

**WATER QUALITY ADVISORY COMMITTEE
JUNE 29, 2004**

ATTENDEES:

NY Not in attendance	DE DNREC John Schneider, Env. Prog. Administrator
EPA Denise Hakowski, EPA Region III Wayne Jackson, EPA Region II	Dupont Alfred Pagano, Env. Consultant Bart Ruiter, Env. Consultant
PA DEP (via telephone) Ed Brezina, Env. Prog. Mgr. Rod Kime, Biologist	Delaware Riverkeeper Network Maya van Rossum, Riverkeeper Tracy Carluccio, Director Special Projects
NJ DEP Debra Hammond, Water Quality Standards & Assmt.	Academy of Natural Sciences Not in attendance
DRBC Ken Najjar, Branch Head Planning & Implementation Robert Tudor, Deputy Executive Director Jonathan Zangwill, Water Resources Planner Bob Limbeck, Watershed Scientist	Other attendees: Allan Ambler, National Park Service

The meeting was called to order by chairwoman, Debra Hammond (NJ DEP).

Review and Approval of Minutes

The minutes from the April 1, 2004 meeting were reviewed and approved.

Committee Membership and Administration

Debra Hammond's one-year term as chair of the committee has expired. Chuck St. Lucia of New York is supposed to be her successor, but there is a problem with New York's ability to attend meetings due to their budget. Ken Najjar will discuss this with the New York Commissioner, Fred Nuffer. John Schneider of Delaware begins his one-year term of vice-chair for the WQAC.

Ken Najjar stated that the Academy of Natural Sciences is not opposed to be replaced on this committee. The City of Wilmington has not responded to our request for replacement. New Jersey American Water Company would also like to be on the WQAC. Ken Najjar requested any suggestions for additional members be forwarded to him within the next couple of weeks.

Review of Water Quality Standards Article 4

Article 4, along with the Comment and Response document (CRD) was sent to the committee back in March 2004, but was not discussed. The latest working version is dated February 18th, which has the Table of Contents as page (i), and the first page is page zero. Debra Hammond noted that some of NJ DEP's comments have already been addressed and are reflected in the February 18th draft.

Definitions were moved to Article 3.

Best Management Practices changed to: Any measures or methods, including activities, procedures, or structural or non-structural controls designed to reduce stormwater runoff and resulting non-point source loads.

It was brought up that the EPA has a different definition for BMPs. Jon Zangwill suggested the WQAC find a uniform definition.

Minimum Performance Standards: "long-term average concentration for a parameter through which surface water quality criteria has been established under..."

It was questioned as to why we are using effluent standards and not water quality criteria to establish limits. The DRBC response in the CRD was, "They are not used to calculate WQBELs. The goal is to provide a starting point."

Then, unfortunately, the initial load when setting becomes the value, then it is reduced from there. The important point is that the regulations state a uniform percent reduction off of the starting point, the initial value.

This will be discussed further and everyone will be updated accordingly.

General Requirements (Page 1):

Section 4.20.3, Intermittent Streams, should read "New discharges...", so that we're not forced to reconsider whether or not there is an environmentally acceptable alternative.

Section 4.20.4, Water Quality Measurements: change "measured" to "met".

Pennsylvania recommends that the DRBC regulations apply solely to the shared waters, not to the intrastate non-shared waters. Therefore, PA feels that the section regarding non-shared waters should be deleted. DRBC's response in the CRD was, "DRBC is keeping the option open in case a situation arises which causes the state to want DRBC to manage shared waters. New Jersey agrees that this section should be deleted.

Pennsylvania also recommends removing all criteria that are not based solely on shared waters of the basin.

Section 4.20.5, Water Quality Zones, has been changed to, "The shared waters of the Delaware River Basin may be further divided into zones.....quality."

Section 4.30, Basin-wide Minimal Effluent Quality Requirements, it is the policy of the Commission that the more stringent regulations shall prevail when more than one agency has jurisdiction. So, under shared waters, the more stringent requirements of PA, NJ, DE,

NY, and DRBC would apply. It was generally agreed that where DRBC has criteria, DRBC's criteria should be used for shared waters. The states should all agree to those criteria for the shared waters and DRBC should add criteria for parameters not currently covered by the DRBC regulations.

John Schneider suggested the following language: "In absence of commission standards, state standards shall apply to the applicable state's jurisdictional waters."

Ed Brezina read from the compact, "Where an interstate or international agency under an interstate compact or international agreement established water quality standard regulations applicable to surface waters of this commonwealth, including land management, more stringent than those of this title, the more stringent standards apply. In other words, if DRBC establishes more stringent standards than PA, then PA would defer to DRBC, otherwise PA standards would apply.

Comment was made that dischargers would like a uniform standard so they know which one applies.

The TAC (Toxics Advisory Committee) had comments on 3 particular sections.

- 1) When are the water quality standards going to be proposed?
- 2) Variance, in terms of going by the DRBC regulations for the shared waters.
DRBC is, at the request of the TAC, looking into whether or not they have the authority to do variances for the Delaware River.
- 3) Section dealing with dynamic modeling. The current DO levels are based on an old model created in the 1960's. Using that same model, setting a new criteria with a higher DO level would require point-source dischargers to reduce loadings. The existing dischargers are meeting the DO criteria, but the model used wouldn't show that, so therefore, you have to reduce everyone's loadings. If an equal marginal percentage reduction is used, a discharger may be impacted that doesn't need to be. If dynamic modeling was used, that would take that information into account.

Integrated List

Jon Zangwill gave a presentation on the integrated list and distributed copies. This presentation was also given to the TAC, at their request, in June 2004. It was a follow-up to an assessment methodology also given at the TAC's request.

In the 305b Report, DRBC used a 3-tiered categorization of water bodies into fully supporting, partially supporting and not supporting each of the designated uses based on the criteria that would apply to those uses. For the Integrated List, each water body (assessment unit) is placed in one of five categories based on all the criteria in place. The data used comes from the three DRBC partnered monitoring programs, the Scenic Rivers Monitoring Program, the Lower Delaware Monitoring Program, and the Estuary Boatrun Program, in addition to a number of state and federal sources.

The non-tidal river was broken up into what ended up being 20 units, from Hancock, NY down to Trenton, NJ. That was based upon a division of the river based upon our water quality zones which are in the regulations as well as a determination of what would be

significant tributaries to the river that would indicate where you might see water quality changes above and below confluence points of those tributaries. That ended up being the tributaries that comprise 85% of the drainage area of the non-tidal river. The tidal assessment units, as in the 2002 report, are based on the Estuary water quality zones, except for zone 5 which is broken up into three. Those are based upon the changes in the DO criteria that occur at those points in zone 5. Zone 6 – decided to keep the shellfish harvesting areas because those are defined units that the states are working with and we didn't want to dissolve boundaries of units that already exist, but if anything, to add to them to further define the areas. We kept the shellfish harvesting areas, and intersected them with units based upon the Estuary Boatrun.

Integrated list of uses for each zone of the Delaware River:

The uses: EPA Fishable / Swimmable and DRBC Regulations

- Aquatic Life
- Recreation (normally primary contact)
- Public Water Supply (after reasonable treatment)
- Fish Consumption
- Shellfish Consumption (Delaware Bay)

Causes of impairment for aquatic use range from pH, turbidity, TDS, DO, temperature and toxics in different zones.

Causes of impairment for drinking water use are toxics and turbidity.

Fecal coliform is the main cause of impairment for recreational use.

Mercury, dioxins, PCBs, Arsenic and Chlorinated pesticides are the causes of impairment for fish and shellfish consumption uses.

One or more uses are not supported in the majority of the mainstream river.

Summary by use – Nontidal

	<u>Supporting</u>	<u>Impaired</u>	<u>Insufficient Data</u>
Aquatic Life	16.3%	51.9%	31.7 %
Drinking Water	46.0%	7.9%	46.0%
Recreation	71.3%	12.9%	15.8%
Fish	0%	60.9%	39.1%

Summary by use – Estuary and Bay

	<u>Supporting</u>	<u>Impaired</u>	<u>Insufficient Data</u>
Aquatic Life	8.1%	82.7%	9.2%
Drinking Water	0%	100%	0%
Recreation	58.8%	0%	41.1%
Fish	0%	100%	0%
Shellfish	0%	0%	100%

Lower Delaware Monitoring Program

On April 1st, Bob Limbeck gave a presentation on the results of the Lower Delaware monitoring program. In response to the Commissioners' comments on April 21st, the WQAC and representatives were given access to the data for comments. There are two proposed rule changes. One would be designation of the Lower Delaware as Special Protection Waters, and the other is Interim Protection.

Based on the WQAC is recommendations to the Commissioners as to whether there is enough information to classify the Lower Delaware as SPW, the commissioners will make a decision, at the 7/13/04 meeting. The WQAC will also provide a recommendation, if appropriate, as to how individual segments of the Lower Delaware should be classified (OBW vs. SRW). The Commissioners will factor this into their 7/13/04 decision as well. If a recommendation to designate is made and it is approved, it would be protection under the current rules, without setting existing water quality, which DRBC wouldn't have until after collecting the fifth year data. Currently available data allow for a preliminary definition of existing water quality.

The steps are as follows:

- 1) Do we have enough data to establish existing water quality?
- 2) Do that data show that the Lower Delaware should or shouldn't be protected as SPW?
- 3) If so, at what classification, significant resource waters or outstanding basin waters?

The eligibility document was the first reviewed. Maya van Rossum stated that the report reads differently than the graphs/charts indicate. It looks like water quality is not good because, according to the chart, 1/3 of the parameters do not meet criteria. The narrative presents good information about the status of the water quality, indicating water quality is good. The chart should be revised.

Bob Limbeck explained that Jon Zangwill's integrated list was used to produce sets of parameters by use (listed on page 16 of the report).

In summary, staff believes there is sufficient data to move forward with a designation of the Lower Delaware River as Special Protection Waters, within the bounds that the existing water quality is defined by the median. Pennsylvania suggested that water quality be defined now, not sometime in the future. Bob Limbeck also stated that there is a strong recommendation to use site-specific WQ targets because of the lessons learned from the Upper and Middle Delaware.

Interpretation of the data: None of the data is normally distributed. Using means is not appropriate. Trying to compare these data using means is not a valid approach. Non-parametric statistics is the recommended approach to take.

Should a stretch receive Significant or Outstanding classification? Staff recommends, based on the results and all the other sources of information, and replies to the

Riverkeeper petition on page 24, wherever it's been designated as Scenic River, Outstanding Basin Waters should apply with the agreement of the towns along the river. Maya stated that the Riverkeeper Network did not agree with the municipal approval section being added as another layer of approval before moving forward. It is the opinion of the Riverkeeper that where the Lower Delaware has been designated under Wild & Scenic, it's deserving of Outstanding Basin Waters and the areas where it's not designated should be Significant Resource Waters. Riverkeeper feels that the regulations should be applied uniformly and fairly, based upon the water quality in the river; not based upon the politics of the local community. On page 21, Riverkeeper would like the language, "pending agreement by River Financed Municipalities", taken out.

If DRBC moves ahead with public meetings and a rule, then ultimately it would affect our water quality standards regulations and how we review dockets. So, the commissioners would be voting on saying anything new or expanded coming in would have to be looked at to make sure that the EWQ at control points is maintained. What the states would separately do in terms of their own regulations would be yet another set of decisions down the road.

The scenic and recreational value of the river could be improved upon in the report. It was decided that staff should list the number of parks, the number of people using the river for recreation, the number of bathing beaches, etc. The Riverkeeper also suggested including the percentage of riparian owners that voted in favor of the designation. Shad should also be added to the report as an ecological value.

Also, on page 3, it was decided to take the Senators' names out of the introduction. There should be a map of the river zones around page 12 and 13.

Water Quality Rules Status / Schedule

Ken Najjar distributed the latest schedule. There will be a Commission meeting on July 13th, at which staff will seek approval to issue a public notice, which is the key next step. Then, assuming the Commissioners agree, staff would take the following steps:

- ! Hold informational meetings on the designation, it might be a little aggressive, but the public hearing might actually be held by the next Commission meeting which would be September 1st.
- ! The WQAC meets again to review public comments on the designation that would be received in the Sept./Oct. timeframe.
- ! Staff issues a response to comments document, and would be in position to adopt Special Protection Waters designation by the December 8, 2004 meeting. There is a question as to whether or not this meeting will occur. There was a reduction in activities and one of the activities is to reduce the number of meetings that are at the DRBC and that one is currently under the questionable status. But, if the 12/8 meeting is held, publishing would occur sometime after that meeting. If that meeting is not held, the next opportunity to adopt would be in January 2005.

Ken Najjar also passed out the WQ Standards rule adoption schedule. On the 2nd page, it shows that the WQAC met to go over the changes on Article 3 back on April 1st, this was presented to the Commissioners at the meeting April 21st, with the idea of separating the Lower Delaware from the WQ rule. This schedule now reflects where we think we'll be on the rule adoption without getting sidetracked by the Lower Delaware.

- ! Staff has started the basis & background document, it was thought to be done sometime around the winter, but we hadn't been able to do it. Earlier this month staff made advances in looking at some of the meetings we had and notes made by Patricia McSparren for changes. We are trying to get a rationale for major changes and minor changes to put together a basis & background document. At this point we are trying to get that done this summer to have something to talk about come September 2004.
- ! Get the Basis & Background document to the TAC.
- ! Then we would look to a September 1st date to present to the Commissioners, not necessarily looking for the green light at that point, but just to let them know the status of the B&B document for the articles.
- ! Then we would look for approval by the next commission meeting which would be October 27th, to issue public notice assuming we have everything in order.

This schedule would provide targets, even if each specific milestone cannot be met by the dates provided. The next phase would be information meetings, the public hearing, water quality meeting to review changes, a comment response document, rule changes, then notice, and that would bring us at the Spring of 2005.

The next WQAC meeting will be Monday, August 2nd, 2004 @ 9:30 am at DRBC offices in West Trenton, NJ.