

February 28, 2020

Via Email: [program.director-dwp@mass.gov](mailto:program.director-dwp@mass.gov)

Attn: PFAS MCL Comments  
MA Department of Environmental Protection  
Drinking Water Program  
One Winter Street, 5<sup>th</sup> Floor  
Boston, MA 02108

**RE: PFAS MCL Comments from LSPA - Proposed PFAS Revisions to 310 CMR 22.00, Drinking Water Regulations**

To MassDEP's Drinking Water Program:

The LSPA Association (LSPA) appreciates this opportunity to provide comments on the proposed revisions to 310 CMR 22.00 relating to per- and polyfluoroalkyl substances (PFAS). LSPA members practice primarily in the field of waste site cleanup and have been involved in the development of the recently-promulgated groundwater criteria for PFAS under the Massachusetts Contingency Plan (the MCP, 310 CMR 40.00). We anticipate that the MCL process will lead to the identification of previously unidentified sources of PFAS, and that cleanup activities will be warranted in response to these findings. To that end, many of our comments focus on the differences between reporting, public involvement, and risk assessment requirements between the two programs, and areas of potential conflict which may lead to complications in the roll-out of this program. Our specific comments follow.

**COMMENTS REGARDING SUMMARY OF PROPOSED REGULATIONS AND NOTE TO REVIEWERS**

The following comments pertain to aspects of the regulations for which MassDEP specifically requested input in its Summary of Proposed Regulations and Note to Reviewers:

- 1. *Applicability of Regulations.*** *The proposed rule applies to all public water systems. Community and NTNC systems will be required to meet all requirements under 310 CMR 22.07(G). These systems either serve entire communities, or in the case of NTNC systems, do not serve residences, but do serve the same people on a regular basis such as places of work, schools, daycares and recreational areas. The rule also requires that TNCs, which serve a transient or changing set of consumers like rest areas or restaurants, collect one sample and submit the results to MassDEP. If TNCs were to be regulated further, a separate risk assessment designed for TNC consumers would be appropriate due to differing exposure assumptions at*

these facilities. That assessment would likely result in calculation of a different MCL value for these systems.

**LSPA Comments:**

The LSPA supports the intent of a “TNC MCL” (Transient Noncommunity Maximum Contaminant Level). We believe that allowing for calculation of a “TNC MCL” would reduce confusion associated with applicability between MCP GW-1 / MCL and TNC MCL. To reduce misinterpretation of reporting requirements under the two programs, it would be helpful to add clarification noting that owners and operators of community, NTNC and TNC systems are exempt from the reporting requirements of the MCP (310 CMR 40.0317(11))

**2. *Staggered Implementation.*** MassDEP has proposed that Public Water Suppliers begin initial monitoring on a schedule based on their population served. The regulations propose the following schedule:

- For Community and NTNC PWSs serving more than 50,000 individuals, begin April 1, 2020 (4.3 million consumers affected); [20 systems per MassDEP presentation slides]
- For Community and NTNC PWSs serving 50,000 individuals or fewer, but greater than 10,000 individuals, begin by October 1, 2020 (2.6 million consumers affected); [106 systems per MassDEP presentation slides]
- For Community and NTNC PWSs serving 10,000 or fewer individuals, begin by October 1, 2021 (708,000 consumers affected); [569 systems per MassDEP presentation slides] and
- TNCs must collect a single sample at each entry point by September 30, 2022 [792 systems per MassDEP presentation slides].

MassDEP has proposed this staggered start to accommodate an anticipated demand for services related to laboratory analyses, engineering design, equipment procurement, and construction.

**LSPA Comments:**

The LSPA believes that it would be relevant not only to note the number of consumers affected per PWS size, but also the approximate number of water supply systems in each noted PWS size category. Such information would better demonstrate the number of additional lab samples that will be required to evaluate smaller PWSs, and help determine whether the increased number of samples will actually be a problem for available labs to accommodate within a reasonable time period. The message that PWS monitoring can wait (up to 18 months) in cases where there are potentially fewer people affected presents a risk communication problem (i.e., “The Commonwealth considers my health to be less important because I live in a smaller community”).

**3. *Monitoring Scheme.*** MassDEP has various monitoring thresholds and schedules for initial monitoring, routine monitoring, increased monitoring as a result of PFAS detection, and monitoring waivers. In its proposal, MassDEP seeks to balance the risk to public health from short-term exposure with the cost of monitoring.

**LSPA Comments:**

No comments.

4. **Electronic Reporting.** *MassDEP proposes that monitoring results be submitted electronically to the department to increase responsiveness by both MassDEP and the PWS, to increase the efficiency of data management, and to decrease the likelihood of human error by decreasing the number of times the data will be handled.*

**LSPA Comments:**

It will be important for MassDEP to communicate to all stakeholders that eDEP is prepared to receive these submittals.

5. **Consumer Notice.** *MassDEP is proposing an early notification, before there has been a determination that the MCL has been violated, in the cases where the average of a PFAS detection and a confirmatory sample exceeds the Total PFAS MCL. This early warning recognizes the sub-chronic risk of exposure and that at-risk sub-populations may choose to take action and discontinue using the water before a determination has been made that there is an MCL violation.*

**LSPA Comments:**

The LSPA is concerned about the proposal for an early notification using the average of two samples which, based on standard data usability assessments, likely reflect an unrepresentative sample and a representative one. The LSPA believes that it is more appropriate to rely on clear thresholds for exceedances and to avoid offering inconclusive information to the public. We do not recommend proposing consumer notices in cases where the MCL has not been conclusively violated and especially in instances where representative conclusive confirmatory data have not been obtained. At a minimum, at least two representative samples should be used to evaluate compliance.

In addition, if this early notification proposal were to be promulgated, what would be the criterion for comparing the confirmatory sample result to the initial PFAS detection in 310 CMR 22.07G(7)? Would the samples have to agree within a reasonable amount (e.g., within a certain relative percent difference [RPD]), or would it be enough that PFAS are detected vs. not detected in a confirmatory sample?

6. **Compliance Calculation.** *MassDEP has proposed that the compliance calculation be based on a Running Quarterly Average of monthly compliance monitoring result(s) from each of the prior three calendar months. Samples with results below the Minimum Reporting Levels ("MRLs" or those minimum concentrations that can be reported as a quantitated value for a target analyte in a sample following*

analysis) but above one-third of the MRL do contain PFAS. To recognize this presence of PFAS in a sample, MassDEP proposes if an analytical result is equal to or greater than one-third of the MRL but less than the MRL, then the Running Quarterly Average shall be calculated using one-half of the MRL as the concentration for that PFAS.

**LSPA Comments:**

The LSPA does not support and strongly encourages MassDEP to omit or revise the compliance calculation as described here. The calculation for results below the MRL requires additional steps that diminish accuracy, it is confusing and arbitrary, and will result in potential mathematical errors and miscommunication of results. The LSPA recommends instead that the laboratory reported “J” values for results below the MRL, once validated, be used directly.

Further clarification is needed regarding the definition of the Minimum Reporting Level (MRL) as used in 310 CMR 22.07G(3). For example, it would be helpful to know what the definition of the MRL is other than having to meet the concentration requirement in 310 CMR 22.07G(16). Is it the low-level in the calibration curve or is it a multiple of the MDL? How should it be derived by the lab analytically?

We urge that the new compliance form, updated to require reporting of the new 6-compound list, be incorporated into eDEP as soon as possible.

**7. *Maximum Contaminant Level Goal (MCLG).*** MassDEP is not proposing an MCLG for PFAS. An MCLG is the maximum level of a contaminant in drinking water at which no known or anticipated adverse effect on the health of persons would occur, allowing an adequate margin of safety. MCLGs are non-enforceable public health goals and are typically set at zero for carcinogens. MassDEP considered the potential carcinogenicity of PFAS. Through this preliminary assessment, limited human and animal bioassay data were identified that demonstrate associations between exposures to these compounds and certain cancers. At this time however, the level of cancer risk posed by PFAS in drinking water is uncertain. MassDEP is following the research in this area closely. If the connection between PFAS and cancer risk is strengthened, MassDEP will reevaluate the basis of the MCL and may adjust it accordingly.

**LSPA Comments:**

No comments.

**ADDITIONAL LSPA COMMENTS AND QUESTIONS**

- The LSPA has some concerns regarding modifications to the definition of Reliably and Consistently Below the MCL (310 CMR 22.02) and possible interpretations of undefined

concepts such as “wide” (as in “wide variations”) and “close” (as in “analytical result which is close to the MCL”). How will MassDEP define/justify the relative meanings of these concepts? We recommend that guidance be provided for relative percent difference (RPD) or relative standard deviation (RSD) acceptance criteria. For example, one option might be to default to EPA Data Validation guidance for acceptable differences in field duplicate RPD such that greater than those differences would be considered “wide.”

- Does the reference to “no PFAS” detections in 310 CMR 22.07G(5) and (6) only refer to the six compounds used to evaluate the Total PFAS MCL in 310 CMR 22.07G(3), or can any PFAS compound detection trigger action?
- The proposed regulations at 310 CMR 22.07G(12) require use of the two current EPA analytical methods. Does this mean updates to the EPA methods will require another change to these regulations? Can language be added to allow for the use of future EPA drinking water methods for PFAS analysis as long as they meet the sensitivity requirements to support these drinking water regulations?

The LSPA appreciates this opportunity to comment on the proposed revisions as reflected above, and is available at your convenience to discuss the comments provided.

Sincerely,

**THE LSP ASSOCIATION, INC.**



Michele Paul, LSP, President



Wendy Rundle, Executive Director

cc: Paul Locke, Assistant Commissioner, BWSC, MassDEP