

November 1, 2021

The Honorable Kathy Hochul
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Re: NYS Drinking Water Quality Council Recommendation

Dear Governor Hochul,

We, the undersigned organizations, write to reaffirm our support for A126A/S1759A and urge you to sign this bill into law as soon as possible. The recent recommendation from the NYS Drinking Water Quality Council (the Council) to expand drinking water testing for emerging contaminants, while encouraging, does not go far enough to inform New Yorkers of what's in their water. Signing A126A/S1759A remains essential to identify harmful pollution and protect the health of the most vulnerable communities across our state.

On October 5, the Council voted to recommend that the NYS Department of Health (DOH) establish seven per- and polyfluoroalkyl substances (PFAS) as emerging contaminants (PFNA, PFHpA, PFHxS, PFHxA, PFPeA, PFBA, and PFBS). We are glad that the Council is recognizing the need to address additional PFAS in drinking water, but it is critical that New York adopt stronger drinking water safeguards than what the Council has proposed. By signing A126A/S1759A, you will ensure that:

1. New Yorkers are directly informed about the full extent of PFAS in their drinking water.
2. All water utilities test for 13 toxic chemicals listed under the US EPA's Third Unregulated Contaminant Monitoring Rule (UCMR 3).
3. A timeline is established for DOH to promulgate regulations and begin testing.
4. DOH reviews and updates the list of emerging contaminants every three years.

Background

"Emerging contaminants" is a term for currently unregulated chemicals that have been linked to harmful health effects and are likely or known to occur in drinking water. Under EPA's UCMR program, large water utilities are required to test for an evolving suite of emerging contaminants every five years. This monitoring provides EPA important information on the scale of pollution across the country and the need for further chemical regulation.

Small water utilities serving fewer than 3,300 people, however, are exempt from EPA's UCMR testing requirement. Before 2018, water utilities serving between 3,300 and 10,000 people were also exempt. Because of this dangerous loophole, residents of the small village of Hoosick Falls were in the dark for years about the toxic chemical PFOA in their drinking water. It took an individual resident testing his own water to discover Hoosick Falls' contamination.

To prevent future water crises from going undetected and to ensure New Yorkers living in big cities and small towns receive the same drinking water protections, New York enacted the Emerging Contaminant Monitoring Act (ECMA) in 2017. The ECMA requires the NYS Department of Health (DOH) to publish its own lists of emerging contaminants that every water utility across the state, regardless of size, is required to test for. DOH is also tasked with setting notification levels so the public is directly informed if elevated levels of emerging contaminants are discovered in their drinking water.

To date, DOH has not yet established a list of emerging contaminants as required by the ECMA. In June, the State Legislature passed A126A/S1759A, which gives DOH a deadline to establish a first list of 40 toxic chemicals, including all currently detectable and unregulated PFAS.

On October 5, the Council voted to recommend that DOH establish seven PFAS as emerging contaminants (PFNA, PFHpA, PFHxS, PFHxA, PFPeA, PFBA, and PFBS), the first time the Council has made such recommendations. However, key improvements to the proposal are needed to protect New Yorkers from emerging contaminants, which can be adopted by signing A126A/S1759A into law.

Importance of Signing A126A/S1759A

1. Importance of Notifying the Public about the Full Extent of PFAS Contamination

DOH has stated that even though the Council recommended only 7 PFAS for emerging contaminant designations, testing will yield results for 25 PFAS. 29 PFAS can currently be detected in drinking water via the use of two EPA-approved testing methods. EPA Method 533 detects 25 PFAS, and EPA Method 537.1 detects the other 4 PFAS (Method 537.1 also detects 14 PFAS included in Method 533).¹

According to DOH, the vast majority of water utilities statewide have already used Method 537.1 to conduct their testing under New York's PFOA and PFOS MCLs.² Since water utilities must use Method 533 to detect the 7 PFAS identified by the Council, DOH has argued that the Council's proposal will give New York a comprehensive picture of PFAS across the state.

However, under the Council's proposal, the public will not be directly notified about the full extent of PFAS pollution they are exposed to, even though their water utilities will generate and possess that data. In either of the two scenarios below, the public will remain in the dark:

1. If none of the 7 PFAS recommended as emerging contaminants exceed their established notification levels, New Yorkers would not receive a public notification about PFAS in their drinking water, even if other PFAS were detected.

¹ US EPA, "EPA PFAS Drinking Water Laboratory Methods," <https://www.epa.gov/pfas/epa-pfas-drinking-water-laboratory-methods>.

² NYS Drinking Water Quality Council meeting, October 2021, <https://totalwebcasting.com/view/?func=VIEW&id=nysdoh&date=2021-10-05&seq=1>.

For example, a city might detect one PFAS designated as an emerging contaminant (PFNA) but four other PFAS without that designation (PFUnA, PFHpS, PFTA and PFDoA). If PFNA did not exceed its established notification level, the city would not have to notify residents about any of the PFAS in its drinking water, even though the total PFAS present would be significant.

2. If one or more of the 7 PFAS recommended as emerging contaminants exceed their established notification levels, utilities would not be required to list any other PFAS detected in their notice to customers.³

For example, if a city exceeded the notification level for PFHxS, but also detected PFDA and PFPeS at dangerous levels, the village would only have to alert residents to the health risks of PFNA in their water.

It is essential to notify the public about all of the PFAS in their drinking water. Scientists have concluded that PFAS should not be regulated individually, but rather as a class of chemicals due to key shared characteristics.⁴ Many PFAS that have been studied are highly mobile in water, extremely persistent in the environment, bioaccumulative in human bodies, and linked to similar toxic health effects. PFAS exposure is associated with cancer, hormone disruption, liver and kidney damage, developmental and reproductive harm, changes in serum lipid levels, immune system toxicity, and other serious illnesses.⁵

Importantly, scientific studies have concluded that exposure to almost every currently-detectable PFAS is associated with harmful health outcomes. The *PFAS-Tox Database*, a searchable literature review of PFAS science created by a groundbreaking research collaborative, has documented the toxic health effects of 24 different PFAS (Figure 1).⁶ For several PFAS that the Council declined to include in their emerging contaminant recommendations (such as PFDA, PFUnA, and PFDoA), there are hundreds of studies linking exposure to adverse effects on almost every major biological system.

³ Water utilities rarely directly notify customers of contaminants unless required to by DOH. For example, Suez Water in Rockland County has detected 8 unique PFAS in its water, yet its letter to customers informing them of Suez's PFOA MCL exceedance only mentions PFOA.

⁴ Kwiatkowski, C.F., et al., "Scientific Basis for Managing PFAS as a Chemical Class." *Environ Sci Technol Lett*, 2020. <https://pubs.acs.org/doi/10.1021/acs.estlett.0c00255>

⁵ Reade and Pelch, "Technical Comments Re Advance Notice on the Regulation of Perfluoroalkyl, Polyfluoroalkyl Substances (PFAS) as a Class," November 2020, <https://www.nrdc.org/sites/default/files/pfas-class-technical-comments-20201116.pdf>.

⁶ PFAS-Tox Database, <https://pfastoxdatabase.org/>.

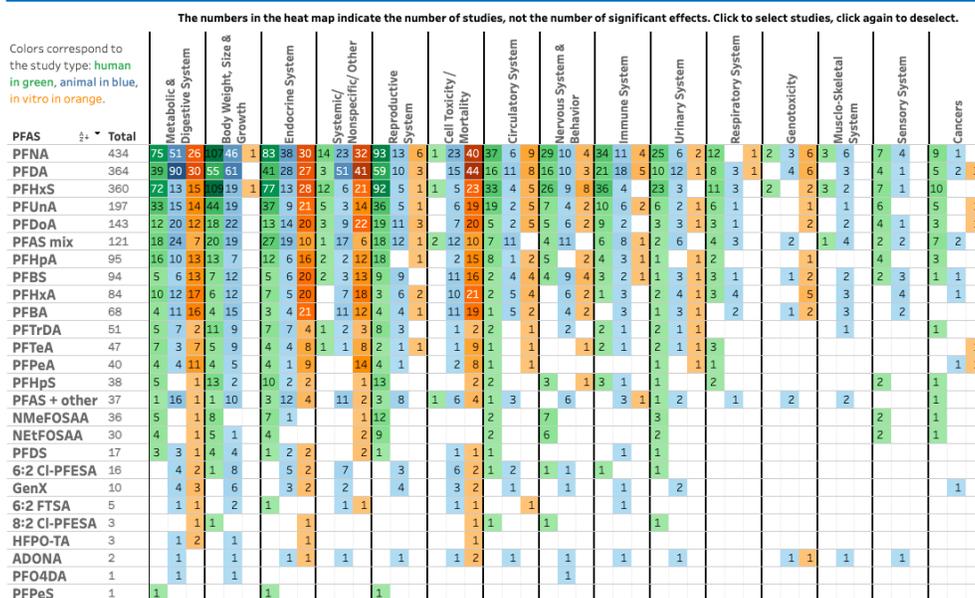


Figure 1

From the testing that water utilities have conducted under New York’s PFOA and PFOS MCLs, we know that almost every currently-detectable PFAS has been found at some point in New York’s drinking water. According to DOH, water utilities have cumulatively detected 24 PFAS compounds (including PFOA and PFOS).⁷ The public has rarely been informed of detections of PFAS other than PFOA and PFOS.

The solution to the lack of PFAS public notification in the Council’s proposal is clear: designating all 27 currently unregulated PFAS in New York as emerging contaminants. Signing A126A/S1759A will guarantee the adoption of this critical policy.

Developing notification levels for 27 PFAS is not a barrier to designating them as emerging contaminants. Industry may argue that there is not enough data to determine at what level each individual PFAS poses a risk to human health. However, as demonstrated above, we know enough about the dangers of almost every currently-detectable PFAS to justify notifying the public about them. It will take decades for a scientific body of evidence to develop around each individual PFAS, and we simply cannot wait that long before telling the public what’s in their water. It is of the utmost importance for DOH to take a precautionary approach to these “forever chemicals” and to address them as a group.

It is especially important for the public to know the full extent of PFAS in their drinking water because exposure to multiple PFAS may have additive or synergistic effects, due to their similar chemical structures and targeting of the same organs or biological processes. The *PFAS-Tox*

⁷ It is very possible that the 5 PFAS yet undetected in New York (ADONA, NFDHA, PFEESA, PFMBA, and PFMPA) are also found in our drinking water; 10% of water utilities have yet to submit their MCL compliance samples to DOH, and 4 of the 5 undetected PFAS can only be found using Method 533, which few water utilities have used so far.

Database includes 121 studies that have identified harmful health effects after exposure to a mixture of PFAS (“PFAS-mix” in Figure 1). Yet DOH and the Council have never discussed the potential toxicological implications of exposure to many PFAS at the same time. In light of this possibility, DOH must enact the most stringent protections against both “long-chain” and “short-chain” PFAS, despite the shorter half-lives of the latter.

The PFAS that have been studied extensively point to the need for DOH to establish the lowest possible notification levels for all PFAS. The more that we learn about these chemicals, the more apparent it becomes how dangerous they are. There is no known safe level of PFAS in drinking water, and many scientists have argued for a class-based Maximum Contaminant Level Goal (MCLG) of 0 ppt for total PFAS.⁸ Vermont has set MCLGs of 0 ppt for the five PFAS it regulates in drinking water (PFOA, PFOS, PFNA, PFHpA, and PFHxS).⁹ California recently proposed Public Health Goals of 0.007 ppt for PFOA and 1 ppt for PFOS.¹⁰

*Given that nearly all currently-detectable PFAS have been linked to harmful health effects, and that certain PFAS are toxic at even low levels of exposure, New Yorkers deserve to know whenever any PFAS are in their drinking water. DOH should establish a notification level for each PFAS at its reporting limit (lowest quantifiable level), between 2 ppt and 5 ppt.*¹¹

DOH has argued that the Council is “prioritizing” 7 PFAS for testing and notification based on their relatively higher frequency of occurrence and levels detected across the state compared to other PFAS. But DOH has so far collected data from only a fraction of water utilities (those with PFOA and/or PFOS detections), few if any of which have tested for all currently-detectable PFAS. Just because a certain PFAS was detected infrequently in this sample of water utilities does not mean that it is not present at dangerous levels in other water utilities. And as stated above, detections of PFAS at any level are cause for concern. The total amount of PFAS in a New Yorker’s drinking water is an essential metric to evaluate the risk to that person’s health.

DOH may also argue that even without emerging contaminant designations and established notification levels for most PFAS in drinking water, agency staff will still receive analytical results from water utilities’ testing and could intervene to inform the public if PFAS not included in the Council’s proposal were detected. But this would be an inadequate and unsustainable approach; indeed, the Governor and State Legislature enacted the ECMA because they recognized the need to create *legal requirements* for when the public must be told about emerging contaminants in their drinking water. Residents of Hoosick Falls remained in the dark

⁸ Vermont Agency of Natural Resources, “Environmental Protection Rules: Water Supply Rule,” page 44, <https://dec.vermont.gov/sites/dec/files/dwgwp/DW/Water-Supply-Rule-March-17-2020.pdf>.

⁹ Reade, Quinn, and Schreiber, “Scientific and Policy Assessment for Addressing Per- and Polyfluoroalkyl Substances (PFAS) in Drinking Water,” 2019, https://www.nrdc.org/sites/default/files/media-uploads/nrdc_pfas_report.pdf.

¹⁰ California Environmental Protection Agency, “Public Health Goals: Perfluorooctanoic Acid and Perfluorooctane Sulfonic Acid in Drinking Water,” July 2021, <https://oehha.ca.gov/media/downloads/cnr/pfoapfosphgdraft061021.pdf>.

¹¹ Water utilities should also be required to include their recent PFOA and PFOS results in these notifications, as well as the sum total of PFAS in their water (designated as “total PFAS”).

about their PFOA contamination because DOH was not required to inform the public about it. New York cannot allow that scenario to potentially repeat itself with other PFAS.

Fortunately, water utilities will face almost no additional cost if New York designates all 27 currently-unregulated PFAS as emerging contaminants. As stated above, by conducting just one test (EPA Method 533), water utilities will receive results for 25 PFAS, including the 7 identified by the Council (two of the 25 PFAS are PFOA and PFOS). The cost of reporting and notifying the public about additional PFAS is minimal, and the cost of conducting a second test, Method 537.1, to detect the remaining 4 currently-unregulated PFAS is just a few hundred dollars.¹² In addition, the ECMA authorizes DOH to promulgate regulations making grant funding available for very small water utilities that may need financial assistance. DOH can utilize portions of the \$4 billion that the State Legislature has invested in the Clean Water Infrastructure Act since 2017 for this purpose.

To conclude, over the last several years, New York has acknowledged the danger posed by all PFAS and enacted laws to phase these “forever chemicals” out of firefighting foam and food packaging. If PFAS pose a danger in our products, they pose a danger in our drinking water, and the public deserves to know about it. Signing A126A/S1759A will ensure that New York implements the most comprehensive monitoring and notification program for PFAS of any state in the nation. Our state should seize this opportunity to show national clean water leadership.

2. Importance of Statewide Testing for UCMR 3 Contaminants

PFAS are not the only emerging contaminants posing a threat to human health. There are hundreds, if not thousands, of other unregulated contaminants of concern entering our drinking water, some of which have been identified through EPA’s UCMR lists. UCMR 3, which large water utilities tested for between 2013 and 2015, included several especially dangerous contaminants, like strontium, vanadium, and molybdenum.¹³

One of the purposes of the ECMA is to ensure that New Yorkers served by small water utilities and large water utilities receive the same drinking water protections. Yet approximately 2.5 million New Yorkers, served by approximately 2,000 water utilities, don’t know if they are being exposed to UCMR 3 contaminants that could make them sick. Water utilities serving fewer than 10,000 people have never been required to test for these contaminants.

A126A/S1759A will ensure statewide testing for the 13 UCMR 3 contaminants that have been detected by at least one large water utility in New York. As with the PFAS testing described above, the costs of testing for these UCMR 3 contaminants are minimal. For the five tests that

¹² Michigan Department of Environment, Great Lakes, and Energy, “Laboratory Testing: Frequently Asked Questions,” https://www.michigan.gov/pfasresponse/0,9038,7-365-86704_90691---,00.html.

¹³ The results of New York’s UCMR 3 testing and the health risks associated with these contaminants can be found in the following report: NYPIRG, “What’s in My Water? Emerging Contaminants in New York’s Drinking water Systems,” 2019, https://www.nypirg.org/pubs/201905/Whats_in_my_water_2019.pdf.

water utilities would conduct, costs range from \$50 and \$470 per sample, per testing method.¹⁴ A wealth of scientific information also exists to aid DOH in establishing notification levels.¹⁵

New Yorkers living in big cities have benefitted from knowing whether these UCMR 3 contaminants are in their drinking water. Now it is time to extend that same certainty to residents of small towns across the state.

3. Importance of Establishing a Timeline to Begin Testing

New Yorkers have been waiting for emerging contaminant testing for years, ever since the Cuomo administration promised to close the UCMR testing loophole in 2016.¹⁶ Despite the enactment of the ECMA in 2017, DOH has yet to establish a first list of emerging contaminants as required by the law. Nor has the Council fulfilled its statutory obligation to annually recommend emerging contaminants for testing to DOH.¹⁷ In fact, this past Council meeting was the first time the Council had made such a recommendation.¹⁸

After so many years of delay, communities impacted by toxic chemicals need certainty that testing for additional emerging contaminants will commence as soon as possible. Unfortunately, DOH has not announced a date for the next Council meeting when notification level recommendations are expected to be discussed, nor has DOH publicly stated when they will begin a rulemaking process to formally establish a list of emerging contaminants.

A126A/S1759A will require DOH to publish draft regulations containing the first list of emerging contaminants within ninety days after the bill becomes law, and will require DOH to produce final regulations ninety days thereafter. Signing this legislation will assure New Yorkers that their drinking water will be tested for these harmful contaminants next year.

4. Importance of Regular Review and Updates of Emerging Contaminants

Under the ECMA, water utilities are required to test for emerging contaminants listed by DOH at least once every three years.¹⁹ The current statute, however, does not specifically require DOH to update the list in this same timeframe. A126A/S1759A makes clear that DOH must add new contaminants to the list at least once every three years.

¹⁴ US EPA, "UCMR 3 Factsheet," May 2012, https://www.epa.gov/sites/default/files/2015-10/documents/ucmr3_factsheet_general.pdf.

¹⁵ EANY et al., "Frequently Asked Questions: A126-A/S1759-A," November 2021, <https://drive.google.com/file/d/1U3ZtvSN0jBk7K5jsB8pSRvPy5sN5OH57/view?usp=sharing>.

¹⁶ NYS DOH and DEC, "Letter to US EPA Administrator Gina McCarthy," September 2016, https://www.health.ny.gov/press/releases/2016/docs/ucmr_letter.pdf.

¹⁷ NYS Public Health Law, Article 11, Title 1, Section 1113, "Drinking Water Quality Council established," <https://www.nysenate.gov/legislation/laws/PBH/1113>.

¹⁸ The Council's 2018 recommendations for PFOA and PFOS MCLs were important, but should have complemented, not replaced, annual emerging contaminant recommendations.

¹⁹ NYS Public Health Law, Article 11, Title 1, Section 1112, Paragraph 4, <https://www.nysenate.gov/legislation/laws/PBH/1112>.

We believe the intent of the ECMA was for DOH to update the list with each cycle of testing by water utilities, so that New York regularly expands its knowledge of new emerging contaminants in the state's drinking water. Lawmakers clearly intended for DOH to be responsive to the latest science in keeping the list current and relevant; for example, the ECMA requires DOH to review the list at least once every three years and determine if any Maximum Contaminant Levels should be established.²⁰ Moreover, requiring DOH to regularly update its list would ensure that the Council's annual emerging contaminant recommendations are considered on a routine basis.

Regular updates to the list would have the additional benefit of ensuring that water utilities do not expend resources retesting for chemicals that do not warrant continued monitoring. Should DOH believe that continued monitoring is appropriate for a given contaminant, it can simply retain its listing on subsequent emerging contaminant lists.

Signing A126A/S1759A will ensure that New York continues to be proactive in addressing the numerous other emerging contaminants threatening the safety of our drinking water.

Conclusion

Under your leadership, our state has an exciting opportunity to enact rigorous and proactive policies to safeguard human health and inform the public about what's in their water. By signing A126A/S1759A, you will ensure that New York establishes the strongest drinking water protections against emerging contaminants in the nation. We look forward to working with you on this critical issue. Thank you for your consideration of these comments.

Sincerely,

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²⁰ NYS Public Health Law, Article 11, Title 1, Section 1112, Paragraph 12, <https://www.nysenate.gov/legislation/laws/PBH/1112>.

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