



RECEIVED
IRRC

2018 FEB -2 A 9 21

3182

January 30, 2018

Bureau of Regulatory Counsel
9th Floor
Rachel Carson State Office Building
P.O. Box 8464, Harrisburg, PA 17105-8464
Also submitted on the portal: RegComments@pa.gov
nmoses@pa.gov; tbarron@pa.gov

**Delaware Riverkeeper Network Testimony on PADEP Triennial Review
Regulations – January 30th Public Hearing in Delaware River Basin,
Norristown, PA – 2pm**

Hello, my name is Faith Zerbe. I am a scientist with the Delaware Riverkeeper Network (DRN). DRN collects, uses, and disseminates stream data to help better protect and restore the streams of the Delaware River Basin which serves as drinking water for 17 million people – 5% of the U.S population and countless more millions that are our non-human neighbors. Delaware Riverkeeper Network is a grass-roots environmental advocacy organization that has 20,000 members and operates in all of the 4 basin states of the Delaware Watershed including PA, NJ, DE and NY. We have a robust community monitoring and citizen science program that supplements our technical monitoring program. Over the last two decades DRN has trained hundreds of volunteer monitors to document stream conditions and watchdog threats to local streams. Volunteer monitors have helped alert the Dept. when exceedances of standards are occurring - for example DRN has participated in DEP's bacteria sampling program to assist in listing streams. DRN has submitted multiple stream upgrade/redesignation petitions to the Dept. to better protect those streams deserving of stronger protections. Finally, DRN has consistently urged the Dept. in past triennial review public comments to strengthen and expand standards – like that of adopting aquatic life use nutrient standards as well as chloride standards that have been on hold despite the science and need – both of which still remain unrealized as of this proposed triennial review.

DELAWARE RIVERKEEPER NETWORK
925 Canal Street, Suite 370
Bristol, PA 19007
Office: (215) 369-1188
fax: (215) 369-1181
drm@delawareriverkeeper.org
www.delawareriverkeeper.org

DRN would like to thank the Dept. for granting a request to hold an additional hearing in the Delaware River Basin and for providing an extension of comment that avoided the end of the year holiday deadline. Delaware Riverkeeper Network will be providing additional substantive written comment before the Feb 16, 2018 comment deadline.

Water quality standards are a critical component to ensuring the spirit of the Clean Water Act is implemented. In addition, the standards and designated and existing uses are critical to ensure that the PA Constitution, Article 1 section 27 is fulfilled. The Pennsylvania Supreme Court Act 13 natural gas challenge brought by Delaware Riverkeeper Network issued an important decision on December 19, 2013. In that decision the Court ruled that Act 13 violates the Pennsylvania Constitution on the grounds that it violates the Environmental Rights Amendment. **In doing so, the Court held that the right to pure water, clean air and a healthy environment are fundamental rights that must be given high-priority consideration and *protection by every level of Pennsylvania's government.*** Since that ruling by Chief Justice Castille, multiple examples of case law have been reinforcing this protection and the responsibility of the PADEP to work and operate within this strong environmental rights construct – this reinvigoration of PA environmental rights is critical as we face many challenges in the decades to come.

DRN believes strengthening water quality standards is a critical component to fulfilling this obligation under Act 1 Section 27 for our generation and future generations to come. Despite this strong environmental rights amendment, according to the most recent assessment by EPA and the Dept. – there are 19,900 miles of polluted waterways in the Commonwealth currently not meeting their current uses ([2016 Integrated Water Quality Monitoring and Assessment](#)). The report is a biennial comprehensive analysis of the water quality status of the more than 86,000 miles of streams and rivers and more than 160,000 acres of lakes in Pennsylvania. Some of the most common pollutant sources are abandoned mine drainage from coal mining, agriculture runoff, and urban stormwater runoff. DRN believes we need more strict numeric standards codified to better clean up these pollution inputs, we believe the science is clear to warrant these standards, and the Constitution requires it.

→ **Conservation Easements** As part of the upgrade petition process, DRN believes it is critical that private conservation easements be a fundamental component to determine outstanding resource waters under Chapter 93. With a wealth of private conservation trusts in the state that work to preserve land and that leverage government and private funds to conserve land, by DEP proposing to undermine its past practice of considering private easements as part of outstanding water qualifiers, flies in the face of what is required under anti-degradation guidance. A narrow look at only government held easements being proposed for future triennial reviews is not in practice what has been done in the past for past upgrade petitions nor is it protective. Furthermore, land trusts are often the very entities that support or petition for stream upgrades – Delaware Riverkeeper Network’s pending 2011 upper Delaware regional upgrade petition still under consideration by the DEP is a clear example where many land trusts signed on in support and where these outstanding qualifiers were cited. By DEP proposing to undermine these strict deed restricted agreements that are privately held that link to water quality improvements would be a disservice. PALTA among other land trusts are here today to make this clear.

Furthermore, as the metrics for benthics and water chemistry continues to be a very high bar to meet, DEP is essentially interpreting these other qualifiers required by the CWA too narrowly –undermining these important land and water protections that it should be supporting and often is supporting through taxpayer and DEP funding to preserve land. Meanwhile developers are looking to undermine these very rigorous upgrade protections. For example, with the recent Monroe county appeal challenge filed to the EQB on November 22, 2017 by a development entity calling itself “Monroe County Clean Streams Coalition” – as this kind of run around for profit at the expense of our cleanest waters is pursued it is absolutely critical that DEP use its authority and power to strengthen methods for upgrades – not weaken them as the developer’s short sighted profit driven mentality would like. Finally, Tincum Conservancy’s (a land trust) pending Tohickon upgrade petition is an excellent example of almost two decades of work by this conservancy, tremendous effort, studies and dedication by this land trust to give the Tohickon special protection. DEP continues to resist providing the needed protection the Tohickon deserves.

→ It is encouraging to see DEP is proposing to add 11 new toxics to its list. Delaware Riverkeeper Network is concerned that DEP is **not** proposing to adopt PFA standards (**Perfluoroalkyl and Polyfluoroalkyl substances**) to protect drinking water even though these toxins have been found in

many drinking water supplies in parts of the Delaware River Basin and Delaware Riverkeeper Network has actually helped uncover these findings the past few years. New Jersey is currently advancing a science panel's recommendation to adopt a standard of 14 parts per trillion – the most protective standard in the nation. PADEP adopting the same protective standard would greatly protect and not undermine the strides New Jersey is making on the other side of the Delaware River Watershed, while also ensuring that Pennsylvania communities are given the higher level of protection warranted by the science.

→ **Fish propagation and DO standards for the estuary** -- Currently, fish propagation is not a designated use in sections of the Delaware River estuary and the state is required to review the reasons behind rejection of those uses since clearly its own studies and those of DRBC indicate that propagation of fish species is clearly occurring in Zones 3,4, and 5. The DRBC found that for all nine fish species evaluated and studied, including the federally endangered Atlantic Sturgeon in addition to American Shad, Striped Bass, White Perch, Bay Anchovy, Atlantic Silverside, Alewife, Blueback Herring, and Atlantic Menhaden successfully reproduce in these zones. In March 2013, the Delaware Riverkeeper Network submitted a petition to DRBC

http://www.delawareriverkeeper.org/sites/default/files/Documents/DO_Petition_03-05-2013.pdf

for dissolved oxygen (DO) criteria to be elevated to meet the existing use of the main stem Delaware River as DO levels far exceed the current standards. The science documented the past two decades show these improvements to fish as well as dissolved oxygen. As outlined in the petition and a 2015 DRN letter,

<http://www.delawareriverkeeper.org/sites/default/files/Documents/existing%20use%20report%20comments%20june%202015.pdf>, it is important to note that while the 1967 dissolved oxygen (DO)

goals and expectations have been exceeded, there seems to be little recognition that the 1967 goals were set low compared to standards set in other estuaries. The exception put in place in 1967 that allowed 3.5 mg/l daily average needs to be raised to the other zones in the estuary, 5.0 mg/l, and ideally to the 6 to 6.5 mg/l level that some research asserts is optimal for Atlantic sturgeon. There is documented and demonstrated propagation. Therefore, a designated use for propagation is fully appropriate and supported and new standards should be set to support propagation. It is not appropriate to qualify the propagation level achieved such that a lower designated use will be applied to the estuary in such a fashion as to continue to depress the level of water quality standards and

goals that are applied for the various zones of the estuary. This continues to be a concerning approach to the Delaware Riverkeeper Network.

→ **Chloride aquatic life use standard are absent once again from this triennial review -**

Delaware Riverkeeper Network is concerned that DEP continues to not establish chloride standards for aquatic life uses, a very real threat in commonwealth waters. An criterion for chloride to begin protecting Pennsylvania streams from brine wastewater from gas drilling and road salt applications would be a critical step by the state that is overdue and needed; and the science conducted by the state and academic institutions supports establishment of this chloride criterion at this critical time in history. This need should be increasingly clear to the Dept. since the PADEP has determined that there are 301 cases of private water well contamination caused by oil and gas operations in the Commonwealth; over 4,400 water complaints related to oil and gas have been filed by the public with PADEP. Between 2004 and November 2016, PADEP lists 9,443 public complaints about environmental problems in shale gas drilling areas. The DRBC has also proposed a permanent ban on gas drilling in the Delaware River Basin because of these threats and a defacto moratorium on drilling, wastewater import, and freshwater export has been in place in the DRB since 2010 – the rest of the Commonwealth streams and communities deserve this same protection and at minimum, a protective aquatic life use chloride standard that is science based would allow more tools for impacted communities to better document these very real harms they are facing from gas drilling. Furthermore, the most recent statistical analysis of the body of scientific literature by the Concerned Health Professionals of New York and Physicians for Social Responsibility, 685 peer-reviewed papers examining gas drilling and/or hydraulic fracturing (“fracking”) were reviewed and the overwhelming majority of studies found evidence of or potential adverse impacts on water, air, and human health. Article 1 Section 27 requires the government protect these environmental rights that are being decimated by this industry.

→ **Nutrient standards are absent once again from this triennial review -** Pennsylvania’s streams continue to suffer from nutrient pollution, both Nitrogen and Phosphorus, and the failure of PADEP to more rapidly adopt numeric nutrient criteria for aquatic life use exacerbates the damage that these streams suffer, and just extends the time that these streams will be part of the long list of “impaired” waters of the Commonwealth. In July 2000, the EPA provided technical guidance for states to develop regional nutrient criteria to begin mitigating this important need yet PA continues to kick this can

down the road over 17 years later. It is encouraging to see this round DEP is proposing an ammonia standard. DRN would highlight review and consideration of EPA's recommendations outlined in their Dec letter for ammonia pertaining to 30 day averages.

→ DRN also has great concerns with **PADEP considering removal of water contact/swimming from the Del River from RM 108.4 to 81.8** which includes a section of the tidal river from about Riverton wharf (108.4) downstream to Raccoon Island/Chester/Bridgeport Ferry (81.4). In this stretch there are multiple instances where DRN has participated in and documented water contact and conducted paddling and kayaking with members on this stretch of the River. For example, on the PA side of the River in this stretch, Spruce Harbor Park and the Darby Creek and John Heinz National Wildlife water trail provide maps to encourage kayakers and paddlers to explore these urban areas of the watershed. Harbor Park in Philly provides livery services including kayak rentals and paddle boats. Petty's Island – a 500 acre island in Pennsauken Township NJ, with community support and advocacy by Delaware Riverkeeper Network and other conservation partners dating back to 2004, is now being permanently protected as a wild nature preserve and access point for urban populations when resistance developed in 2004 to stop a golf course and hotel development agreement between Cherokee developers and Citgo who owns the island (<https://philly.curbed.com/2018/1/9/16739672/petty-island-new-jersey-history-park>). There is a Tidal Delaware River Water Trail in this portion of the tidal Delaware River <http://www.tidaltrail.org/> which is bringing large population centers closer to the Delaware River – this water trail was funded by the Dept and DCNR and other partners. The Tidal Delaware Water Trail is 56 miles of accessible river opportunities from Trenton, New Jersey to Marcus Hook, Pennsylvania and is one of 25 designated Pennsylvania Water Trails and a hub of environmental features, historic resources, and recreational activities for Pennsylvania and New Jersey. The Dept sites combined sewer overflows (CSOs) as a reason to undermine these water opportunities that exist but as EPA also notes, EPA's CSO policy was issued in 1994 and incorporated into the CWA in 2000 and long term control plans are now in development or in place for the CSOs in this portion of the Delaware River. DEP and DRBC should be listing water contact/swimming as a use in this triennial review because it is clearly occurring in this stretch of the River.

→ **Bacteria** – DRN will provide more detail in writing related to e.coli and fecal coliform proposals. EPA also provided important feedback.

→ DRN will be examining the drainage lists closer and providing more detail but in general a few important notes: It would appear that the Dept. is **proposing to downgrade** Goose Creek in the

Delaware River Basin from TSF (trout stock fishery) to WWF (warmwater fishery). More information and analysis is warranted to the public on how this decision is justified. DRN has documented fisher people on the lower area of Goose Creek within community park boundaries fishing on multiple occasion as part of our several years of monitoring related to phosphorus and a TMDL being challenged by a sewage treatment plant operator. When a downgrade is being considered, similar to that which was proposed by a water company for the Wissahickon many years ago, a use attainability analysis seems protective and in line with the regulations. The Dept. must also prove that at no time in the future would trout be able to be stocked even with restoration and the likely enforcement of a strong TMDL standard for phosphorus which is coming down the pike. To remove a use just when this tributary may finally get the long needed protection it deserves would be short sighted and we believe against anti-degradation regulations. A similar potential downgrade appears to be proposed for a tributary (00322) of Beaver Creek which flows into the East Branch Brandywine River. As above, an existing use determination is needed before any of these downgrades are codified. EPA states concerns with these downgrades as well in their Dec 20, 2017 letter on the triennial review.

→ Good to see the addition finally of many Monroe County streams to HQ-CWF – likely from work by the PA Fish and Boat Commission studies as well as the decades long work by local groups to petition for upgrades in that region of the Watershed. A

In closing, setting new and strong ambient aquatic life use standards is critical in the current environment where PA legislators continue to placate to the gas industry. You may recall that during budget negotiations last year, legislators were proposing legislation that would essentially allow an entire stream to be a mixing zone – by only requiring standards be met at the point of a drinking water intake. As anti-environmental legislators that are not scientists continue to attempt to undermine our clean water rules for short term profit and gain, it is critical scientists resist and set important standards now instead of kicking the can down the road for another decade. DEP science on standards is strong and warranted – we have a strong program here – we need to collectively work to protect the strides we have made. We are grateful for the instances where DEP is providing more listings for toxins and other parameters as part of this regulation but we do believe much more needs to be done to adhere to the requirements of anti-degradation and the PA Constitution. Thank you for the opportunity to comment.