NEW YORK STATE OF OPPORTUNITY. | Department of Environmental Conservation | Department of Health

August 30, 2016

Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator McCarthy,

We write as Commissioners working to address the water quality situation in Hoosick Falls. While we always try to work in partnership with the federal government, the Environmental Protection Agency's (EPA) role in the Hoosick Falls situation was certainly not helpful, and was, at times, counterproductive. As you know, perfluorooctanoic acid (PFOA) is an unregulated contaminant, although the EPA has known of its existence in drinking water for more than a decade.

The statements and guidance from the EPA's regional office inexplicably differed from town to town in New York – not to mention from state to state. To further compound this confusion, the guidance from the EPA's regional office differed from the EPA's headquarters. In the span of several months, the EPA took no less than three different positions regarding PFOA. This lack of clear direction and, in fact, differing direction caused our agencies great hardship in responding to the situation in Hoosick Falls and more importantly, caused great public concern, frustration, and anxiety.

Our agencies responded immediately and aggressively to address any health concerns, as well as the public anxiety the situation generated. We believe the EPA's handling of this matter aggravated the situation, causing undue expense to our agencies, and the EPA should reimburse the state for the extraordinary costs incurred due to the EPA's mishandling. We estimate that cost to be almost $25 million to date to our taxpayers, with at least $50 million in costs over the coming years. To review the specifics of the situation, please be advised as follows.

The impact of industrial pollution on drinking water is emerging as one of the defining issues in our time. Of the roughly 85,000 unregulated contaminants, the EPA has regulated fewer than 100, leaving state and local officials to address these emerging contaminants in drinking water with little or no federal guidance.

The Hoosick Falls situation effectively commenced in 2014 when the state became aware. The state immediately followed the EPA guidance for addressing PFOA contamination in drinking water. At the time, the EPA advisory for PFOA was 400 parts per trillion (ppt), and stated that in cases of an exceedance, "action should be taken to reduce exposure to unregulated contaminants in drinking water." Working with the municipality, the state immediately acted to reduce the PFOA contamination in the drinking water.

The New York State Department of Health (DOH) notified EPA about PFOA contamination in the Village of Hoosick Falls drinking water in December of 2014, and continued to keep EPA updated on the situation throughout 2015. This included DOH working with the EPA to ensure that the state was adhering to the EPA's regulatory requirements for sampling and testing of unregulated contaminants. The DOH also held an in-person meeting with the EPA in July 2015 where it provided updates on the situation in Hoosick Falls.

At no point did the EPA express any concerns regarding the actions undertaken by DOH to address the problem. And yet, on December 17, 2015, after the state and village had secured a commitment from the responsible party to pay for a granular activated carbon filtration (GAC) system which would have reduced if not eliminated exposure to PFOA, the EPA suddenly advised residents not to drink the Village water.

Moreover, adding to the confusion, in January 2016, EPA Region 2 issued a PFOA advisory level of 100 parts per trillion exclusively for the Village of Hoosick Falls and the Town of Hoosick in New York. This directly conflicted with the guidance of 400 parts per trillion issued by EPA headquarters, which remained in effect in the rest of the country; including the Town of Petersburgh—just seven miles away from Hoosick Falls—which was also confronting PFOA contamination issues. Because of the unprecedented application of a EPA health advisory to a single community, the DOH chose to apply the new EPA Region 2 guidance level of 100 parts per trillion to all residents of New York State.

In March 2016, following the confusion generated by the EPA's new town-specific health advisory, a bipartisan group of Governors from New York, Vermont and New Hampshire sent a letter to the EPA specifically requesting uniform national guidance on this issue, precisely to ensure that all communities in the United States were operating under the same health advisory levels. Arbitrary guidance levels create unnecessary confusion for water system operators, communities, and regulators.

In response to our letter, the EPA finally released an updated health advisory for PFOA on May 19, 2016, establishing a new lifetime health advisory level of 70 parts per trillion in drinking water. Yet the new health advisory provides no additional guidance on the steps to be taken in the event of an exceedance, advising only that steps be taken to assess the contamination, inform consumers, and reduce exposure in the water supply. Thus, the new EPA health advisory from May 2016 would not have changed the process for responding to the contamination in Hoosick Falls, and did not make any specific recommendation that residents not drink the water in the case of a PFOA exceedance.

The EPA must provide clearer guidance about when a water system should be taken offline—or when bottled water should be provided—in the case of an exceedance of a maximum contaminant level or a non-binding health advisory level.

The EPA has been studying and monitoring PFOA for over 15 years. Nevertheless, the Agency has chosen not to regulate PFOA in drinking water—forcing state and local governments to adapt to confusing, changing, and inconsistent guidance. In Hoosick Falls, the lack of clarity at

the national level was exacerbated by conflicting guidance from EPA headquarters and EPA Region 2.

In a span of a few months, the EPA shifted their position repeatedly – changing the level from 400 ppt to 100 ppt in a single town, and then changing the national advisory level from 400 ppt to 70 ppt. In addition, the EPA has had different guidance for what to do when any of those levels are actually exceeded. This generated undue public anxiety and different strategies and deployments for our agencies, resulting in the state marshaling unprecedented resources in order to adapt to the constantly shifting guidance and recommendations from the EPA. As a result, the EPA should reimburse the State for any costs not ultimately borne by the responsible parties.

Currently, the state has incurred $25 million in costs to our taxpayers and expects to spend at least $50 million over the next ten years for costs, including but not limited to, biomonitoring, installation and ongoing maintenance of home point of entry water treatment (POET) systems, full site remediation, and identification and connection to a permanent alternative water supply.

The state remains committed to doing everything in its power to continue providing clean drinking water to residents of Hoosick Falls and communities across the state. We respectfully request your personal attention to the challenges created by PFOA contamination in our states.

Thank you for your attention into this critical matter.

Sincerely,

Howard Zucker M.D.

Howard Zucker, MD
Commissioner
Department of Health

Basil Seggos
Commissioner
Department of Environmental Conservation