



American Water Works
Association

New York Section



March 20, 2023

Senator Rachel May
198 State Street, Legislative Office Building
Suite 803
Albany, NY 12247

Assemblymember Dr. Anna Kelles
NYS Assembly – LOB 833
Albany, NY 12248

Also via email: vandervo@nysenate.gov

Re: Proposed PFAS Surface Water Discharge Disclosure Act: S00227A/A

Dear Senator May and Assemblymember Kelles,

The New York Section of the American Water Works Association (NYSAWWA), the New York Water Environment Association (NYWEA), and the New York Rural Water Association (NYRWA) represent the drinking water, wastewater, stormwater, and rural water interests of New York State (NYS). Our members include the owners and operators of these critical infrastructure systems in NY, the consultants who design and manage their construction, scientists that study key water issues, as well as the manufacturers who supply the highly specialized equipment and technologies used in treatment, supply, and collection. Together our 7,000+ members ensure that all NYS residents have access to clean, affordable, and reliable water and clean water services.

Contaminants of emerging concern such as per- and polyfluoroalkyl substances (PFAS) are of great concern to our members as stewards of New York's water resources. The NYSAWWA, NYWEA, and NYRWA recently became aware of a proposed bill titled "**PFAS Surface Water Discharge Disclosure Act**" (S00227A/A03296). We have reviewed the draft legislation and believe our organizations have important insights to assist the New York State Assembly and Senate in implementing strategies to address PFAS.

Potential for NYSDEC Department of Water (DOW) Gridlock

As you are aware, the regulation of new contaminants in wastewater discharges and ambient waters of New York State is handled by the New York State Department of Environmental Conservation (NYSDEC). The agency operates in a stepwise fashion and based on available science and need for regulation. NYSDEC is already taking steps to address PFAS compound discharges. Specifically, on March 15, 2023 the NYSDEC released final water quality guidance values to PFAS and 1,4-Dioxane in New York State waters, with the focus on industrial discharges having the potential of being a more concentrated contaminant source. The release of the water quality values is on the heels of the NYSDEC's ambient water quality sampling efforts, its development of various fact sheets, its drafting and issuance of Technical and Operational Guidance Series (TOGS) documents, its partnering with research universities to study related issues, and more. NYSDEC has emphasized priority facilities – those that discharge within a hydrologic unit code 12 watershed of a drinking water supply (i.e., Class A, AA, A-Special, AA-Special, GA, and GSA ambient waters in NYS) – to continue NYS's efforts to meet the drinking water MCL of 10 ppt and protect our citizens. The NYSDEC has

even assessed the analytical methods to address the difficulties of sampling very low effluent concentration levels.

What might not be apparent is that, if enacted, the PFAS Surface Water Discharge Disclosure Act may severely impact NYSDEC's ability to do its job. The proposed bill defines a SPDES permit as "an authorization or license issued by the department [NYSDEC] authorizing discharges to the waters of the state" and defines permittee as "the holder of a SPDES permit." The proposed bill further includes language requiring that "if a permittee detects PFAS of any amount in its discharge from any outfall" that that permittee must continue quarterly monitoring for the "duration of its SPDES permit." The NYSDEC is responsible for over 22,000 permits when considering all types of SPDES programs under their purview. This requirement means that NYSDEC will have to modify each SPDES permit to require monitoring where any of the 40 PFAS compounds are detected. While some of those 22,000 permits are covered under general documents, even if the proposed bill were narrowed to only the permits for wastewater treatment facilities, industrial facilities, and/or PCI (private, commercial, institutional) facilities, there are close to 7,000 permits¹. This paperwork exercise will divert NYSDEC DOW resources to updating SPDES permits and away from the critical work they are completing to address PFAS issues.

This gridlock will occur because PFAS compounds are ubiquitous, and discharges of these compounds come from sources **outside** a municipal or industrial setting, including: drinking water, personal care products, toilet paper, food packaging, clothing, and non-stick cookware, along with many other sources. Monitoring for the 40 PFAS compounds will, with no question, result in detections regardless of whether there is a substantial upstream source of PFAS.

Given the possibility of sampling cross contamination and the extraordinary low levels at which these PFAS compounds are measured (i.e., part per trillion/nanograms per liter), a discharge may have to monitor in perpetuity for a false positive. Given POTW resource limitations, any ongoing monitoring should be dependent upon the environmental risk the discharge poses. **It is requested that the requirement to continue quarterly monitoring be removed from the Bill.**

As noted previously, the NYSDEC has just finalized ambient water quality standards for PFOS and PFOA (<https://www.dec.ny.gov/press/127293.html>). NYSDEC is also in the process of developing guidance for POTWs to utilize Industrial Pretreatment Programs (IPP) and mini- IPP to address discharges to the POTW that contain PFAS. The IPP efforts also need to be aligned with USEPA Region 2, who has oversight of POTWs with an IPP.

USEPA is in the process of getting feedback from stakeholders regarding PFAS regulations and guidance, and only just issued general guidelines (December 5, 2022) to States regarding PFAS regulations associated with IPPs. **It is our recommendation the NYSDEC have input on these various strategies before this proposed bill is advanced to eliminate the potential for duplicative or competing requirements.**

Specific Comments on S00227/A03296

If or when the Environmental Conservation Committee contemplates proposed bill S00227/A03296, we also respectfully request you consider the following during your deliberations:

- Even though the proposed Act identifies that PFAS "pass through" a POTW, some individuals that are unfamiliar with POTWs may mistakenly believe POTWs "produce" PFAS – in reality POTWs are receivers of PFAS from those discharging to the upstream sewer system. The legislative intent section correctly notes that POTWs were not designed to remove PFAS. This knowledge is important, as upstream source control will be the most effective means to address PFAS in wastewater.
- Upstream source control is the most effective means to address PFAS in wastewater from POTWs. Should this legislation proceed **it is recommended that sampling be conducted upstream of the POTW**

¹ NYSDEC website. <https://www.dec.ny.gov/chemical/62557.html>. As accessed March 16, 2023.

in lieu of effluent/outfall sampling. This would provide critical data for subsequent track-down activities.

- As noted previously, there are 22,000 SPDES permits under the NYSDEC's purview. This includes the many County, City, Town, and Village governments that are permittees managing municipal separate storm sewer systems (MS4s), combined sewer overflows (CSOs), operating under SPDES general permit construction activities, multi-sector stormwater activities, concentrated animal feeding operations, and more. Should this legislation proceed, **it is recommended it be clarified that certain classes of SPDES permits and/or outfalls are excluded from the sampling requirements.**
- Regarding monitoring, the proposed bill requires POTWs monitor for at least 40 substances that are PFAS compounds, quarterly for one year. This is to start within 90 days of NYSDEC requiring the monitoring, and the POTW is to disclose any detected PFAS in discharges quarterly. A few factors complicate monitoring:
 1. The current wastewater method for PFAS monitoring "Draft Method 1633 - Analysis of Per- and Polyfluoroalkyl Substances (PFAS) in Aqueous, Solid, Biosolids, and Tissue Samples by LC-MS/MS" is **draft**, and USEPA is still in the process of finalizing it. **It is recommended that a final method be established prior to the Bill being enacted.**
 2. The cost to sample and test for PFAS via this method is high due to efforts to minimize sample contamination, need for field blanks, shipping and the laboratory analytical cost itself. It is important to note many POTWs have not budgeted for the additional sampling and laboratory analyses proposed. **It is recommended a dedicated State funding source be provided as opposed to passing this cost to local municipalities.**
 3. It is unknown what the available laboratory capacity or turnaround time will be for the very sudden increase in this sampling. At this time, it is uncertain if POTWs will be able to properly sample and present the results within a single quarter.
- The proposed bill requires "every application for a new SPDES permit applicant shall include a statement from the applicant indicating whether the proposed discharge will or may contain any PFAS." Without a threshold value, the term "any PFAS" may require all new permittees to answer 'yes' considering the ubiquitous nature of these chemicals. The State's recently released guidance values may be logical thresholds to consider. To keep with the Legislative intent, **it is also recommended that only "new POTW or industrial" SPDES permit applicants are to submit documentation in lieu of "any new" applicant.**
- The latest Bill includes requirements for new indirect industrial dischargers. Specifically, "any new industrial user seeking to introduce pollutants into any publicly-owned treatment works to monitor for *at least forty* substances that are PFAS" and "submit the results of such monitoring to the" POTW and NYSDEC "prior to receiving initial approval to introduce pollutants to the" POTW. Again, if a detection occurs the industrial user is required to monitor quarterly for the life of its permit. Similar to a POTW, the new industry could have PFAS compounds present, but not be the source of detected compounds. The source could be the drinking water supply, employee activities or a host of other sources. It is unclear how monitoring all new indirect industrial dischargers will aid the POTW in determining whether a new discharger shall be allowed to discharge to its POTW. This requirement, without a completed regulatory framework places the POTW in a confusing position on how to act on PFAS detections. Without EPA and NYSDEC guidance on Industrial Pretreatment Program implementation, SPDES permit conditions or ambient water quality standards/guidance values, acting on a significant industrial PFAS compound discharge to a POTW will be difficult, and potentially ripe for a legal challenge. **We recommend this provision be removed from the proposed bill.**

- There are no approved methods for testing PFAS in wastewater at this time. The EPA released draft method 1633 (draft 3, December 2022) for non-potable applications, but it has not been made final. Further, there is no official sampling protocol for sampling PFAS in wastewater, and the potential for sample contamination is real. It is our understanding a draft American Society for Testing and Materials sampling method may be published in 2023; however, as far as we are aware that is not an official timeframe.
- It may be advisable to develop a tiered or targeted list of Standard Industrial Classification (SIC) codes for potential industrial PFAS sources, as “industrial user” is quite broad and place an undue cost burden on the discharger. Further, similar to a previous comment, due to the ubiquitous nature of these chemicals it may be advisable to provide a threshold value in industrial discharges as opposed to noting “any PFAS.”

Thank you for your consideration. We would welcome the opportunity to meet and discuss the matter further at your request.

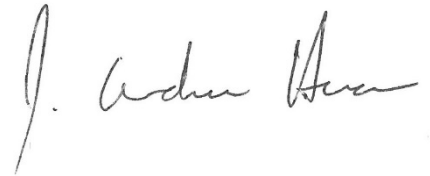
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