February 26, 2020

Ms. Yvette DePeiza, Director
Massachusetts Department of Environmental Protection
Drinking Water Program
One Winter Street, 5th Floor
Boston, Massachusetts 02108

RE: Comments on Proposed Changes to the Massachusetts Drinking Water Regulations (310 CMR 22.00)
Via email to program.director-dwp@mass.gov

Dear Ms. DePeiza:

The New England Water Works Association (NEWWA) applauds the MassDEP’s diligence in discovering, and ultimately removing, Per- and Polyfluoroalkyl Substances (PFAS) from drinking water. In response to the proposed changes to the Drinking Water Regulations, 310 CMR 22.00, NEWWA would like to submit the below comments, which are also in support of the Massachusetts Water Works Association’s (MWWA) comments. NEWWA, along with MWWA, urge MassDEP to consider all comments to the proposed regulatory changes carefully before moving forward with any new rule. NEWWA believes it is critical that any new rule be established utilizing sound science, research, and data.

Water suppliers are charged with protecting public health through compliance with the Safe Drinking Water Act. Through the Third Unregulated Contaminant Monitoring Rule (UCMR3), Per- and Polyfluoroalkyl Substances (PFAS) became a contaminant of heightened awareness not only in drinking water, but in a vast number of everyday products and items humans are exposed to daily (cookware, clothing, cosmetics, housewares, etc.). Research on these compounds—particularly on the toxicity and health effects of PFAS—is ongoing and the scientific understanding of these compounds on human health continues to evolve.

For public health protection, the United States Environmental Protection Agency (EPA) has a rigorous process for evaluating contaminants of concern in drinking water and deciding whether regulation is warranted. EPA has released a National Strategy on PFAS and is working on its implementation. NEWWA joins with MWWA in asking MassDEP to allow EPA
to take the lead on addressing the regulation of PFAS, as this is an issue being seen across the country and is not unique to Massachusetts. Following rulemaking protocol from the federal down to the state primacy level is a pattern that should remain consistent for all emerging contaminants. The fact that many states have already taken it upon themselves to establish their own regulations regarding PFAS is not only highly confusing to the general public to be able to understand why levels are different from state to state, but sets a precedent for this same course of action to be taken as future contaminants arise, which will significantly affect the rulemaking process.

With respect to MassDEP’s proposal to develop a Massachusetts Maximum Contaminant Level (MMCL) of 20 parts per trillion (ppt) for PFAS which includes six compounds: perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), perfluorononanoic acid (PFNA), perfluorohexanesulfonic acid (PFHxS), perfluoroheptanoic acid (PFHpA), and perfluorodecanoic acid (PFDA), NEWWA also joins MWWA in asking MassDEP to develop compound-specific standards for each of the PFAS, and not employ a cumulative approach. The compounds should not be combined because of different toxicity endpoints, different uncertainty factors between humans and mammal toxicities, different reference dosages, differences in half-lives, bioaccumulation, etc. There are also treatment and operational considerations that could be more challenging if the compounds are considered cumulatively.

In addition, MassDEP is proposing to mandate electronic reporting of all data submitted to the Drinking Water Program. Electronic reporting should not be mandated until MassDEP can ensure that the state's information technology infrastructure can reliably support such a directive. NEWWA joins MWWA in asking for this requirement to be stricken.

The proposed rules would require monthly monitoring if detections are above 10 ppt, which would greatly affect the capacity as well as budget of some of the smaller systems (and potentially larger ones as well). Given the expensive nature of PFAS sampling, the limited number of laboratories that are able to conduct the proper analysis, staff capacity at both the utility and MassDEP levels to maintain the data, not enough scientific data to determine any acute health affects, and the question as to if the results would vary significantly from month to month, NEWWA joins MWWA in requesting that quarterly sampling be required for these systems detecting more than 10 ppt.

The proposed MMCL compliance calculations, including estimates of analytical results below the Minimum Reporting Level (MRL), are concerning, and NEWWA joins MWWA in requesting this be excluded from any final rule promulgated. A detection below the MRL should not be governed (or calculated) by an arbitrary rule which assumes a certain level exists, as such an interpretation is not based on sound science. Values below the MRL should not be reportable, nor counted towards compliance calculations at these low parts per trillion levels, which are still subject to human as well as instrumental error at such minute amounts. There are also concerns about the legal defensibility of estimating values
MassDEP should also consider ways to invalidate sample results if the Public Water System demonstrates that results were influenced by products used in the piping or plumbing of the sample location, involved human error, or if confirmatory sample results are markedly different than the initial results. PFAS are popular compounds found in many materials that water suppliers use in their daily operations (Teflon® tape, piping, etc.) – and this should be taken into consideration given the infinitely small levels suppliers are being asked to measure these compounds at.

NEWWA supports MWWA's appreciation that MassDEP is allowing Public Water Systems to submit previously collected data in order to forgo some of the future sampling. We also agree it is important to have waiver provisions and regulatory flexibility related to monitoring if there are emergency, operational, or lab capacity issues which would preclude such monitoring. NEWWA joins MWWA in supporting these provisions in the proposed regulation.

The below implementation challenges facing Public Water Systems should be addressed by MassDEP before finalizing and implementing a MMCL. These include:

- The complexities, timing, and cost of designing, permitting, and constructing treatment systems needs to be factored into MassDEP’s timeline for enforcing the standards. Will funding be made available to systems for testing as well as system upgrades?
- The existing timeframes and statutory constraints on being able to quickly procure goods, services, and equipment needs to be evaluated and resolved. MassDEP should work with the Operational Services Division to add necessary services and common treatment components to the state bid list.
- MassDEP must provide the appropriate risk communication tools so that Public Water Systems have the information necessary to communicate with the public, especially if consumers have health questions or concerns. This risk communication guidance should also include reasoning as to why the MassDEP regulations will differ from the federal, as well as other states. This information will be needed to help lessen confusion the general public will certainly have from the inconsistencies seen between the federal level and states.
- MassDEP should ensure that the language in the “Consumer Notification” it intends to require is specific to the sensitive subpopulations that it is most concerned with so that it does not overly alarm the general public.
- MassDEP must provide context to relative exposures of PFAS in drinking water versus all other exposure points (consumer products, food, air, etc.). If MassDEP
only concentrates on regulating PFAS in drinking water, it may be giving consumers a false impression they are protected. There are many other sources of PFAS exposure in consumer products as well as food, including detections at even higher levels than what is found in drinking water. If MassDEP does not address all these other exposures, intended public health protection will not be achieved. This information should also be placed on the homepage of the MassDEP website to include ALL routes of exposure, as well as a graph of what percentage is from consumer products, water, air, environment, etc. This information will be critical for proper public education.

- Guidance must be provided to the public and/or sensitive subpopulations on the appropriate “PFAS-free” alternative water supply options (i.e. bottled water and appropriate Point of Use Filters).
- A definitive timeline must be set by which MassDEP's Bureau of Waste Site Cleanup will launch investigations into the source(s) of contamination of the drinking water to identify responsible parties.
- The commonwealth must identify additional grant funds to assist Public Water Systems in paying for treatment of their drinking water.
- MassDEP must provide the appropriate technical and compliance assistance to help Public Water Systems comply with the new rule.

Thank you for the opportunity to provide these comments. Public water suppliers understand the importance of safeguarding the drinking water that reaches their customers, while complying with Safe Drinking Water Act requirements and protecting public health. Water suppliers work hard each day to meet these goals and satisfy their customers' expectations. As we have all come to be keenly aware, the issue of emerging contaminants presents a huge challenge. Compliance with regulatory standards will fall on water systems and MassDEP has an obligation to determine what the real human risk exposure is, and then, when and if the science dictates, move toward standards that will achieve desired public health outcomes. As outlined in this letter, there are still many outstanding issues that need to be addressed before moving forward with these new regulations.

Sincerely,

Kirsten King
Executive Director