



Delaware River Basin Commission

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Steven J. Tambini, P.E.
Executive Director

June 10, 2020

Maya K. van Rossum
Delaware Riverkeeper Network
925 Canal Street, 7th Floor, Suite 3701
Bristol, PA 19007

Re: Recreational Uses in Water Quality Zone 3 and Upper Portion of Zone 4

Ms. van Rossum,

The Delaware River Basin Commission (“DRBC” or “Commission”) received [your letter](#) of March 2 concerning recreational uses in the Delaware River Estuary. We understand you wrote on behalf of several organizations, and we trust that you will forward this response to all of them. The Commission appreciates your collective interest in recreational uses and the continued improvement of water quality in the Estuary. I have conferred with the DRBC alternate commissioners on this response.

The Commission supports the “fishable /swimmable goals” of the federal Clean Water Act. The past nearly six decades of improvements in the health of shared interstate waters throughout the Basin, including in the Delaware River Estuary, is in significant part a result of this commitment. We envision a time when the improvements we continue to achieve result in new recreational opportunities for those who live, work, and play in the Basin.

The authority conferred on the Commission by the Delaware River Basin Compact has enabled the Basin states and federal government, acting jointly through the DRBC, to implement an integrated approach to water management in the Basin. Since its inception in 1961, the DRBC has served as a model for interstate water quality management. As such, the Basin states incorporate the uniform water quality criteria set forth in [DRBC’s Water Quality Regulations](#) as their criteria in shared interstate waters. Although as a matter of law, the authority to implement the Clean Water Act and the obligations imposed by that Act rest with the federal government, states and eligible tribes, we anticipate that the states will continue to establish Estuary stream quality objectives and use designations through the Commission prior to seeking EPA review and approval or disapproval of their water quality standards pursuant to the Clean Water Act. Through coordinated and collective effort, not only do we avoid conflict, but we are able to achieve for interstate waters what no single jurisdiction can accomplish on its own.

The DRBC’s 2020-2022 Water Resources Program (“WRP”), adopted on March 11, 2020 in accordance with Section 3.2(b) of the Compact, states:

Section 101(a)(2) of the Clean Water Act sets, as a national goal, attainment of water quality that protects fish and wildlife and provides for recreation. In the Delaware River, recreation is [a] designated use for all zones. . . . Zone 3 and the upper portion of Zone 4, above River Mile 81.8, are designated as recreation—secondary contact, while the lower portion of Zone 4, below River Mile 81.8, is

designated for primary contact recreation. Primary contact recreation is [also] supported in Zone 1C, 2, 5, and 6. . . . DRBC is in the midst of a special study to assess the likelihood of achieving water quality that would support [primary contact] recreation in Zones 3 and upper 4. DRBC expects results from this effort in 2020, and identification of follow-up actions that will support both safety and increased recreational opportunities in the future.

On April 30, 2020 DRBC staff and staff of the Philadelphia Water Department (PWD) separately presented the DRBC Water Quality Advisory Committee (WQAC) with relevant data independently collected and analyzed by the respective entities in 2019. For your reference and that of co-signers of your letter who may not have attended the April 30 meeting, links to the DRBC and PWD presentations are provided [here](#). The sampling results in each case show that near-shore sites do not consistently meet EPA's recommended water quality criteria for recreational uses with respect both to bacterial indicators and to public health criteria for human illness. Specifically, in accordance with EPA recommendations, both DRBC and PWD used the fecal indicator bacteria (FIB) enterococci and *Escherichia coli* (*E. coli*) as indicators of fecal contamination for recreational waters. Enterococci are understood to be good predictors of gastrointestinal illnesses (GI) in marine and fresh recreational waters, while *E. coli* are good predictors of GI illnesses in fresh waters. The presenters each cautioned that the 2019 data were limited, and that additional data should be collected. The Commission shares the view that additional data and analysis are needed.

The control of pollutants that impact water quality for recreational uses involves questions of public health, wastewater treatment system design, stormwater control and public investment. In addition to rigorous data collection and analysis, the engagement of diverse experts and stakeholders is thus essential in this area. The Commissioners and DRBC staff concluded that the WQAC is the appropriate forum for initial stakeholder input and consideration of your request. DRBC staff plan to collect additional bacterial indicator data as funds are made available and to outline further steps within the annual Water Resources Program ("WRP") process. The Commissioners may also instruct DRBC staff to solicit input from public health and other experts not ordinarily represented on the WQAC.

Finally, as a procedural matter, outside the context of DRBC's Special Protection Waters regulations, DRBC's rules do not include a "petition" process. Additional input by you and your co-signers is welcome through the WQAC and WRP public processes. You may also consider additional action pursuant to Section 2.1.6 of the Commission's *Rules of Practice and Procedure* (18 C.F.R. 401.6), concerning proposed changes to the Comprehensive Plan.

We look forward to an informative dialogue with and among the members of the WQAC, the co-signers of your March 2 letter, and other stakeholders on this important matter.

Sincerely,



Steven J. Tambini
Executive Director

c: DRBC Commissioners
DRBC WQAC Chair