



January 10, 2024

U.S. Environmental Protection Agency  
EPA Docket Center  
Office of Water  
Docket, Mail Code 2822IT  
1200 Pennsylvania Avenue NW  
Washington DC 20460

*Re: Docket ID No. EPA-HQ-OW-2023-0222;  
Water Quality Standards to Protect Aquatic Life in the Delaware River*

Dear U.S. EPA,

The Delaware Riverkeeper Network thanks you for recognizing the need to take swift and strong action to protect the Delaware River's aquatic life and ensure we are protecting our River's genetically unique population of Atlantic Sturgeon from extinction, including by passing water quality standards that ensure oxygen levels necessary for supporting all life stages. We submit this first comment for your consideration, but fully plan to supplement it with more in-depth, detailed, and robust scientific and legal analysis before the close of the comment period on February 20.

**Comment Period Extension Must Be REJECTED!**

Industry and wastewater dischargers are urging the US EPA to extend, by an additional 30 days, the current comment period regarding EPA's Proposed Water Quality Standards to Protect Aquatic Life. The Delaware Riverkeeper Network urges the EPA to reject this request and maintain the current February 20, 2024 deadline for comments.

For well over a decade industry, wastewater treatment facilities, and other regulatory agencies in our region, have known about the ongoing efforts to secure increased dissolved oxygen standards in order to protect the aquatic life of the Delaware Estuary. In addition, the technologies and practices necessary to achieve the proposed standard are not new; they in fact have been around for decades and are in use nationwide and around our region. Industry, wastewater operators, and government agencies are fully aware of the technologies and practices necessary to address the ammonia nitrogen, and to accomplish the nitrification, necessary to restore healthy oxygen levels to the Delaware River. The request for this comment extension is unfounded, unjustified, and merely seeks to prolong the suffering of the aquatic life of the Delaware Estuary, and particularly the Atlantic Sturgeon of the Delaware River which are already perilously close to

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extinction and should not be subjected to more delays before they begin to secure the legal protections they need to both survive and to thrive.

### **EPA’s Proposal to Upgrade Designated Uses & Water Quality Standards is Legally & Scientifically Mandated.**

The Delaware Riverkeeper Network applauds the EPA proposal to upgrade the designated uses of Delaware River Zones 3, 4, and 5 to include “propagation”.

The Delaware Riverkeeper Network applauds the EPA’s determination that existing water quality standards with regards to dissolved oxygen are insufficient to ensure the protection of all life stages of Delaware Estuary aquatic life species, particularly our genetically unique population of Atlantic Sturgeon. Recognizing that the other regulatory agencies of our region (DRBC and the states) have failed to ensure protective standards, I support the administration’s decision to take the leadership role in issuing needed protective standards and to use a science-based approach to ensure high dissolved oxygen levels critical for supporting all life stages of our Delaware River Atlantic Sturgeon and other aquatic life in the River.

### **The Proposed Water Quality Standards Fall Short of The Full Protections Science & Sturgeon Dictate are Needed – Three Fixes Are Required.**

But at the Delaware Riverkeeper Network we are concerned that EPA failed to fully fulfill its commitment to rely only on the science, and not succumb to pressure from industry, or other agency representatives, who would seek lower standards below what the science clearly demonstrates our Atlantic Sturgeon require.

In order to ensure dissolved oxygen levels that are fully protective of all life stages of Delaware River Atlantic Sturgeon and aquatic life, the proposed water quality standards must be adjusted in 3 critical ways:

1. It is essential that the standards include a minimum level of dissolved oxygen that can never be violated. Simply relying on medians, averages, and percentiles fails to ensure the sturgeon and other aquatic life, at all times, have a level of oxygen that can sustain them. While a median oxygen level over a period of months may look fine on paper, in reality it can allow for serious dips in oxygen for prolonged periods of time with deadly consequences – fish, like people, may not be able to hold their breath or sustain their life systems long enough to survive a period of oxygen below the minimum level they need to survive for that prolonged period. The Delaware Riverkeeper Network urges EPA to add to their regulatory proposal a minimum dissolved oxygen level that can never be violated for any period of time.
2. The length of time over which assessments are conducted, and exceedances are allowed, must be reduced from being seasonal to monthly. As currently written, the proposed standard could allow dissolved oxygen levels that are dangerously low for up to 61 days during the most dangerous summer months of the year for the sturgeon of our River. A four month window where violations can last from 10% to 50% of the time is dangerous and could be deadly on a serious, population-threatening scale.

3. The science is clear that Atlantic Sturgeon require 6.5 mg/l of dissolved oxygen – which translates to an 80% saturation value at August median temperatures – to fully support all life stages. The current proposal of 66% to 74% saturation seriously fails to meet this science-based mandate. The Delaware Riverkeeper Network urges the EPA to increase the oxygen criteria to saturation levels that ensure full protection of our Atlantic Sturgeon.

These modifications are essential to ensure full protection of all life stages of the Delaware River Atlantic Sturgeon and other aquatic life. Given how perilously close the Delaware River Atlantic Sturgeon are to extinction – less than 250 spawning adults returning each year – and the increasing pressures climate change, industry and wastewater operations place on the sturgeon, it is essential that this basic need for high levels of oxygen year round is provided for and fully protected.

The Delaware Riverkeeper Network is undertaking a thorough and detailed scientific and legal evaluation and fully intends to supplement this preliminary comment before the end of the comment period.

Respectfully,



Maya K. van Rossum  
the Delaware Riverkeeper