Dear Commissioner Zucker:

Thank you for giving us the opportunity to comment on New York State’s proposed Amendments to Subpart 5-1 of Title 10 NYCRR to establish Maximum Contaminant Levels (MCLs) for perfluorooctanoic acid (PFOA), perfluorooctanesulfonic acid (PFOS), and 1,4-dioxane.

Environmental Advocates of New York’s mission is to protect our air, land, water, and wildlife, and the health of all New Yorkers. Throughout our 50-year history, we have worked to block threats to clean water and clean air and to prioritize public health and the environment. As part of our work, we have developed collaborative relationships with hundreds of community advocates, grassroots groups, labor representatives, local government officials, and communities impacted by pollution and contamination in Hoosick Falls, Newburgh, Petersburgh, the Finger Lakes region, and on Long Island. Our Clean Water for New York campaign aims to protect New York’s water supplies from source to tap, ultimately ensuring clean and abundant water supplies for all New Yorkers for years to come. This means that we not only promote healthy watersheds and work to protect our source water supplies from harmful bacteria and pollutants, but also that we seek to expand New Yorkers’ understanding of what’s in our drinking water through comprehensive statewide testing of all contaminants.

In December 2018, the New York State Drinking Water Quality Council issued MCL recommendations of 10 parts per trillion (ppt) for PFOA, 10 ppt for PFOS, and 1 part per billion (ppb) for 1,4-dioxane. On July 24, 2019, the NYS Department of Health published Amendments to Subpart 5-1 of Title 10 NYCRR, marking the start of a 60-day public comment period and proposing these NYS Water Quality Council recommendations as MCLs.

Establishing Maximum Contaminant Levels for PFOA, PFOS, and 1,4-dioxane will require all public water systems to test for these chemicals and install treatment technology where
elevated levels of contamination are discovered, which is why we support moving forward in establishing enforceable MCLs in New York State. That said, since this is the first time in two decades that the state is moving to establish MCLs, we believe these regulations need to be the most health protective for all New Yorkers, especially our most vulnerable populations. We also believe the MCLs need to be based on the most recent science on these chemicals, including on new research published in 2019 and based on available detection and treatment technologies.

As the state agency charged with protecting “the health, productivity and wellbeing of all New Yorkers,” the Department of Health’s highest priority must be the protection of public health. With this in mind, we urge you to:

1. **Establish a combined MCL of 2 parts per trillion (ppt) for PFOA and PFOS**

   The danger that PFAS chemicals pose to human health is well-known, and recent studies have shown that they are linked to detrimental health effects such as cancer, hormone disruption, liver and kidney damage, developmental and reproductive harm, and immune system toxicity. Emerging science on PFAS chemicals continues to demonstrate that there is likely no safe level of PFAS exposure. Recent studies recommend a non-enforceable Maximum Contaminant Level Goal (MCLG) of 0 ppt as a guiding principle for these chemicals. To be fully protective of human health, especially of our most vulnerable populations, we strongly recommend establishing the lowest MCLs possible, and we urge New York to embrace a precautionary approach. Based on existing science as well as available detection and treatment technologies, we support a combined MCL of 2 ppt for PFOS and PFOA.

2. **Establish an MCL of 0.30 parts per billion (ppb) for 1,4-dioxane.**

   The US Environmental Protection Agency has determined that 1,4 dioxane is likely carcinogenic to humans, and studies have found that exposure to high levels of 1,4-dioxane can cause liver damage and cancer. The EPA conducted a cancer risk assessment for 1,4-dioxane, which indicated a concentration of 0.35 ppb in drinking water elevates the risk for cancer. Massachusetts has a similar drinking water guidance level of 0.30 ppb. Massachusetts’ level was set at stringent levels to “err on the side of protecting public health.” To err on the side of caution and using this analysis, New York should adopt an MCL of 0.30 parts ppb for 1,4 dioxane.

3. **Create an emerging contaminant monitoring list in accordance with the Emerging Contaminant Monitoring Act of 2017 to ensure comprehensive statewide testing for harmful chemicals.**

   Statewide testing is essential to ensure every New Yorker’s drinking water is protected from dangerous chemicals. Many smaller communities have never been required to test their water for emerging contaminants. The Village of Hoosick Falls, for example, only discovered its water had been contaminated after a resident decided to test the water himself. Recently, several communities in the Finger Lakes have independently tested for PFAS chemicals, and also detected levels of contamination in three communities. To address this problem, the Department of Health was charged by the New York State Legislature in 2017 to create an emerging contaminant monitoring list that would require testing in every New York community, regardless

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of size. This list, however, has still not been published, and we urge the Department of Health to publish an emerging contaminant monitoring list immediately, beginning with the chemicals listed in the US EPA’s Third Unregulated Contaminant Monitoring Rule.

4. **Establish MCLs for other per- and polyfluoroalkyl substances (PFAS) in this growing class of 3,300 to 5,000 chemicals.**

In absence of federal leadership regulating the PFAS class of chemicals, states have rightly begun taking matters in their own hands in a piecemeal approach across the country which has resulted in inequitable protections. While New York is moving towards regulating PFOA and PFOS, several states have gone much further, addressing multiple PFAS chemicals with their proposed regulations: four (New Hampshire), five (Vermont, Connecticut), six (Massachusetts), and seven (Michigan). According to the Natural Resources Defense Council (NRDC), “our review suggests a combined MCL of 2 ppt is feasible for PFOA, PFOS, PFNA, and PFHxS, with a separate MCL of 5 ppt for GenX. Laboratory methods support a reporting limit of 2 ppt with EPA Method 537.1 (5 ppt for GenX), and therefore all water testing should be required to achieve this limit for the PFAS chemicals detectable with this method.” We concur with NRDC’s recommendation and urge the Department of Health to establish a combined MCL of 2 ppt for not only PFOA and PFOS, but also PFNA and PFHxS, and a separate MCL of 5 ppt for GenX, until technology allows for these levels to be lowered further. Addressing only two PFAS chemicals falls short of the leadership we expect and need from New York State.

5. **Reject the phased-in testing schedule outlined in the Notice of Proposed Rulemaking.**

All public water systems should be required to test for PFOA, PFOS and 1,4-dioxane within 60 days of adoption of the regulation. The longer we wait, the greater the chance that New Yorkers are exposed to dangerous levels of toxic contaminants. New Yorkers served by small systems should have the same clean water protections as those provided to New Yorkers served by larger systems, and a more equitable approach is to ensure testing for all public systems, regardless of size, begins within 60 days of the adoption of the final MCLs.

6. **Reject previous tests for PFOA, PFOS, and 1,4-dioxane as the baseline for the new regulations.**

We believe that all public systems need to establish a baseline of data as soon as the final MCLs are adopted, rather than using past data collected, to provide clarity to this process.

7. **Require 24-hour public notification of MCL violations and exceedances for any health advisory levels, Maximum Contaminant Level Goals (MCLG), and any other regulatory guidance.**

Under the Department of Health’s current drinking water program public notification requirements, there are three tiers for public notification. Tier 1 notification requires notification to the Department of Health and the public no later than 24 hours after the system learns of a public health hazard.² Tier 1 requirements should be applied to all water supply operators, county governments, and any contractors and consultants, across the board for regulated contaminants, and should also be applied to any contaminants with state or federal health advisory levels, MCLGs, or other guidance levels. The public deserves prompt notification

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regarding contaminants in their drinking water so they can make informed decisions to protect their health and safety.

Contamination by PFOA, PFOS, and 1,4-dioxane in drinking water supplies has already harmed the lives of too many New Yorkers. We urge the Department of Health to set the toughest standards to prevent future exposure and protect the safety of our drinking water supplies and the health of our residents. To thrive, New York States needs clean water. With a combined MCL of 2 ppt for PFOA and PFOS and an MCL of 0.30 ppb for 1,4-dioxane, the Department of Health will demonstrate that New York is committed to the fullest protection of public health, and ready to lead the nation in safeguarding healthy and vibrant communities.

Thank you for your commitment to ensuring clean water for all New Yorkers.

Sincerely,

Maureen Cunningham
Senior Director for Clean Water
Environmental Advocates of New York

cc: Governor Andrew Cuomo  
Basil Seggos, Commissioner, Department of Environmental Conservation  
Paul Francis, Deputy Secretary for Health  
Dale Bryk, Deputy Secretary for Energy & Environment  
Roger Sokol, Department of Health  
Lloyd Wilson, Department of Health  
Katherine Ceroalo, Department of Health