



For Immediate Release

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Environmental Coalition Petitions the US Environmental Protection Agency To Take Action on Delaware River Oxygen Standards In Facing of DRBC & State Failure to Act

NY, NJ, PA, DE – A coalition of leading environmental organizations – the Delaware Riverkeeper Network, PennFuture, Clean Air Council, Environment New Jersey and Penn Environment – submitted a 17 page legal Petition (Petition) to the U.S. Environmental Protection Agency (EPA) urging the federal government to override the regional Delaware River Basin Commission (DRBC) and “promptly initiate rulemaking” necessary to protect aquatic life in the Delaware Estuary, including the federally endangered Atlantic Sturgeon that are the brink of extinction. According to the Petition:

“Because the DRBC is failing to discharge its duty to protect the health of the Delaware River Estuary at the expense of valuable aquatic life—including the federally endangered Atlantic sturgeon” and because the 4 watershed states have similarly failed to carry out needed protections, “Petitioners now request of the EPA to promptly exercise its Clean Water Act Section 303(c)(4)(B) authority to prepare and publish proposed regulations setting forth a revised [Water Quality Standards] that includes a designated use for fish “propagation” and upgraded D.O. criteria to support that revised designated use.”

According to the petition, the DRBC and the watershed states have failed to recognize that the Delaware Estuary, from Trenton to the top of the Bay, is being used for maintenance and propagation of resident fish and other aquatic life; as well as for spawning and nursery habitat for anadromous fish; and have similarly failed to take action to institute water quality legal standards essential for protecting critical species such as the federally endangered Atlantic Sturgeon of the River. According to the submitted Petition, the Delaware River Basin Commission, and the four watershed states, have been repeatedly and formally urged to recognize these aquatic life uses, and to upgrade associated water quality protections, particularly dissolved oxygen standards. These requests, dating back more than a decade, have failed to spark needed protective action other than additional scientific research which the organizations say is unneeded given the robust scientific data already available on the record.

The Petition further asserts:

“Without a “propagation” designated use for the subject zones of the Delaware River Estuary, and attendant upgrade to D.O. criteria, the health of valuable aquatic life continues to be unnecessarily threatened. DRBC initiated the regulatory process for upgrading the designated uses to include “propagation” for the subject zones in 2009 and has unjustifiably prolonged the regulatory time frame by which it will make a decision. Given DRBC’s protracted decision-making process and patterned refusal to take meaningful action to protect the health of the Delaware River Estuary, the most effective and practical means of addressing these issues is for EPA to exercise its Clean Water Act Section 303(c)(4)(B) authority. Put simply, the existing designated use of the subject zones of the Delaware River Estuary are insufficient to meet the requirements of the Clean Water Act.”

The Petition comes on the heels of a strongly worded letter delivered on April 19 to the four states of the watershed and the Delaware River Basin Commission challenging a recent DRBC Draft Technical Report for “cherry picking science” in a way that will minimize and undermine pursuit of appropriate water protection standards, particularly dissolved oxygen.

According to the coalition, this draft report is the most recent evidence of the DRBC’s failure to act in accordance with federal law; and the acquiescence of the watershed states to the failing efforts of the DRBC staff demonstrates that they too will not undertake the steps necessary for Clean Water Act compliance. As a result, the coalition of five organizations said they were left with no choice but to seek EPA intervention.

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