

RESOLUTION FOR THE MINUTES

A RESOLUTION for the Minutes to support regulatory efficiency, intergovernmental coordination, and clarity to the public in revising the aquatic life designated uses to provide for fish propagation and corresponding water quality criteria for dissolved oxygen in the Delaware River Estuary (“Estuary”).

WHEREAS, on September 13, 2017, the Commission adopted [Resolution No. 2017-4](#), which recognized that evidence supported further study on the inclusion of propagation as a designated use in Water Quality Zones 3 and 4 and the upper portion of Zone 5, located in the Estuary, provided for such studies to be undertaken in consultation with co-regulators and dischargers, and directed the Executive Director to initiate rulemaking to revise the designated uses for these reaches to include propagation of aquatic life consistent with the results of the identified studies and the objectives and goals of the federal Clean Water Act (“CWA”);

WHEREAS, by a [Resolution for the Minutes dated September 10, 2020](#), the Commission amended the goals established by Resolution No. 2017-4, to provide that the Commission would complete a draft analysis of attainability for aquatic life uses in Zones 3, 4 and upper Zone 5 by September of 2022 and would adopt a final rule to revise the designated uses and supporting water quality criteria by March of 2025;

WHEREAS, to satisfy their obligation under the CWA and its implementing regulations to establish, periodically review, and where appropriate revise water quality standards for their surface waters within the Delaware River Basin, the States of Delaware and New Jersey and the Commonwealth of Pennsylvania either defer to water quality standards that they have jointly established through the Commission or provide for application of the more stringent of state and Commission standards;

WHEREAS, the longstanding arrangement by which the Commission establishes surface water quality standards and performs water quality monitoring and assessment for the interstate Delaware River has served the Commission’s members and the region’s environment and economy well, including by achieving remarkable water quality improvements over the course of 60 years;

WHEREAS, in accordance with the schedule set forth in the Resolution for the Minutes dated September 10, 2020, the Commission completed the scientific studies outlined in Resolution No. 2017-4, which entailed: developing a linked, three-dimensional hydrodynamic and water quality model with the input of a panel of experts; researching dissolved oxygen requirements for key sensitive species to support establishment of water quality criteria protective of these species; collaborating on an ichthyoplankton survey; performing ambient nutrient monitoring and primary productivity and algal speciation studies to support model calibration; identifying feasible advanced treatment technologies and developing estimates of the associated capital and operating costs for their implementation at twelve wastewater treatment plants; and conducting an initial evaluation of the physical, chemical, biological, social and economic factors affecting the attainment of uses in the affected water quality zones;

WHEREAS, as required by Resolution No. 2017-4, DRBC has issued the following reports or draft reports containing the results of its studies supporting the inclusion of propagation as a designated use in the Estuary:

- Hydrodynamic Model Report, [Modeling Eutrophication Processes in the Delaware River Estuary: Three-Dimensional Hydrodynamics Model](#) (DRAFT; December 2021) & [Appendices A-N](#) (DRAFT; December 2021; zip)

- Water Quality Model Report, [Modeling Eutrophication Processes in the Delaware Estuary: Three-Dimensional Water Quality Model](#) (DRAFT; September 2022; pdf) & [Appendices A-H](#) (DRAFT; September 2022; zip)
- Analysis of Attainability Report, [Analysis of Attainability: Improving Dissolved Oxygen and Aquatic Life Uses in the Delaware River Estuary](#) (DRAFT; September 2022; pdf)
- Linking Aquatic Life uses with Dissolved Oxygen Conditions, [Linking Aquatic Life Uses with Dissolved Oxygen Conditions in the Delaware River Estuary](#) (DRAFT; November 2022; pdf)
- Socio-Economic Analysis Report, [Social and Economic Factors Affecting the Attainment of Aquatic Life Uses in the Delaware River Estuary](#) (DRAFT; September 2022; pdf)
- Nitrogen Reduction Cost Estimation Study, [Nitrogen Reduction Cost Estimation Study: Final Summary Report](#) (submitted to the DRBC by Kleinfelder, Inc.; January 2021; pdf);

WHEREAS, on April 29, 2022, a group of non-governmental organizations submitted a petition to the United States Environmental Protection Agency (“EPA”) seeking to bypass the Commission’s ongoing studies and rulemaking processes and requesting EPA to commence a separate rulemaking to revise the designated uses and dissolved oxygen criteria in the Delaware River Estuary;

WHEREAS, on [December 1, 2022, EPA issued a determination](#) (the “Determination”) concluding that revised water quality standards for a portion of the Delaware River Estuary to protect aquatic life are necessary to satisfy the requirements of the CWA. Recognizing the value of the foundational science performed by the Commission, the Determination nevertheless noted that EPA is required to develop proposed regulations to comply with Section 303(c)(4) of the Clean Water Act, which provides that “the [EPA] Administrator shall promptly prepare and publish proposed regulations setting forth a revised or new water quality standard . . . in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of [the Clean Water Act]”;

WHEREAS, on December 1, 2022, the DRBC issued a statement, in part explaining that the Commission “viewed the petition as unnecessary,” and adding that “while EPA’s decision has the potential to create a duplicative regulatory process, the DRBC is committed to continuing to work jointly with EPA and state co-regulator agencies in Delaware, New Jersey and Pennsylvania to develop water quality standards using sound science to meet the goals of the CWA and the Delaware River Basin Comprehensive Plan”;

WHEREAS, both before and since EPA issued its Determination, the Commission, EPA, and state co-regulators have worked cooperatively and collaboratively to develop dissolved oxygen criteria that support propagation as an aquatic life use for portions of Estuary that are currently designated for fish maintenance only; and

WHEREAS, although the Determination recognized that both the Commission and EPA could proceed with coordinated, yet separate, rulemakings to revise the designated use and corresponding water quality criteria, a parallel and duplicative process is not the most efficient method for revising the Estuary aquatic life water quality standards and presents the potential to confuse the public;

NOW THEREFORE, BE IT RESOLVED by the Delaware River Basin Commission:

1. The Commission hereby suspends, effective immediately, its own actions to develop proposed regulations for public comment upgrading the designated aquatic life use for Water Quality Zones 3 and 4 and the upper portion of Zone 5 to include propagation, and:
 - a. will continue to provide its scientific, technical, and engineering assistance to support EPA's process for revising the aquatic life designated uses and corresponding criteria for Water Quality Zones 3 and 4 and the upper portion of Zone 5 of the Delaware River to attain and maintain propagation of aquatic life, consistent with the staff's best professional judgment and expertise.
 - b. will continue to coordinate and collaborate with state and federal co-regulators during EPA's rulemaking process.
 - c. withdraws its scheduled commitment to adopt revised DRBC water quality standards for the Delaware River Estuary by March 2025.
2. In accordance with Articles 5.2 and 13.1 of the [Delaware River Basin Compact](#), the Commission retains the authority to update its Comprehensive Plan and [Water Quality Regulations](#) for the Delaware River Basin to include designated uses and criteria (in DRBC parlance, "stream quality objectives") for the Estuary, including establishing propagation of aquatic life as a designated use for all water quality zones with corresponding dissolved oxygen criteria to protect that use, at a date to be determined after EPA's rulemaking process is complete.
3. The Commission commits, effective immediately, to working with the EPA, co-regulator states, and interested stakeholders through the Water Quality Advisory Committee to develop plans, analyses, and, if appropriate, related regulations for the implementation of new aquatic life uses and criteria in the Delaware River Estuary. Implementation measures to be considered may include, but are not necessarily limited to, wasteload allocations, effluent limitations, capital improvement schedules, and variances. The schedule for completing such plans and promulgating related regulations as appropriate will depend upon the timing of completion of EPA's rulemaking process and will be determined at a later date.

ADOPTED: September 7, 2023