

DELAWARE RIVER BASIN COMMISSION

FINAL

ORDER

Amendments to the Water Quality Regulations, Water Code and Comprehensive Plan to Update Water Quality Criteria for pH

Proposed: Delaware *Register of Regulations* (17 DE Reg. 365 (10/01/2013)) on October 1, 2013.

Adopted: December 4, 2013 by the Delaware River Basin Commission, Pamela M. Bush, Esq., Secretary and Assistant General Counsel

Filed: April 8, 2014.

Authority: 53 Delaware Laws, Chapter 71, Approved May 26, 1961 (*Delaware River Basin Compact*).

Effective Date: Thirty (30) days from publication of the corresponding notice of final rulemaking in the Federal Register.

Expiration Date: N/A

The Delaware River Basin Commission is a federal-state regional agency charged with managing the water resources of the Delaware River Basin without regard to political boundaries. Its members are the governors of the four basin states – Delaware, New Jersey, New York and Pennsylvania – and the North Atlantic Division Commander of the U.S. Army Corps of Engineers, representing the federal government. The DRBC is not subject to the requirements of the Delaware Administrative Procedure Act. The purpose of this notice is to advise the public that duly adopted regulations of the Commission have been filed with the State of Delaware in accordance with Section 14.2 of the *Delaware River Basin Compact*.

Summary: By Resolution No. 2013-9 on December 4, 2013, the Delaware River Basin Commission (“DRBC” or “Commission”) approved amendments to the Commission’s *Water Quality Regulations, Water Code and Comprehensive Plan* to update the Commission’s stream quality objectives for pH in interstate tidal and non-tidal reaches of the main stem Delaware River.

Supplementary Information: Notice of the proposed amendments appeared in the Delaware *Register of Regulations* (17 DE Reg. 365) on October 1, 2013, as well as the *Federal Register* (78 FR 58985) on September 25, 2013, the, the *New Jersey Register* (45 N.J.R. 2201) on October 7, 2013, the *New York State Register* (page 13) on October 9, 2013, and the *Pennsylvania Bulletin* (43 Pa.B. 5995) on October 12, 2013. Notice of the proposed changes also was published on the Commission’s web site on September 20, 2013. A public hearing was held on October 24, 2013 and written comments were accepted through November 21, 2013. No written or oral comments were received.

The Commission’s current criteria for pH in interstate streams were adopted in 1967. Today, these criteria are inconsistent with scientists’ increased understanding of natural fluctuations in freshwater and saltwater pH levels and with modern applications of pH criteria. The amendments approved by the Commission on December 4, 2013 will minimize regulatory inconsistencies and better address natural pH cycles in the main stem Delaware River. First, they will increase from 6.0 to 6.5 the lower threshold of the range of acceptable pH conditions in non-tidal zones of the main stem – DRBC Water Quality Zones 1A through 1E. Second, they will add a clause to the pH criteria for all interstate tidal and non-tidal water quality zones, recognizing natural deviations outside the 6.5 to 8.5 pH range. In accordance with these changes, the pH criteria for Water Quality Zones 1A through 1E (the non-tidal main stem) and 2 through 6 (the tidal main stem and tidal portions of tributaries) will read, “Between 6.5 and 8.5 inclusive, unless outside this range due to natural conditions.”

Rule Text: The affected sections of the Commission’s *Water Code and Water Quality Regulations* consist of subsection C.3 of each of sections 3.20.2 through 3.20.6, respectively, for Water Quality Zones 1A through 1E (non-tidal main stem); and sections 3.30.2 through 3.30.6, respectively, for Water Quality Zones 2 through 6 (tidal main stem and tidal portions of tributaries). In each of these sections, the text shall be amended to read, “Between 6.5 and 8.5 inclusive, unless outside this range due to natural conditions.”

(The affected sections relating to Water Quality Zones 1A through 1E were incorrectly identified in the Notice of Proposed Rulemaking as sections 2.20.2 through 2.20.6 of the *Water Code and Water Quality Regulations*. Sections 2.20.2 through 2.20.6 of the *Water Code* are part of an unrelated article; no sections numbered 2.20.2 through 2.20.6 exist in the *Water Quality Regulations*.)

Related Materials, Contact: The complete text of Resolution No. 2013-9, the *Water Code*, the *Administrative Manual Part III - Water Quality Regulations*, a basis and background document setting forth the technical basis for the amendments, and additional documents concerning pH criteria for interstate non-tidal and tidal reaches of the main stem Delaware River are available on the Commission’s website, DRBC.net. Copies also may be obtained from the Commission’s Secretary and Assistant General Counsel by phoning 609-883-9500, ext. 203 or 224. A charge for printing and mailing may apply.

Dated: April 8, 2014
Pamela M. Bush, Esq.
Commission Secretary and Assistant General Counsel
17 DE Reg. 1058 (05/01/14)(Final)