



March 6, 2020

Mr. John Yagecic
Supervisor, Standards and Assessment Section
DRBC Modeling, Monitoring and Assessment Branch,
Water Quality Assessment 2020
P.O. Box 7360
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Submitted via john.yagecic@drbc.nj.gov

**Re: Delaware Riverkeeper Network Comments on DRBC Water Quality Assessment 2020
Draft Methodology**

Dear Mr. Yagecic:

Thank you for the opportunity to comment on the Delaware River Basin Commission's (DRBC) proposed assessment methodology for the 2020 integrated water quality assessment report. Delaware Riverkeeper Network (DRN) understands from past reports that as part of DRBC's coordinating role with the Basin states to work to ensure and assess shared waters in the Basin are protected, DRBC provides a preliminary draft report to the states by March 15, 2020 so the state's have adequate time for public notice and inclusion of DRBC data into the state's regulatory obligation of the integrated listing process. DRBC's 2020 Assessment and the Basin States' Integrated Lists are shared one year prior to the April 1 deadline. DRBC's water quality assessment report has been developed every even numbered year since its initiation. DRN has commented on DRBC's assessment methodology since at least 2009. While DRBC does perform a water quality assessment function consistent with Section 305(b) of the Clean Water Act, only the states list water bodies not meeting standards, as per section 303(d). The DRBC does not list, but provides its assessment to the states for consideration in their listing determinations. Pennsylvania, New Jersey, Delaware, and New York consider this assessment, in the context of their own EPA approved assessment and listing methodologies, to determine whether sections of the main stem Delaware River should be listed on the state 303(d) list of certain pollutant(s). Because state methodologies differ, listing decisions for shared waters are not automatically consistent.

DRN Comment: DRN urges the DRBC to use its authority and compact to its best ability to ensure its evaluations are adopted by the states that are the most protective and to best consistently protect the Delaware River which serves as drinking water for over 15 million people, is a major and important natural recreational resource near large populations centers and is the longest stretch of special protection waters in the nation.

Background of DRBC's Water Quality Reports:

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Every two years, the DRBC compiles a Delaware River and Bay Water Quality Assessment Report for the U.S. EPA, which provides an assessment of the Delaware River and Bay's support of various uses during previous years. The basin states use the DRBC main stem assessment as part of their reports to U.S. EPA. The uses, which are protected by the DRBC's water quality regulations or by the federal Clean Water Act of 1972, are:

- Maintenance of aquatic life
- Providing a raw water source for human consumption
- Swimming and recreation
- Fish consumption
- Shellfish consumption

The assessment primarily involves comparing levels of water quality indicators (pH, dissolved oxygen, etc.) with DRBC stream quality objectives, identifying impaired waters, or those that do not meet DRBC's water quality regulations. The regulations define six "zones" in the Delaware River from the bay at 0.0 to stream mile 330.7 at Hancock, NY to which the stream quality objectives are applied, and the report assesses water quality based in part upon those zones.

According to DRBC, data used for the report come from a variety of sources. The foundation for the assessment comes from DRBC's three water quality monitoring programs that cover different sections of the Delaware River:

- Scenic Rivers Monitoring Program (From Hancock, N.Y. to the Delaware Water Gap)
- Lower Delaware Monitoring Program (from the Delaware Water Gap to Trenton, N.J.)
- Delaware Estuary Boat Run Program (from Trenton, N.J. to the mouth of the Delaware Bay)

In addition, data from a variety of other sources are utilized in making the water quality assessments. These other sources include:

- U.S. Geological Survey National Water Information System
- Pennsylvania Department of Environmental Protection (DEP) Water Quality Network
- New York State Department of Environmental Conservation Ambient Water Quality Monitoring Program
- New Jersey DEP Ambient Surface Water Monitoring Program
- U.S. Environmental Protection Agency's (EPA) National Coastal Assessment Program

DRN comment: DRN suggests listing monitoring data collected by partner and environmental NGOs using standard QAQC methodologies be incorporated into this list since there is an obligation and data solicitation for NGO's and volunteer monitors to submit data to be considered in the integrated report as part of the requirements.

The biennial reporting of water quality assessments of the Delaware River and Bay is intended to provide the U.S. EPA and the public with an overview of water quality conditions and to provide a basis for further study. DRBC typically leads impaired waters' recovery for the mainstem river and bay through the establishment of "pollution budgets" or waste allocations, which set interim and long term standards, goals, and plans. DRBC also takes the lead on its Special Protection Waters Antidegradation Program for the non-tidal Delaware River.¹

Please see DRN comments below and thank you in advance for your consideration of these comments.

¹ DRBC. 2018 Delaware River and Bay Water Quality Assessment. Delaware River Basin Commission. West Trenton, NJ. May 2018.

Safe and Healthy Delaware River Petition Submitted to DRBC

On March 1, 2020, Delaware Riverkeeper Network and a coalition of nine other organizations submitted a petition to the DRBC requesting an upgrade of the designated use of Zone 3 and River Miles 95.0 to 81.8 of Zone 4 of the Delaware Estuary to include primary contact recreation. Zone 3 and Upper Zone 4 are currently designated only for secondary contact recreation. Today people enjoy the main stem Delaware River in many ways that bring them into direct contact with the water (what is known as primary contact recreation), such as kayaking, swimming and tubing. However, the regulations currently upheld by the Delaware River Basin Commission (DRBC), Pennsylvania and New Jersey fail to recognize that these primary contact recreation uses already take place frequently on the Delaware River along Philadelphia and Camden. As a result, the regulations and water quality standards currently in place cannot be relied upon to sufficiently protect the health and safety of individuals, children and families who enjoy primary contact recreation activities on this stretch of the Delaware River. DRBC has recognized the need for this existing use of primary recreation at its Water Quality advisory committee meetings that supports this goal that the Safe and Healthy Delaware River Petition is requesting.²

This petition calls upon DRBC and the states of New Jersey and Pennsylvania to recognize primary contact recreation as a designated use for this section of the Delaware River in order to conform with the mandates of the Clean Water Act as well as to modify the water quality standards to better protect the health and safety of those who participate in activities on the river that involve direct contact with the water.

The Safe and Healthy Delaware River petition with press release is available for download here: <https://www.delawariverkeeper.org/sites/default/files/Primary%20Contact%20PR%203.2.20%20%2B%20Attachments.pdf> and we very much look forward to working with the DRBC to ensure these much needed and important uses are finally realized which also helps illustrate the good work of so many regulations over the decades since the Clean Water Act was put in place.

Page 8, Table 2 --- DRN Comment: it may be less confusing and more accurate to ensure that Zone 4 is broken out into river miles to differentiate the current primary recreation designation since the entire Zone 4 is not currently designated primary contact – the way the table is displayed in the draft document, Zone 4 is checked as having both primary and secondary. Since all Zones have secondary contact recreation (per paragraph 3 on page 8) we are unsure of why the boxes are not checked for that secondary use in the Table for all zones.

Page 3, Introduction – DRN Comment: DRBC notes that “the Assessment methodology proposed is based on the methodology used in the 2018 report *with some modifications*. In previous assessments (2010-2018), units would not meet criteria when one exceedance plus one confirmatory exceedance were documented. This approach was flawed and not supportable so modifications to the assessment methodology were made. In this report, assessment units fail to meet criteria if applicable criteria were met less than 99% of the time.” DRN in general supports more stringent protections and thresholds as these often are better protections for aquatic life health, public health, water quality, and safety. Though DRBC asserts this 99% rule modification, it is unclear what the basis, rationale and justification is for this change and DRN believes we need careful deliberation about this change and that information should be transparent to the public for us to better understand how this decision was arrived at. Are surrounding states using the 99% rule? Has this change been discussed and considered at the Water Quality Advisory Committee meetings for thorough deliberation and is it protective enough? For example, with toxics criteria a 99% rule could mean that there are 3.7 days out of a 365-day year where exceedances could be allowed. With some toxins this threshold could be completely lethal and not supportive for aquatic life and could entirely eliminate all aquatic life – so 99% would not be protective enough depending on the toxin. This type of harm would not be acceptable to the Delaware River community or in keeping with meeting designated

² DRBC presentation by John Yagecic provided to the Water Quality Advisory Committee Meeting, July 18, 2018. https://www.nj.gov/drbc/library/documents/WQAC/071818/yagecic_recreational-criteria_DelEstuary.pdf

uses. In addition, dataset size and sources may become a factor for this kind of threshold (auto loggers that may collect once an hour every day versus monthly sample grabs for example). This is a major switch in methodology and the process should be transparent for better public comfort on how this decision was arrived at but again the more stringent the protection to water quality, the more supportive DRN is of these thresholds as they are more in keeping with the requirements of the Clean Water Act and ensuring all uses are protected or cleaned up to needed existing use standards.

Section 1.1 Coordination and Schedule

DRN Comment: When the DRBC provides a report to the basin states a year in advance (its noted in this guidance it will be shared March 15, 2020), this report could also be made available to the public or stakeholders and to monitoring groups so watershed groups could adequately plan to submit any needed water quality data that may be missing from the report and where they believe problems may exist or designated uses are not being met. This would help provide additional data that could be considered for assessment purposes and help better fill data gaps.

DRN is glad to have seen that the notice for this public review was shared via email and DRBC list serves in addition to the federal register (this consequently is the way that several of our staff members noticed this public comment period) which was a recommendation we provided in prior years. DRN scanned the Our Shared Waters Facebook page that we understand is to be for stakeholders and the DRBC but we did not see any mention of this open comment period. Sharing on social media could help educate and solicit more public input.

A longer comment period than the 30 days provided for the methodology would encourage the public to more effectively weigh in on this important process. With a close of the comment period on March 6, 2020 and the DRBC stating in its notice that the 2020 Delaware River and Bay Water Quality Assessment Report, which uses this draft assessment methodology, will be released to the states on March 15, 2020 – a mere 5 business days – it is not clear how any public comments on the methodology used in the report could be realized and incorporated in this short window. With integrated listing being a lengthy process and often strapped staffed agencies lagging behind in the federal requirements and timelines, providing adequate public time for review and input and actual consideration by the agency would go a long way in ensuring public confidence and incorporation in the designation and listing process.

2.3.1 Temperature, Page 9 – DRN Comment: It is unclear why the temperature data and modeling were unworkable in the 2012 assessment and as such why DRBC did not assess Zones 1A through 1E. Was this the case for the 2018 assessment? More details on this would be helpful especially considering how critical temperature and related dissolved oxygen (DO) is to aquatic life.

In prior DRN comments to DRBC for this methodology and DRN's March 2013 Dissolved oxygen petition submitted to the DRBC at one of its regularly scheduled meetings, DRN urged and continues to urge DRBC to ensure DO levels in the main stem river reflect and protect all life stages of fish that are currently residing and reproducing, including the federally listed Atlantic sturgeon among other river species. As indicated in various datasets, higher DO levels are occurring and have been documented in the main stem and DO standards need to be increased to reflect these successes and protect aquatic life and this existing use.³

Toxics: DRN supports DRBC's use of the most stringent ambient water quality criteria available. DRN supports efforts to ensure additional and all toxics parameters are established (where missing) with stringent numeric protections as narrative criteria are difficult to enforce. On Table 12 it appears that DRBC is using as the assessment method – no more than one exceedance in an AU over a three-year window for toxic pollutants while the data requirement is “available data”. With toxics, this low threshold is key to protecting

³ Access to March 5, 2013 Petition Submitted to DRBC and additional DRN comments and supplements regarding Dissolved oxygen available here: <https://www.delawariverkeeper.org/ongoing-issues/dissolved-oxygen-criteria>

uses as compared to some of the other parameters noted that require say, 20 samples per AU during the assessment period. It will be interesting and important to see the frequency of toxics sampling in the report.

2.3.2. Salt line – it may be helpful to note and highlight salt line language in the report as it pertains to drinking water intakes and impacts anticipated from climate change.

2.4 Assessment Summary – DRBC’s practice in the 2018 report to include a summary of the individual assessments for each designated use is helpful and helps illustrate how the River is doing for each designated use.

DRN appreciates DRBC considering our comments and we look forward to reviewing and learning more when the 2020 report becomes available.

Sincerely,



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