Kevin Durk, Chairman
Suffolk County Water Authority
260 Motor Parkway
Hauppauge, New York 11788
Email:
kdurk@scwa.com

tel. 631.563.0259
fax 631.563.0357

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Ms. Katherine Ceroalo
New York State Department of Health
Bureau of House Council
Regulatory Affairs Unit- Room 2438
ESP Tower Building
Albany, NY 12237

Sent Via Email: regsqna@health.ny.gov

Re.: **Proposed Rule Making, Public Water Systems**
Maximum Contaminant Levels (four additional per- and polyfluoroalkyl substances (PFAS)
I.D. No. HLT-40-22-00002-P

Dear Ms. Ceroalo:

On behalf of the Long Island Water Conference (LIWC), an association of public water supply professionals in Nassau and Suffolk Counties in NY, I am pleased to present our comments on the referenced proposed Amendments to the NY State Sanitary Code.

Our member suppliers have a long history of responsiveness in meeting the increasing needs for comprehensive water supply monitoring, research, and groundwater protection programs. We have worked cooperatively with our regional regulatory agencies to provide monitoring and oversight that dramatically exceeds federal EPA requirements. Aggressive monitoring is necessary and desirable in protecting public health. We have also worked with regional regulatory agencies in water supply and water resource management studies and supported the integration of local regulations which combine discharge controls, and the storage of hazardous substances into an advanced source water protection system.

Our comments are significantly aligned with those of the Regulatory Review Committee of the Water Utility Council of the NY Section of the American Water Works Association, as reflected in their recent comment letter to you. We will repeat and expand somewhat further.

1. **Part 5-1.51(q)** indicates that public water supplies (PWS) need only perform public notification on the proposed MCLs until January 1, 2025. It is unclear whether this infers a “grace period” or deferment of enforcement to allow PWS time to install treatment to remove sources from production. We ask that this be clarified in the rulemaking package. Clarity is important to both regulated public water suppliers and to the Local Health Officers in the counties enforcing Part 5 on your behalf. Insofar as public notification within 30 days of the MCL exceedance appears to be required within 30 days of the event, we are unclear as to how this will be presented in the notification itself.

2. **Part 5-1.52 Table 3:**

    a. We note the significance of PFAS6 as the first "Contaminant Group" regulation that NYSDOH has established since the 1989 definitions of POC and UOC contaminants. Since PFAS contaminants number in the thousands and health effects information is limited, we are concerned about how NYSDOH will develop meaningful health effects language for these compounds as the science remains limited. It would appear that the validity of this "group" approach may be expanded much beyond the six listed compounds, given Minimum Reporting Limits which currently range from 1.9 to 2 ppt, or 2.2 to 4 ppt in UCMR5 for the six PFAS currently in this proposed group regulation.

    b. The PFAS6 MCL violation confirmation method differs from all other Organic chemicals in the table. PFAS6 specifically says *each* confirmation sample must be positive. Other MCL determinations say if *any* confirmation sample is positive. This wording could lead to a great deal of confusion for both PWS operators, as well as local health department (LHD) staff. If the MCL determination is meant to be different than all other organic compounds, the wording should be improved to be clearer.

3. **Part 5-1.52 Table 3B:** Footnote 4 creates a separate Emerging Contaminant notification level for GenX of 10 ppt. This could easily be overlooked by PWS or LHD staff. We suggest including this in the Table itself with a separate entry.

4. **5-1.52 Table 9E:** We share our appreciation with the Water Utility Council and Regulatory Review Committee for the efforts made by NYSDOH to ensure PWS can utilize data from USEPA's Fifth Unregulated Contaminant Monitoring Rule (UCMR5) to satisfy monitoring for Emerging Contaminants. However, we do note that the Public Health Law (PHL) does not direct a continued monitoring requirement for Emerging Contaminants, and, in fact, was open to the Commissioner removing contaminants from an EC list. If the intent of the PHL amendment was in part to inform the Department regarding contaminant occurrence in the establishment of a future MCL, there should be a mechanism for sun setting or eliminating the continuing monitoring requirement, particularly in those cases that new health effects information or an EPA Lifetime Health Advisory Level warrant it.

    We also believe that, in permitting UCMR5 sample data to be used to comply with the new Table 9E monitoring, that the State should clarify that the note in Table 9E to indicate that the minimum reporting limits specified in UCMR5 would be acceptable for Table 9E compliance.

5. **5-1.78 (f):**

    a. We believe the requirements around *who* is to be notified in this section is unnecessarily complex and confusing. This section refers to notifying three potentially completely different populations: "owners of real property", "all persons served by the water system" and "each customer receiving a bill". The use of three separate terms creates and potential disagreement over what constitutes completing public notification requirements, which is the core goal of the Emerging Contaminants Regulation. The ambiguity this creates is not helpful to PWS trying to comply with the regulation, nor is it protective of public health. In many cases, owners of real property, or even bill payers are not consumers of the water. Public Notification Requirements should be simple and clear, targeting the population that uses the water being served. We suggest the language in the Rule be simplified to require PWS to distribute public notification to all addresses with a service connection to the PWS, and at locations where consumers of the water can reasonably be expected to have access to the information.

    b. We respectfully request clarification of the language in the subsection (2) reference to "violations" to make it clearer that the only violations that can exist in EC monitoring would be failure to notify in the event of an exceedance of a notification level, or failure to use an approve analytical method to monitor designated EC's

6. **5-1.102 (b):** This section of the Rule as published grants the Commissioner broad authority to regulate any contaminant unilaterally. As written, we believe that this section goes well beyond the intent and language of the enabling legislation that directed creation of this monitoring program and created the initial Emerging Contaminants list. As citizens of New York State, NYSAWWA membership has concerns that granting this authority to one individual (agency) will have the effect of circumventing systems already put into place to ensure Regulations are implemented in a fair and equitable manner. As written, this section provides the Commissioner the ability to bypass the legislative process, the traditional rule making process required by all State Agencies, and the due process afforded to consideration of new regulations by the NYS Drinking Water Quality Council.

7. **5-1.102 (c):** As written, this section of the Rule grants the Commissioner authority to "*take such actions as may be appropriate to reduce exposure to emerging contaminants"* based on the "*best available scientific information".* This language provides unchecked authority to "regulate by decree", circumventing the regulatory development process. This is particularly concerning since there is no agreed upon definition of "best available scientific information". The use of language such as this sits in stark contrast to the proven regulatory rule making process that was based on sound science that considered the balance of public health benefit and economic impact. We recommend this language be modified to require the Commissioner to direct studies and further research on contaminants of concern and to use the result of such studies to work with the Drinking Water Quality Council to develop regulatory actions that are beneficial to public health, and economically sustainable.

8. **Regulatory Impact Statement:**
    a. We believe the estimates of cost and the number of samples is inadequate. Basing the impact on an average of 1.7 entry points per PWS fails to adequately produce a meaningful estimate of range of cost and minimizes lab capacity issues.
    b. We are concerned that the analysis of lab capacity fails to consider the requirements for initial and Continued Monitoring of PFAS6. In addition, the analysis inadequately considers the impacts of UCMR5 sampling and PFAS monitoring requirements in other states, as well as other non-potable water samples such as remediation and investigations occurring nearly nationwide. EPA has indicated that a final list of UCMR5-approved laboratories will be forthcoming towards the end of this year, and the state's analysis might be more meaningful after its issuance.

Thank you for the consideration of these comments and concerns.

Sincerely,

Kevin Durk

Kevin Durk
Chairman
Long Island Water Conference