



**Testimony of the Delaware Riverkeeper Network
to the Environmental Hearing Board**

Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477

November 14, 2023

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Re: "Testimony for Proposed Rulemaking of Triennial Review of Water Quality Standards - Regulation and Rulemaking (#7-577) (Open Comment period from 10/7-11/21/23)"

The Delaware Riverkeeper Network is a membership based not for profit organization that champions the rights of our communities for a Delaware River and tributary streams that are free-flowing, clean, healthy, and abundant with a diversity of life.

Delaware Riverkeeper Network (DRN) is submitting this testimony to share our overall support of the current Rulemaking underway regarding DEP's Triennial Review of Water Quality Standards. Delaware Riverkeeper Network submitted prior substantive comments throughout this triennial review and former triennial review periods. We understand this rulemaking process is a lengthy one and a critical tool to help to ensure our rivers and creeks do not continue to be jeopardized by polluters who do not have long term community health in mind. On December 19, 2013, the Pennsylvania Supreme Court issued a final plurality opinion written by the Chief Justice of the Court, the justices vindicated the importance and power of the Environmental Rights Amendment of the Pennsylvania Constitution which promises all generations of Pennsylvanians (including future generations) have the right to pure water, clean air and a healthy environment, giving them the ability to defend that right in the courts if it is violated. (case Robinson Township, Delaware Riverkeeper Network, et al. v. Commonwealth, 83 A.3d 901 (2013)).

DRN recognizes that Water quality standards are a major pollution prevention tool because they protect water quality and designated and existing uses. The proposed rulemaking amendments will be implemented through the Department's permit and approval actions and lead to important hooks and protections including the NPDES

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program which can then establish much long and overdue effluent limitations for CSOs and other polluters by requiring more stringent and today readily available technology-based or water quality-based effluent limits. Water quality-based effluent limits are determined by the protected water uses of the receiving stream and the water quality criteria necessary to achieve those designated and existing uses. DEP must do more to ensure existing uses are promptly and fully realized and protected and that has not been the case to date.

For this rulemaking, DRN is in support of this triennial rulemaking passing promptly but we offer up at this time, repeated considerations for dissolved oxygen improvements and primary contact recreational existing uses for the tidal main stem Delaware around Philadelphia and Camden that have been ignored for far too long; we urge DEP to make these long overdue changes in the next triennial review period. Three major points Delaware Riverkeeper Network would like to highlight now:

- 1) Delaware Riverkeeper Network is in full support of DEP and the Board setting 17 new human health and aquatic life criteria being put forth this round which will begin to restrict critical toxins jeopardizing our waterways that are long overdue – the Board is proposing updated and new aquatic and human health criteria for cadmium, carbaryl, tributyltin, acetone, barium, boron, chloroform, formaldehyde, methyl ethyl ketone, metolachlor, resorcinol, 1,2,3-trichloropropane, 1,2,4-trimethylbenzene, 1,3,5-trimethylbenzene, 1,4-dioxane, chlorophenoxy herbicide (known as 2,4-D) and xylene. These criteria are consistent with existing EPA policies and again long overdue.

- 2) DRN urges DEP to embrace fully the long overdue work of improving dissolved oxygen standards for the main stem tidal Delaware River. We highlight the long standing work being done by the Delaware River community for the board, starting with the March 2013 DO petition submitted by Delaware Riverkeeper Network, the Shad Fisherman's Assoc. and the Lehigh River Stocking Assoc. calling on the DRBC to upgrade Dissolved Oxygen for sections of the tidal Delaware River for fish propagation including 9 important fish species present and reproducing, with special attention to the endangered Atlantic Sturgeon. More recently and after years of languishing by DRBC, there was a March 3, 2021 supplement to Delaware Riverkeeper Network's original DO petition – this updated supplement was submitted by DRN, Clean Air Council, Pennfuture, Env New Jersey and other grass roots watershed groups. When it was clear to our coalition that DRBC and DEP were not eager to act and kick the can down the road even farther for dissolved

oxygen standards, on April 2022 Delaware Riverkeeper Network, PennFuture, Clean Air Council, Environment NJ, and PennEnvironment petitioned the USEPA to use their federal authority and finally take action and urge and promulgate improved Dissolved Oxygen standards for the tidal Delaware River. Alas and finally, DRN understands after multiple community petitions have been submitted to DRBC with little action on DO and others since before 2013 and more recently, the petition to EPA has not fallen on deaf ears. In the next month, US EPA will be taking actions to set more accurate and protective DO standards through federal rulemaking to help protect aquatic life including the ailing Atlantic Sturgeon and 9 other fish species that live and reproduce in the main stem Delaware River around Philadelphia. The situation is dire for the Atlantic Sturgeon as studies show that the sturgeon continue to decline even since their federal endangered listing in 2012; and so in the mean time this past summer (July 19, 2023), Delaware Riverkeeper Network petitioned the U.S. Department of Commerce and the National Marine Fisheries Service (NMFS) urging that the Delaware River population of Atlantic Sturgeon be recognized as its own Distinct Population Segment (DPS) pursuant to the federal Endangered Species Act. This recognition if achieved we hope will provide increased protections essential for preventing the genetically unique population known to only exist in the Delaware River, from going extinct on our watch with studies indicating there are only 250 remaining adult breeding atlantic sturgeon in the Delaware River. Outreach and education continue to be a part of our efforts to save this “Dino in the Delaware” while also ensuring much needed CSO clean up is finally mandated through improved DO criteria that are not from the olden times before the CWA and over 50 years ago. Again, this illustrates the grass roots community support for over a decade and longer for stronger DO standards to ratchet down CSO harms finally- finally EPA is acting - we urge DEP to fully support and embrace this long overdue DO update to the main stem River promptly.

- 3) Delaware Riverkeeper Network and allies are dismayed that the proposed rulemaking is yet again not providing primary contact recreation use for the 27-mile stretch of the main stem Delaware river that flows between Philadelphia, the City of Chester and Camden communities – much of these areas are overburdened already with pollution, being sought out for more fossil fuel industry impacts through LNG export and other harms, and are in environmental justice zones. While DEP continues to drag its feet, the Delaware River community engaged together again in March, 2020 to petition the DRBC to change secondary contact recreation to primary contact recreation for RM 95 to RM 81.8 (Zone 3 and upper sections of

Zone 4). This petition¹ was submitted by DRN, Clean Air Council, Pennfuture, and Environment NJ along with broad support from PennEnvironment, River Network, Bartram's Gardens, Glen Foerd on the Delaware, Darby Creek Valley Association, and Clean Water Action and clearly outlined the great need and evidence that primary contact IS indeed happening on the tidal river; therefore primary contact recreation is an existing use that should be implemented and is long overdue for the millions of Philadelphia and Camden water users who have the right to recreate in a River that belongs to everyone including human and non human community members.

On behalf of Delaware Riverkeeper Network, thank you to the Environmental Hearing Board and to the PADEP for this opportunity to comment on these long overdue and future important triennial review rulemakings.

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<https://www.delawareriverkeeper.org/sites/default/files/Primary%20Contact%20PR%203.2.20%20%2B%20attachments.pdf> March 2, 2020