

DELAWARE RIVER BASIN COMMISSION

PROPOSED

PUBLIC NOTICE

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

The Delaware River Basin Commission (“DRBC” or “Commission”) is a Federal interstate compact agency charged with managing the water resources of the Basin without regard to political boundaries. Its commissioners are the governors of the four Basin states – Delaware, New Jersey, New York, and Pennsylvania – and a Federal representative, the North Atlantic Division Commander of the U.S. Army Corps of Engineers. The Commission is not subject to the requirements of the Delaware Administrative Procedure Act. This notice is published by the Commission for information purposes.

Summary: The Commission will hold a **public hearing** to receive comments on proposed amendments to the Commission's Water Quality Regulations, Water Code and Comprehensive Plan to update stream quality objectives (also called “water quality criteria”) for pH in interstate tidal and non-tidal reaches of the main stem Delaware River.

Dates: The **public hearing** will be held at 2:00 P.M. on Thursday, October 24, 2013. The hearing will continue until all those wishing to testify have had an opportunity to do so. Written comments will be accepted and must be received by 5:00 P.M. on Thursday, November 21, 2013. For more information regarding the procedures for the hearing and comments, see Supplementary Information.

Addresses: The **public hearing** will be held in the Goddard Conference Room at the Commission's office building located at 25 State Police Drive, West Trenton, NJ. As Internet mapping tools are inaccurate for this location, please use the driving directions posted on the Commission's website.

Oral Testimony and Written Comments: Persons wishing to testify at the hearing are asked to register in advance by phoning Paula Schmitt at 609-883-9500, ext. 224. Written comments may be submitted as follows: If by email, to paula.schmitt@drbc.state.nj.us; if by fax, to Commission Secretary at 609-883-9522; if by U.S. Mail, to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360; and if by overnight mail, to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360. Comments also may be delivered by hand at any time during the Commission's regular office hours (Monday through Friday, 8:30 A.M. through 5:00 P.M. except on national holidays) until the close of the comment period at 5:00 P.M. on Thursday, November 21, 2013. In all cases, please include the commenter's name, address and affiliation, if any, in the comment document and “pH Rulemaking” in the subject line.

For further information: The rule text and a report entitled “pH Criteria Revision Recommendations for Interstate Waters of the Delaware River Basin: Basis & Background Document” (DRBC, March 2013) are available on the Commission's web site, www.drbc.net. Hard copies of the latter document may be obtained for the price of postage by contacting Ms. Paula Schmitt at 609-883-9500, ext. 224. For questions about the technical basis for the rule, please contact Dr. Erik Silldorff at 609-883-9500 ext. 234. For queries about the rulemaking process, please contact Pamela Bush at 609-477-7203.

Supplementary Information

Background. The Commission in 1967 assigned stream quality objectives (also called “criteria”) for pH to all tidal and non-tidal interstate streams in the Delaware River Basin (“basin”). Since that time, scientists' understanding of natural fluctuations in freshwater and saltwater pH levels has grown. Likewise, the development and application of pH criteria have evolved, while the Commission's pH stream quality objectives have remained unchanged. Commission scientists in consultation with experts from DRBC member states and federal agencies have evaluated the pH criteria adopted by signatory states and recommended by federal agencies over the past four-and-a-half decades. They have concluded that in order to minimize regulatory inconsistencies and better address natural pH cycles in the main stem Delaware River, two classes of revisions to the Commission's criteria for this shared interstate waterway should be considered. The first concerns the range of pH levels deemed to comprise the numeric standard within the tidal and non-tidal zones of the main stem and tidal portions of tributaries. The second concerns excursions outside the standard range that are attributable to natural conditions. The proposed revisions were unanimously endorsed by the Commission's Water Quality Advisory Committee (“WQAC”) in March 2009. The WQAC is a standing committee of stakeholders, including regulators, municipal and industrial dischargers, academicians and environmental organizations that advises the Commission on technical matters relating to water quality within the basin.

Proposed Change to Existing Criteria. The Commission's existing pH criteria applicable to the main stem are expressed as ranges. “Between 6.0 and 8.5” is the range currently assigned to all freshwater (non-tidal) zones of the main stem Delaware River – DRBC Water Quality Zones 1A through 1E. In all tidal zones – DRBC Water Quality Zones 2 through 6, which include the tidal main stem and tidal portions of its tributaries – the pH range currently in effect is “between

6.5 and 8.5". The proposed amendments would make 6.5 the lower threshold of acceptable pH conditions for all water quality zones encompassing reaches of the main stem and tidal portions of its tributaries.

Natural Conditions Clause. The proposed amendments would add a clause to the pH criteria recognizing natural deviations outside the 6.5 to 8.5 pH range in the moderately acidic waters draining the Catskill Mountains and Pocono Plateau, the high-light and high-productivity zones of the non-tidal main stem, and the acidic coastal plain tidewaters of the Delaware Estuary.

Proposed Rule Text. In accordance with these proposed changes, the pH criteria for Water Quality Zones 1A through 1E (non-tidal main stem) and 2 through 6 (tidal main stem and tidal portions of tributaries) are proposed to be amended to read, "Between 6.5 and 8.5 inclusive, unless outside this range due to natural conditions." The affected sections of the Commission's *Water Quality Regulations* consist of subsection C.3 of each of sections 2.20.2 through 2.20.6, 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). It is further proposed to amend paragraph 410.1(c) of title 18 of the Code of Federal Regulations by replacing the date of incorporation by reference that appears there (currently, December 8, 2010), with the date on which the Commission adopts a final rule in response to this proposal.

Dated: September 13, 2013

PAMELA M. BUSH, ESQ.
Commission Secretary

17 DE Reg. 365 (10/01/13)(Prop.)