#) that PFAS must be regulated together due to their key shared characteristics, including high mobility in water, extreme persistence in the environment, bioaccumulation in the human body, and links to similar harmful health effects.

All 19 PFAS that will be designated as emerging contaminants are associated with harmful health outcomes. The [PFAS-Tox Database](#), a searchable literature review of PFAS science created by a groundbreaking research collaborative, has coalesced over a thousand health and toxicological studies of more than two dozen different PFAS. There are hundreds of studies linking exposure to PFAS to health effects covering a wide range of biological systems.

The more we learn about PFAS, the more dangerous we realize they are. With thousands of PFAS being used in industry and present in our environment, it is essential that you adopt the most precautionary approach to the PFAS we can currently detect in drinking water. Many [scientists](#), including national PFAS experts such as Dr. Linda Birnbaum, have [called](#) for the [adoption](#) of the lowest possible standards for all PFAS given the risks posed by the entire class of chemicals. We

therefore urge you to set a single combined notification level for the 19 PFAS lower than 20 ppt and at the lowest technologically feasible level for any of the 19 PFAS.

DOH has justified their high notification levels by claiming that a water system will be required to report these 19 PFAS on its AWQR, and that this will adequately inform customers of what's in their water. They have stated that any PFAS chemical detected through the MCL testing is already required to be listed on the AWQRs.

But a review of a sample of AWQRs reveals significant noncompliance with current reporting requirements. **Many water systems are failing to properly inform the public about the PFAS in their drinking water.** Of approximately 50 AWQRs reviewed, 11 AWQRs demonstrated significant noncompliance, with problems concentrated among medium and small-sized systems:

- The [Town of Glenville](#), [City of Hornell](#), [Village of Brewster](#), and [Village of Voorheesville](#) all failed to report PFOA or PFOS results on their 2021 AWQR; a limited DOH statewide [database](#) of PFAS results confirmed that all 4 systems had PFOA or PFOS detections in 2021.
- The [Village of Warwick](#), [Town of Walkill](#), [Village of Chester](#), [Village of Greenwood Lake](#), and [Village of Maybrook](#) all stated on their 2021 AWQRs that they detected multiple other PFAS besides PFOA and PFOS, but they failed to include which additional PFAS were detected and their respective levels.
- The [Town of Newburgh](#) and [United Wappinger Water District](#) list PFOA and PFOS as “Unregulated Contaminants” in their AWQRs, misinforming customers and giving the false impression that these chemicals are not dangerous enough to warrant formal regulation.

In addition to this concerning lack of transparency, the majority of AWQRs reported only PFOA and PFOS results. It is highly likely those water systems also detected other PFAS but simply failed to report them. It is also difficult to check many AWQRs for compliance since so few, especially from small systems, are posted online. A [database](#) of AWQRs maintained by DOH and DEC only includes reports from systems serving more than 3,300 people.

New Yorkers clearly cannot rely on AWQRs to access basic information about their drinking water. If water systems cannot comply with current PFAS reporting requirements, they will likely fail to comply with requirements to list emerging contaminant results, depriving the public of their right to know what's in their water. Even if PFAS are listed on some AWQRs, New Yorkers should not have to wait months after sampling is conducted to learn the level of contamination they are exposed to.

Direct public notification soon after contamination is detected, followed by online posting and outreach to relevant news media and community institutions, will ensure that water utilities clearly communicate key information to their customers. We therefore urge you to strengthen the Council's notification level proposals for PFAS.

Conclusion

PFAS pose one of the greatest threats to drinking water in New York. As you determine how to address these “forever chemicals,” we hope you will make the protection of public health your highest priority. We look forward to working with you to ensure that when New Yorkers turn on the tap, the water that comes out is safe to drink. Thank you for your consideration of these comments.

Sincerely,

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Elie Ward Director of Policy NYS American Academy of Pediatrics, Chapters 1, 2 & 3	Peter Topping Executive Director & Baykeeper Peconic Baykeeper
Kyle Belokopitsky Executive Director NYS Parent Teacher Association	Adrienne Esposito Executive Director Citizens Campaign for the Environment
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CC:
Basil Seggos, Commissioner, Department of Environmental Conservation
Members of the NYS Drinking Water Quality Council