



Via Email and Overnight Mail

December 20, 2019

Hon. Howard Zucker, Commissioner

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Anna Stamm, Secretary

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***Re: Failure to ensure meaningful public participation in Drinking Water Quality Council process***

Dear Commissioner Zucker, Deputy Commissioner Hutton, and Secretary Stamm,

We write today to express our concern with repeated failures to ensure essential and meaningful public participation in the New York State Drinking Water Quality Council (the "Council" or "DWQC") meetings and to request that you take steps immediately to rectify this problem. DWQC meetings are required to be "open to the public pursuant to article seven of the public officers law." Pub. Health Law § 1113(4). The Council has an affirmative obligation to enable robust public participation, which "is essential to the maintenance of a democratic society" and is the best way to "enable the governmental process to operate for the benefit of those who created it." Pub. Officers Law § 100. As discussed further below, the Department of Health ("DOH" or the "Department") and the Council have failed in this regard: numerous procedural deficiencies regarding the convening of the DWQC's meetings have thwarted public participation by the very people who have been hit hardest by the widespread drinking water contamination crisis that led to DWQC's formation.

We urge you, as the chairs of the DWQC, in advance of the forthcoming DWQC meeting tentatively scheduled for January 2020, to make the following changes to ensure that public

voices are centered and that all interested New York State residents can meaningfully participate in the Drinking Water Quality Council process:

- Provide public notice of DWQC meetings and the agenda for such meetings at least 30 days in advance;
- Broadly disseminate meeting notices and agendas, including in the State Register;
- Set up remote locations, as you did for the December 18, 2018 DWQC meeting, and/or allow for remote participation for all DWQC meetings, so that persons who cannot take time off from work and/or travel long distances can participate;
- Ensure that the public comment period portion of any DWQC meeting takes place before the DWQC votes on any proposal or issues any formal recommendations; and,
- Place on the agenda for the next DWQC meeting a discussion of how public participation in the meetings can be improved and allow members of the public to offer comment on this topic.

Despite the critical importance of the issues under the DWQC's purview, which continue to impact communities in every corner of the state, the Council's meetings have been repeatedly convened in a manner that impedes broad participation from members of the public—despite complaints made to the New York State Department of Health (“DOH”) about these shortcomings just two months ago.

On October 16, 2019, the Council held a meeting that included an update on DOH's rulemaking process for setting drinking water regulations for PFOA, PFOS, and 1,4-dioxane, one of the main charges assigned to the DWQC. Some of the most engaged members of the public did not find out about that meeting until the *day before the meeting* and thus could not attend on such short notice. And many, regardless of whether they had notice, could not attend because DOH did not set up a remote location in New York City or Long Island, which many stakeholders were expecting given that DOH set up three remote locations for the December 2018 meeting about those chemicals. As a result, *only one member* from an impacted community offered public comment in support of the necessary swift and strong regulation of these toxic chemicals—in contrast with the dozens who did so at the December 2018 meeting. That one voice stood out in contrast to the litany of representatives from drinking water utilities—over a dozen of whom somehow managed to learn of the meeting in time to both attend and convey their unified message that actions to regulate the chemicals and protect the public should be postponed.

These notice and accessibility failures threaten to affect the health of New Yorkers and the quality of the state's drinking water supplies. As several of the signatories to this letter learned at a telebriefing hosted by DOH on December 17, 2019 (convened in lieu of a postponed DWQC meeting), DOH decided after the October 2019 meeting dominated by utilities to revise its proposed regulations to accommodate suppliers' concerns about the timing and implementation of drinking water standards for PFOA, PFOS, and 1,4-dioxane. Now, some

communities may have to wait up to three years before their families' drinking water meets the health-based standards adopted by DOH. These revisions will also require an additional public notice and comment process before the standards and mandatory testing for these chemicals can take effect. Because of the lack of effective notice to the public about the timing and substance of the October meeting, the DWQC did not hear views contrary to those offered by the 14 representatives from water suppliers. As the sole member of an impacted community lamented in her public comment, "you haven't heard from residents today."

It is worth noting that several stakeholders sharply criticized the lack of notice and other failures in advance of the October 2019 DWQC meeting. At a separate meeting of clean water stakeholders on October 10, where many of us first learned from DOH officials that the next DWQC meeting would take place less than one week later, advocates admonished DOH for failing to give sufficient advance public notice and failing to adequately publicize the announcement of the October 2019 DWQC meeting. While many of those stakeholders were satisfied that DOH understood the necessity of taking steps to ensure meaningful public participation, the message did not translate into action.

Members of the public received notice of the next DWQC meeting—scheduled for December 17, 2019—via email on Wednesday, December 11, *less than a week before* the meeting, which was also scheduled on the brink of the end-of-the-year holiday season. DOH had not set up any remote locations, nor had DOH made accommodations for alternative remote participation in the public comment process. The email notice contained no agenda for the meeting, and as late as the night before the meeting, no agenda was available on the DWQC's website. It therefore would have been impossible for those individuals who did receive notice of the meeting to evaluate the merits of taking time off work and incurring travel expenses to make it to Albany to attend and prepare comments. Though that DWQC meeting was ultimately postponed due to inclement weather, concerns about insufficient notice of DWQC meetings raised with DOH just two months prior continued.

The effects of the lack of notice were underscored by the telebriefing hosted by DOH on December 17, 2019, which was convened in lieu of the DWQC meeting. In that telebriefing, DOH announced major revisions to its proposed regulation setting enforceable drinking water standards for PFOA, PFOS, and 1,4-dioxane. DOH also noted that among the topics for the next DWQC meeting, which is to be scheduled in January 2020, is consideration of regulating PFAS as a class and potentially other chemicals as part of the emerging contaminants program. Advocates and community members would have valuable perspectives to offer DOH and the DWQC on these matters, but they can only prepare and relay relevant comments if they know the topics that will be before the Council and are given opportunities to participate.

Finally, the way in which the Council receives public comment has limited the ability for commenters to influence the DWQC process. The public comment portion of the agenda has been scheduled for the end of DWQC meetings—after both the Council's substantive deliberations *and* any votes to forward formal recommendations for DOH's consideration. As we have seen with DOH's proposed regulations for PFOA, PFOS, and 1,4-dioxane, the Department is likely to give great deference to any formal recommendations advanced by the

DWQC, making it vital that the public be given adequate opportunity to meaningfully comment on potential recommendations *before* they are adopted.

DOH's flawed process undermines the intent behind the Drinking Water Quality Council. The legislation that created the DWQC declared that "New Yorkers served by public water supplies have the right to know when potentially hazardous substances contaminate their drinking water and [DOH] must be equipped to monitor and protect the public from these emerging contaminants." Pub. Health Law § 1112(1). The DWQC is perhaps the key mechanism enabling DOH to respond to the drinking water crisis. A public body charged with such an important mandate and required by law to ensure robust public participation must, at the very least, make the changes urged herein in order to allow for meaningful participation from impacted residents of New York State. The process followed up until now jeopardizes the public's trust in the DWQC and DOH's interest in fully hearing from affected communities and the outcomes that result from the Council.

Thank you for your prompt attention to this important matter.

Sincerely,

Alok Disa  
Suzanne Novak  
EARTHJUSTICE

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ENVIRONMENTAL ADVOCATES OF  
NEW YORK

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NATURAL RESOURCES DEFENSE  
COUNCIL

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