



September 22, 2020

Governor Andrew M. Cuomo  
ATTN: Ms. Amanda Lefton, First Assistant Secretary  
for Energy and the Environment  
Executive Chamber  
NYS State Capitol Building, 2<sup>nd</sup> Floor  
Albany, NY 12224

Dear Gov. Cuomo,

We write to strongly urge you to sign A.4739C and S8817, legislation which would prohibit the sale or distribution of food packaging that contains per- or polyfluoroalkyl substances (PFAS) as of December 31, 2022. These bills were approved in floor votes in both the Assembly and Senate in late July.

This legislation, introduced by Assembly Member Pat Fahy and Sen. Brad Hoylman, is urgently needed to help address the public health and environmental crisis of exposure to PFAS in food and drinking water, particularly in light of new concerns about links between exposure to PFAS and COVID-19 severity. Signing this bill would represent significant progress in protecting New Yorkers against unnecessary and preventable exposure to hazardous chemicals.

As you know, PFAS are a class of chemicals known to harm human health. Some of the toxic effects associated with exposure to these chemicals include immunotoxicity, cancer, thyroid disease, birth defects, and decreased sperm quality.<sup>1</sup> They reduce the immune response to childhood vaccines and may increase the risk of infectious disease.<sup>3</sup> In addition, PFAS exposure has been directly linked to several underlying conditions that make people more vulnerable to severe symptoms of COVID-19, including obesity, asthma, kidney disease, and high cholesterol. Compared to people with no underlying conditions, patients who have these conditions are six times as likely to be hospitalized with COVID-19 and 12 times as likely to die of the disease.<sup>4</sup>

Some manufacturers add PFAS to food packaging to make it water- and grease-resistant. It also contaminates the food with which it comes into contact. Indeed, the Food and Drug Administration recently reported that it has detected PFAS in a wide variety of foods purchased around the country, including produce, meats and seafood, and chocolate cake.<sup>5</sup> People are exposed when they eat the contaminated food. In a recent test, PFAS were detected in the packaging of foods sold by major retailers, including a national chain with multiple stores in New York.<sup>6</sup> This prompted some retailers to

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<sup>1</sup> Zeng, Z. et al. (2019). Assessing the human health risks of perfluorooctane sulfonate by in vivo and in vitro studies. Elsevier, 126, 598-610. doi:10.1016/j.envint.2019.03.002

<sup>2</sup> National Institute of Environmental Health Sciences and National Cancer Institute. Early Puberty and Breast Cancer Risk. Breast Cancer and the Environment Research Project. Accessed July 2020 from <https://bcerp.org/health-professionals/early-puberty-and-breast-cancer-risk/>

<sup>3</sup> Grandjean P, et al. (2012). Serum vaccine antibody concentrations in children exposed to perfluorinated compounds [published correction appears in JAMA. 21;307(11):1142]. JAMA. 307(4):391-397. doi:10.1001/jama.2011.2034

<sup>4</sup> Stokes, EK et al. (2020). Coronavirus Disease 2019 Case Surveillance — United States, January 22–May 30, 2020. MMWR Morb Mortal Wkly Rep 69:759–765. doi:10.15585/mmwr.mm6924e2

<sup>5</sup> Knickmayer, Ellen. *FDA Food Sampling Finds Contamination by 'Forever Chemicals'*, June 3, 2019, Business Insider, available at: <https://www.businessinsider.com/fda-food-sampling-finds-contamination-by-forever-chemicals-2019-6>

<sup>6</sup> Dickman, J., Schreder, E., and Uding, N. *Packaged in Pollution: Are Food Chains Using PFAS in Packaging?*, Safer Chemicals, Health Families, August 6, 2020, available at: <https://saferchemicals.org/packaged-in-pollution/> and

announce that they will switch to safer alternatives, thereby demonstrating the availability of and feasibility of using non-PFAS food packaging.

Not surprisingly given their widespread use, PFAS are detectable in the blood of 95 percent of people in the United States.<sup>4</sup> They have been termed “forever chemicals” because they do not break down in our bodies or the environment owing to the strength of the bonds formed by their carbon and fluorine atoms. It is urgent that we eliminate the use of these chemicals wherever possible to reduce our exposure and resulting health risks.

Consumer Reports has reported on the risks of PFAS in food packaging and bottled water, and advised our readers on ways to change their food consumption water drinking habits to avoid unnecessary ingestion of PFAS. We recently published results of bottled water tests that found toxic PFAS chemicals in several popular water brands exceeding 1 part per trillion, including two non-carbonated and seven carbonated waters.<sup>7</sup> We believe consumers should avoid exposure to PFAS because of the growing body of evidence that raises health concerns about these chemicals; their long-lived nature in the environment; and the existence of safer substitutes in food packaging that do not pose the same level of risk.

With respect to the existence of safer alternatives, as Earthjustice and others have pointed out, many restaurants, food service establishments and government agencies are already switching to PFAS-free packaging alternatives:

- A 2017 study by the Silent Spring Institute found that the majority of samples of food packaging collected from fast food restaurants were PFAS-free, with detectable PFAS levels in only 20% of paperboard samples and 46% of food contact papers.<sup>8</sup>
- Major chains such as Chipotle, Panera Bread, sweetgreen, and Taco Bell have already committed to getting PFAS out of their packaging.<sup>9</sup> Three restaurants—CAVA, Freshii, and McDonald’s—told Consumer Reports in August 2020 that they were eliminating or reducing PFAS in food packaging. (CAVA pledged to eliminate PFAS in its packaging by mid-2021. Freshii said it planned to roll out PFAS-free bowls “in the early part of 2021, if not before.” McDonalds said that it had eliminated significant classes of PFAS, but that “we know there is more progress to be made across the industry, and we are exploring opportunities with our supplier partners to go further.”)<sup>10</sup>
- The largest grocery store chain on the East Coast (comprising Stop & Shop, Food Lion, Giant Food, Hannaford, Peapod, and others) announced last year that it will not allow PFAS in food packaging for its private brand products.<sup>11</sup>

<https://saferchemicals.org/2020/08/06/new-study-indicates-toxic-chemicals-used-in-take-out-food-packaging-from-popular-food-chains/>

<sup>7</sup> Felton, Ryan. *What’s Really in Your Bottled Water*, Consumer Reports, Sept. 24, 2020, available at:

<https://www.consumerreports.org/bottled-water/whats-really-in-your-bottled-water/>

<sup>8</sup> Schaider, L.A. et al. *Fluorinated Compounds in U.S. Fast Food Packaging*. *Environmental Science & Technology Letters* 2017 4 (3), 105-111. DOI: 10.1021/acs.estlett.6b00435

<sup>9</sup> Kemler, B. Safer Chemicals, Healthy Families. *Eight reasons to actually celebrate on National Teflon Day*. Apr. 6, 2020.

<http://saferchemicals.org/2020/04/06/eight-reasons-to-actually-celebrate-on-national-teflon-day/>

<sup>10</sup> Loria, K. “Potentially Hazardous Chemicals Are Found in Fast-Food Packaging, A New Report Finds,” Consumer Reports, August 6, 2020, available at:

<https://www.consumerreports.org/toxic-chemicals-substances/potentially-hazardous-pfas-found-in-fast-food-packaging-report-finds/>

<sup>11</sup> GlobalNewswire. *Ahold Delhaize USA Brands Announce Commitment to Sustainable Chemistry, Transparent Products and Packaging*. Sept. 19, 2019,

<https://www.globenewswire.com/news-release/2019/09/19/1918074/0/en/Ahold-Delhaize-USA-Brands-Announce-Commitment-to-Sustainable-Chemistry-Transparent-Products-and-Packaging>.

- Last December, Congress voted to prohibit PFAS in any food contact substances that are used to assemble and package “meals ready to eat” -- individual field rations procured by the United States Department of Defense and eaten by military service members in field conditions.<sup>12</sup> This prohibition will go into effect on October 1, 2021, 14 months before the effective date of the New York bills.

This legislation would help reduce exposure to PFAS in multiple ways. First, it would reduce PFAS contamination of food. Second, curbing the use of packaging that contains PFAS would reduce the manufacture and disposal of materials containing these chemicals. Manufacturing and disposal often result in ongoing release of PFAS into the air and drinking water, exposing fence-line communities and consumers, and saddling municipalities with drinking water treatment costs. This bill would help protect drinking water and reduce remediation costs across the state. A.4739C and S.8817 is enthusiastically supported by numerous many other New York environmental and community organizations, including Earthjustice, the Sierra Club, and Clean and Healthy New York.

Other states are also taking action to protect their residents from PFAS. Washington State and Maine have already banned PFAS in food packaging, and similar bills have been introduced in numerous other states. The enactment of A.4739C and S.8817 by New York would send a strong message to the industry to develop PFAS-free food packaging, and spur additional legislative action elsewhere.

**For all these reasons, Consumer Reports strongly urges you to sign A4739C and S8817 to eliminate the sale or distribution of food packaging that contains PFAS, thereby protecting New Yorkers from exposure to this dangerous class of chemicals. This important public interest legislation is a win-win for consumers and the environment, and will help facilitate the adoption of safer packaging alternatives in restaurants and food service establishments.**

Sincerely,



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<sup>12</sup> Bloomberg Law. *INSIGHT: Congress Confronts PFAS in National Defense Authorization Act – What You Need to Know*. Mar. 20, 2020, <http://news.bloomberglaw.com/environment-and-energy/insight-congress-confronts-pfas-in-national-defense-authorization-act-what-you-need-to-know>; National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116-92, § 329, 133 Stat. 1198, 2277–81.

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#### **Appendix A. Consumer Reports' Coverage of PFAS in Food Packaging and Bottled Water**

Loria, Kevin. [Should You Be Concerned about PFAS Chemicals?](#) Consumer Reports, 4/18/19.

Felton, Ryan. [Some Bottled Water Brands Have Concerning PFAS Levels, Massachusetts Regulator Warns](#) Consumer Reports, 7/12/19.

Felton, Ryan. [Regulators Concerned Bottled Water, Not Just Tap, May Contain PFAS Contaminants](#) Consumer Reports, 8/1/19.

Loria, Kevin. [To Reduce PFAS Levels, Cook at Home.](#) Consumer Reports, 10/19/19.

Loria, Kevin. [Potentially Hazardous Chemicals Are Found in Fast Food Packaging, a New Report Finds](#) Consumer Reports, 8/6/20.

Felton, Ryan. [What's Really in Your Bottled Water](#), Consumer Reports, 9/24/20.

[Consumer Reports Praises New York Legislatures Vote to Ban PFAS in Food Packaging](#), Press Release, 7/23/20.