



October 17, 2023

The Honorable Kathy Hochul
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Dear Governor Hochul,

We are writing to you to express our profound disappointment with the State's response to a mounting public health crisis faced by 45,000 residents of small, upstate communities throughout Cayuga County that rely on the Owasco Lake Watershed for drinking water. Due to deficiencies in State regulations, toxins and chemicals that cause liver damage, decrease nervous system activity, and even increase the risk of cancer, are proliferating throughout the watershed. We have requested a meeting with you to discuss this grave threat to public health, but have so far not received an answer. We now demand urgent action by your office to ensure that further contamination of our drinking water is prohibited. You must direct the Department of Health ("DOH") to expeditiously promulgate our draft Owasco Watershed Rules and Regulations without substantial revisions. You must also instruct the Department of Environmental Conservation ("DEC") to prioritize the development of a Total Maximum Daily Load for our watershed. Without both actions, "Cayuga County, New York" – like "Flint, Michigan" – may soon become a nation-wide byword for State government mismanagement and neglect.

To put this growing drinking water crisis in context, it is important to understand that residents of the City of Auburn and the Town of Owasco already face enormous public health and economic burdens. New York state has designated several census tracts throughout the City of Auburn as "Disadvantaged Communities," and acknowledged that these tracts have some of the highest rates of heart attack hospitalizations, COPD emergency department visits, disability, and premature deaths in the state. The economic burdens faced by the City of Auburn are profound with over 20% of residents falling below the poverty line and 100% of students in the local school district eligible for free breakfast and lunch based on financial need. Residents of the census tract encompassing the Town of Owasco also face significant public health and economic burdens including high rates of heart attack hospitalizations and low rates of health insurance coverage compared to communities throughout the rest of New York.

Notwithstanding these local challenges, for many years the City of Auburn and the Town of Owasco have worked diligently and spent millions of dollars to upgrade local water treatment plants to safeguard our residents' health even as the State has failed in its role to maintain Owasco Lake's water quality. These efforts have so far been successful, but we are reaching a breaking point. We are deeply concerned that our local systems for protecting drinking water quality may soon be overwhelmed.

The most concerning hazard facing Owasco Lake is an increasing occurrence of Harmful Algal Blooms ("HABs"), which produce toxins that threaten human health and increase the amount of potentially carcinogenic disinfection byproducts in drinking water. These HABs are a persistent and growing problem for our watershed, with 26 blooms reported by volunteers during Labor Day week of this year alone. An enormous amount of agricultural runoff pollutes Owasco Lake, and that pollution makes these blooms much more likely to occur. Much of this pollution is the result of outdated agricultural practices. There are well-established best practices the agricultural industry can adopt at a reasonable cost to control this nutrient runoff before it reaches the lake. The State also has programs in place to offset any costs of adopting these agricultural practices with subsidies. But, years of research, analysis, and experience demonstrate that voluntary incentives alone are insufficient to prompt the widespread adoption of these practices. The root of

the problem is that, at present, there are no legal requirements that the operations contaminating our drinking water adopt these best practices.

For over six years, we have been lobbying New York state to require these best practices of the agricultural community. After numerous initial discussions with the office of the former Governor, we determined that strengthening the Owasco Lake Watershed Rules and Regulations enacted by DOH in 1984 would be essential for protecting our residents' health. Public Service Law Section 1100 gives DOH broad authority to pass Watershed Rules and Regulations that require the adoption of pollution control measures to protect New Yorkers' drinking water from contamination. Although DOH has passed regulations controlling agricultural runoff elsewhere in New York, the 1984 regulations for our watershed do nothing to control this type of pollution.

In the Spring of 2017, together with the other members of the Owasco Lake Watershed Management Council we launched a multi-year process to draft new regulations for our watershed. The process involved numerous public and stakeholder meetings and included a lengthy public comment period. The final draft of the updated regulations produced at the end of this stakeholder process was the product of a compromise reached in cooperation in good faith by many local residents and industries. The Auburn City Council and Owasco Town Board passed a joint resolution in favor of the draft on October 29, 2020. On the same day, our county Health Department transmitted the draft update to DOH.

After three years of consultations and negotiations, DOH still has not started the rulemaking process to adopt our proposed regulations. To the contrary, DOH has flatly rejected our request to create regulations that would protect our drinking water from runoff. DOH has instead offered to propose its own rules and regulations a year from now. DOH's alternative rules were developed via an interagency process with the Department of Environmental Conservation ("DEC") and the Department of Agriculture and Markets, but the new draft ignores the concerns of local stakeholders. DOH's alternative leaves watershed contamination by agricultural runoff entirely unabated, and also *weakens* the already insufficient 1984 regulations.

DOH's refusal to protect our watershed has been compounded by a broader pattern of State government failure to protect our water. We have been especially troubled by the State's shirking of its duties under the Federal Clean Water Act. In 2016, the Auburn City Council passed a resolution requesting that the State expeditiously create a Total Maximum Daily Load ("TMDL") for pollutants impairing Owasco Lake's water quality, as required by the Clean Water Act. Once developed, a TMDL would further facilitate the achievement of pollution reduction targets in the watershed. However, in November 2020, DEC refused to add Owasco Lake to the State's Impaired Waters List,ⁱ even though doing so would have been first step towards the creation of a TMDL for the lake. In March of 2022, the United States Environmental Protection Agency ("EPA") objected to DEC's decision to leave Owasco Lake off the Impaired Waters List. The federal agency stated that DEC "did not demonstrate an adequate basis for not including" Owasco Lake on the Impaired Waters List. And on October 26, 2022, EPA went a step further, mandating that DEC list Owasco Lake as impaired for HABs. DEC has as of this date ignored EPA's directive.

After these experiences, our trust in DOH and DEC to protect our residents' drinking water is at a low point. As mentioned in the opening paragraph of this letter, we need these two agencies to change their practices and use the authority at their disposal to take two urgent actions that, together, are necessary to avoid a drinking water crisis in Cayuga County:

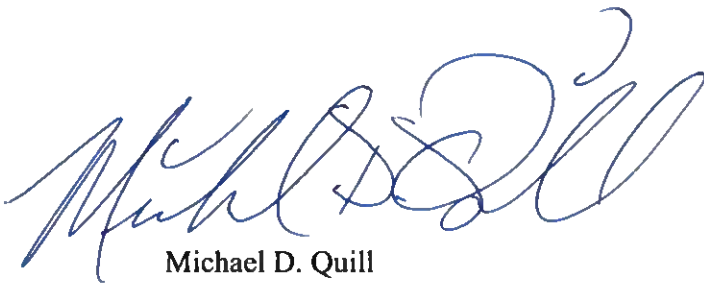
1. We request that DOH expeditiously promulgate our draft Owasco Watershed Rules and Regulations without revisions for statewide notice and comment. DOH must finalize our draft regulations shortly thereafter.

2. In line with unanimous resolutions passed by the City of Auburn and the Town of Owasco on September 14, 2023 and as required by the Clean Water Act, we demand that DEC immediately finalize the 2020-22 Impaired Waters List, and thereby designate Owasco Lake as impaired for HABs. Thereafter, DEC must fully back the development of a TMDL for Owasco Lake by listing the water body as impaired for nutrients and as a high priority water for TMDL development in the 2023-25 cycle.

We implore you to use your powers to direct these agencies to take both actions. By convincing DOH and DEC to reverse course, your office can help to prevent the Owasco Watershed from becoming a cautionary tale. Instead, your decisive intervention coupled with continued state support for the cleanup of Owasco Lake could serve a model for policymakers seeking to protect the drinking water and health of residents of smaller cities and towns.

Thank you for your time and consideration.

Sincerely,



Michael D. Quill
Mayor, City of Auburn



Ed Wagner
Supervisor, Town of Owasco

¹ Clean Water Act Section 303(d).