



Public comments – Triennial Review of Water Quality Standards (#7

November 21, 2023

I am a frequent visitor to Philadelphia where I try to get on and in the Delaware River every time I can make or find an opportunity - having discovered the fun of kayaking from the Independence Seaport Museum and swimming in the back channel behind Petty's Island. My participation in these wonderful experiences leave revenue in Philly restaurants and hotels. They also provide a first hand opportunity to understand the current recreation use and its potential, like Pennypack Park and the Chester waterfront.

I respectfully call upon the Commonwealth of Pennsylvania to fulfill its responsibilities to take fair and reasonable action to set a course **to** improve the water quality in the Delaware and lower Schuylkill Rivers that will benefit residents and visitors from Philly down to Chester – in other words, take action to change the Clean Water Act designation from secondary to primary recreation contact in the “forgotten section” of the Delaware River.

While many comments will focus on the legal and technical reasons that this is an essential action. Others will debunk the myths that people do not want to use the water.

I would like to offer another perspective – about the slow, creeping, unseen inertia of allowing year after year to pass without making change.... Next year turns into the next year....

Having served on the MD Governor's staff, as Assistant Secretary, Maryland Department of Natural Resources for 20 years, Executive Director, Campbell Foundation, an organization that invested heavily in PA's environment, and now consulting on Delaware River water issues for eight years, I am very familiar with the challenges facing government, trying to balance economic reality and public needs. However, I am also familiar of the benefits of healthy outdoor opportunities that become triumphs when

government leaders take action to question those that offer excuses to wait, and wait, and gather more info....

I hope that the following points clearly convince you that PA (1) SHOULD improve the designation and (2) CAN improve the designation.

Point 1 – PA SHOULD change the designation to primary

The current situation is not equitable, sensible or justifiable:

- Not equitable
 - These “zones” happen to boarder the only 27 miles of the 330-mile Delaware River where people do not enjoy the same water quality as those in rest of the River.
 - Adding to this inequity is the fact that Philadelphia and Chester have some of the highest poverty rates and lowest mean household incomes of PA
 - People in these areas may not be able to “go to the shore” but should have local water related activities and relief from the heat;
- Not economically sensible
 - There are strong connections between a healthy tourist economy and clean water. Beyond job creation, the impact on property values¹ and general annual benefit² has been quantified for the areas like Washington DC and Baltimore. Related studies³ illustrate benefits for fishing and swimming in the tidal Delaware River through sewage treatment plant improvements that will improve oxygen in the water.
 - Cities all over the United States and the world are rediscovering the remarkable economic potential of their rivers and waterfronts. Beyond just creating opportunities for

¹ Leggett et al. (2000) estimated improved bacteria levels to meet water quality standards along the western shore of the Chesapeake Bay in Maryland raised shoreline property values by 6%.

² Bockstael et al. (1989) conducted a contingent valuation survey that estimated Willingness To Pay (WTP) for swimmable water quality in the Chesapeake Bay for Washington, D.C. and Baltimore nonusers was \$44.6 million/yr. Van Houtven (2009) estimated WTP to increase the water quality index to swimmable in the Chesapeake Bay provided \$159 million/yr in annual benefits for D.C., Maryland, and Virginia nonusers.

³ University of Delaware, Biden School of Public Policy and Administration

people to look at the water, cities (including New York City, Baltimore, Washington D.C., Pittsburgh, Camden, and Paris) are realizing the benefits of getting people on and in the water.

- Not legally justifiable
 - A designated use represents the goals for the water body, and does not mean the water quality is *already* meeting primary contact criteria. Attainability means that it is an achievable goal, even if that is over a relatively long period of time.
 - Given that significant water quality improvements have already been made, and there are LTCPs for the CSOs in place, PA DEP cannot rely on this outdated reason to avoid designation.

Point 2 – PA CAN change the designation to primary –

The current situation is based on:

- 35 year old findings
 - In 1988, DRBC issued an “Attainability” report recommending the most of 330 miles of the Delaware River be reclassified to primary contact recreation. However, it stated secondary contact should be retained for zone 3/upper zone 4 “at this time due to uncertainty of being able to attain the primary contact use.”
 - In other words, 35 years ago, the 27 miles (passing Philadelphia, Camden and Chester) of the 330 miles were not upgraded.
- However, even 35 years ago, the prognosis was to bring this section forward:
 - The statement went on to conclude: “The programs of CSO correction Philadelphia and Camden ...is expected to reduce fecal coliform levels, which may result in future attainment of the primary recreation objective in Zone 3 and Upper Zone

4. **Primary contact will be a future use goal, based on an evaluation and a firm commitment to a CSO correction program.**

- Note this was written before the development of the Green Cities Clean Long Term Consent Plan.

So let's look at what has changed in the last 35 years with respect to these conditions.

➤ The consent order is certainly a "firm commitment to a CSO correction program." And PWD has assured the PA DEP, EPA, and the Philadelphia City Council many times that they will meet its commitments.

➤ With respect to "evaluation" –

✚ **In July 2018, a Delaware River Basin Commission (DRBC)** made a presentation, relating to a path to primary contact designation to its Water Quality Advisory Committee which asked and posed answers to two questions:

- What has changed since 1988? (the Attainability report just cited....)

□ *PWD's Green City, Clean Waters program to reduce stormwater in combined sewers*

□ *Much more accurate models of CSO systems –volume and timing of discharge*

□ *Efforts to reconnect regional urban areas to their waterfronts*

□ *Very high level of public / NGO interest in this issue*

□ *Statistical models providing guidance on current conditions relevant to contact recreation*

- Where are we?

1988 Attainability report envisioned upgrading Zones 3 & upper 4 to primary contact in the future

- Contact recreation is happening right now, today
- CSO management programs are in place and expanding
- CSO prediction capability is strong

- Tools for predicting which sets of conditions are likely to contribute to exceedances have been demonstrated
- Evidence that new recreational use / criteria should be attainable
 - Not every condition / circumstance
 - Improved ability to attain over time?

✚ In December 2017, EPA Region III⁴ made its evaluation clear in an official comment letter to PA DEP: *“EPA believes that this conclusion needs to be reconsidered since.... Long Term Control Plans are now under development or in place for the CSOs in this portion of the river. In addition, recreation which results in contact with the water is occurring in this portion of the river. PADEP should initiate an effort with the Delaware River Basin Commission (DRBC) and the other member states to revise the applicable standards to include designated use protection for water contact/swimming.”*

✚ In 2019, possibly as a result of many public comments⁵, PA ruled in its triennial, *“the Department will initiate an effort with DRBC and the other signatory parties to reevaluate the applicable standards, and an updated recommendation regarding the WC use will be considered in the next triennial review of water quality standards, following outcome of this collaboration.”*⁶

- Not great, but a step forward
- Now, the rest of the story... That next triennial review is now

⁴ — Dec. 20, 2017 Letter from EPA to PADEP Environmental Quality Board with comments on the then draft Triennial Review.

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⁶ — Executive Summary, Triennial Review, Nov. 2019 (“WC” is short for Water Contact, which terminology is used by the State of PA as its equivalent to the Primary Contact language of the Clean Water Act, or CWA)

✚ Today, In 2023, **this triennial review does fulfill these promises... it does not revise the designated use to include kayaking, wading, swimming , nor does it even describe the efforts undertaken with partners, the remaining steps necessary, or the timeline on which it will do so.**

- the new Triennial language simply reaffirms the primary contact recreation designation removal, without reference to Existing Use, without directly acknowledging marked improvement in recent decades, and this time without providing any explanation or justification at all.
- It now simply states: { *"As part of every triennial review of water quality standards, the Department is required to reaffirm the removal of CWA Section 101(a)(2) uses and, as part of this triennial review, is recommending reaffirmation of the following:..... }*
*The Delaware Estuary water uses remain under study by the Department in cooperation with the Delaware River Basin Commission and the United States Environmental Protection Agency."*⁷

Information exists today to change the designation SO WHY HAS PA not met its commitment... indeed, even going backwards?

There is no excuse for PA not to lead this region of the Commonwealth to water victory. PA has finally come to the table in the Chesapeake Bay ... and frankly as I can knowledgably testify, is helping to solve water pollution problems, including those relating to agriculture, that are far more difficult, more expensive and more culturally intransient.

⁷ — Executive Summary, Triennial Review, Oct. 2023

I say with great respect, this is not a difficult job, compared with the task that PA has in improving the Chesapeake Bay and the Susquehanna River. This area is not plagued by agricultural pollution. Technology is proven. Federal funding (that might still be available) if the State's agency (PennVest) and the City's recipient (PWD) insist on ways to break down decades old bureaucratic barriers for Philly access.

In the meantime - Baltimore Harbor, Potomac River, Anacostia River, New York Harbor—and many others are hosting swim events- taking advantage of legal, economic and ethical obligations to clean up their Rivers.

While PADEP should improve monitoring and its analysis to inform and guide implementation actions, that is neither required nor should it stop the Department from adopting higher primary contact standards at this time.

We believe that implementation actions can be designed to advance attainment in an equitable and cost-effective manner for regulated entities, particularly given the availability of federal funding through the State Revolving Fund and other sources.

Many groups have been actively advocating for such support for the region and are committed to actively continuing to try and bring necessary financial support and new approaches to this issue. While some monitoring has been conducted, a multi-step action plan is needed that spells out what tasks are required, by when, and by whom to guide both short and long-term responses.

The ultimate goal is to upgrade the quality of the waters within the 27-mile stretch to primary recreation consistently and minimize pollution inputs. The public deserves more days on and in the river. There are ways to do this. There are also near-term actions that can be taken to help the environmental justice communities in Philadelphia and Chester. The Department plays a key role in implementing actions, permit conditions and directing funding to needed infrastructure (both green and grey)

Thank you for giving me the opportunity to provide comments.

Verna Harrison