

DELAWARE RIVER BASIN COMMISSION

PROPOSED

Proposed Amendment to the Water Quality Regulations, Water Code and Comprehensive Plan to Classify the Lower Delaware River as Special Protection Waters

Agency: Delaware River Basin Commission

Summary: The Delaware River Basin Commission ("Commission" or "DRBC") will hold a public hearing to receive comments on proposed amendments to the Commission's Water Quality Regulations, Water Code and Comprehensive Plan to classify as Special Protection Waters the reach of the main stem Delaware River known as the "Lower Delaware." The Lower Delaware extends from the southern boundary of the Delaware Water Gap National Recreation Area at River Mile ("RM") 209.5 to the head of tide at Trenton, New Jersey, RM 133.4.

Background. The Special Protection Waters regulations, consisting of Section 3.10.3.A.1. of the Water Quality Regulations (also, "Regulations"), are intended to maintain the quality of interstate waters where existing water quality is better than the established stream quality objectives. They consist in large part of a series of policies relating to: water quality management (§3.10.3.A.2.b.), allowable discharges (§3.10.3.A.2.c.), wastewater treatment facilities (§3.10.3.A.2.d.), the control of non point sources of pollution (§3.10.3.A.2.e.), and inter governmental responsibilities (§3.10.3.A.2.f). Other sections of the rule include definitions (§3.10.3.A.2.a.), a list of waters classified as Special Protection Waters (§3.10.3.A.2.g.), a table defining existing water quality with numeric values for a series of different parameters in each of the river sections classified as Special Protection Waters (Table 1), and a table describing the location of the Boundary and Interstate Special Protection Waters Control Points, which are the locations used to assess water quality for purposes of defining and protecting existing water quality (Table 2).

To be protected as Special Protection Waters, stream reaches must be classified as either "Outstanding Basin Waters" or "Significant Resource Waters." "Outstanding Basin Waters" are defined as "interstate and contiguous intrastate waters that are contained within the established boundaries of national parks; national wild, scenic and recreational rivers systems; and/or national wildlife refuges that are classified by the Commission under Subsection 2.g.1. [of the Regulations] as having exceptionally high scenic, recreational and ecological values that require special protection" (§ 3.10.3.A.2.a.1.). "Significant Resource Waters" are defined as "interstate waters classified by the Commission under Subsection 2.g.2. [of the Regulations] as having exceptionally high scenic, recreational, ecological, and/or water supply uses that require special protection" (§ 3.10.3.A.2.a.2.).

In accordance with Section 3.10.3.A.2. of the Regulations, the Delaware Riverkeeper Network submitted to the Commission in April 2001 a nomination petition requesting that the Commission classify the Lower Delaware River as Special Protection Waters. The Commission initiated a five year monitoring program in May of 2000 to characterize existing water quality in the Lower Delaware. Four years of data have been collected and analyzed. Data collection and analysis for the fifth year will be completed in 2004.

A series of studies, plans, and policies and a federal designation document the scenic, recreational, ecological and water supply values and uses of the Lower Delaware and support the goal of preserving these qualities. The four years of data and findings set forth in the report entitled, *Delaware Eligibility Determination for DRBC Declaration of Special Protection Waters* (DRBC, August 2004) demonstrate that water quality in the Lower Delaware River generally is better than the water quality criteria. The *Lower Delaware National Wild & Scenic River Study Report* (National Park Service, Northeast Region, 1999) documents that the Lower Delaware River includes islands, wetlands, and diverse ecosystems that support rare and endangered plant and animal species and constitute scenic and recreational amenities. The *Lower Delaware River Management Plan* (Lower Delaware River Wild and Scenic River Study Task Force and Local Government Committee, with assistance from the National Park Service, August 1997) (LDRMP) contains goals relating to water quality, natural resources, historic resources, recreation, economic development and open space preservation for the Lower Delaware River. Goal 1 of the LDRMP calls for maintaining, and where practical, improving existing water quality in the main stem of the Lower Delaware River and its tributaries. On November 1, 2000, the President of the United States signed Public Law 106 418, designating portions of the Lower Delaware River as part of the National Wild and Scenic Rivers System. The system was established by Congress in 1968 to preserve the character of rivers with "outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural or other similar values" and to ensure that designated rivers remain free flowing (P.L. 106 418, 106 Congress). The *Water Resources Plan for the Delaware River Basin* (DRBC Watershed Advisory Committee, September 2004) ("Basin Plan"), which is supported by each of the Commission's signatories, directs,

"[w]here water quality is better than standards for the protection of aquatic life and wildlife, implement anti degradation regulations, policies and/or other mechanisms to maintain or improve existing water quality."

Proposed Amendments. The Commission proposes to amend the Special Protection Waters regulations by adding one section of the main stem Delaware River to the list of stream reaches classified as Outstanding Basin Waters (see §3.10.3.A.2.g.1) and two sections of the main stem Delaware River to the list of stream reaches classified as Significant Resource Waters (see §3.10.3.A.2.g.2). The section of the main stem proposed to be classified as "Outstanding Resource Waters" is the reach extending from RM 171.4, a point just south of the Gilbert Generating Station in Holland Township, New Jersey, to RM 141.8, at Washington Crossing, Pennsylvania. The sections of the main stem proposed to be classified as "Significant Resource Waters" extend from RM 209.5, the downstream boundary of the Delaware Water Gap National Recreation Area, to RM 171.4, the location of which is noted above, and from RM 141.8 at Washington Crossing, Pennsylvania, to RM 133.4, the location of the head of tide at Trenton, New Jersey.

The proposed amendments do not at this time include additions to Table 1, defining existing water quality in each classified reach with numeric values for a series of different parameters, or to Table 2, describing the location of the Boundary and Interstate Special Protection Waters Control Points. These amendments will be made at a later date, when analysis of a fifth year of water quality data for the Lower Delaware has been completed. Thus, the Commission proposes to add to Section 3.10.3.A.2.g. a new section 6), providing that the regulations that depend for enforcement upon the use of approved numeric values for existing water quality will not apply, under the proposed amendments, to regulated activities within the drainage area of the Lower Delaware River and that all other provisions of Section 3.10.3.A.2. shall apply for the Lower Delaware River upon the effective date of the proposed amendments. Provisions of the Special Protection Waters regulations that will apply within the drainage area to the Lower Delaware River include but are not limited to the following: Subsections 3.10.3.A.2.c.1. through 3., in part requiring an analysis of alternatives to new or expanded discharges; Subsections 3.10.3.A.2.d.1. through 7., setting forth requirements for wastewater treatment facilities; and Subsections 3.10.3.A.2.e.1. and 2., conditioning project approval on the existence of an approved Non Point Source Pollution Control Plan for the project area and requiring that approval of a new or expanded withdrawal and/or wastewater discharge project be subject to the condition that new connections to the project system be limited to service areas regulated by non point source control plans approved by the Commission.

Dates: The public hearing will be held on October 27, 2004 at approximately 2:00 P.M. as part of the Commission's regularly scheduled business meeting. This time is approximate because the Commission will conduct hearings on several dockets (project approvals) beforehand, beginning at approximately 1:30 P.M. The hearing will continue until all those who wish to testify are afforded an opportunity to do so. In the event all those who wish to testify cannot be heard on October 27, the hearing will be continued at a date, time and location to be announced by the Commission Chair that day. Persons wishing to testify at the hearing are asked to register in advance with the Commission Secretary by phoning 609 883 9500, extension 224. Written comments will be accepted through Tuesday, November 30, 2004.

Addresses: The public hearing will be held in the Kirby Auditorium of the National Constitution Center, 525 Arch Street, Independence Mall, Philadelphia. Written comments should be addressed to the Commission Secretary as follows: by e mail to 12aula.schmitt@drbc.state.nj.us; by fax to Commission Secretary dial 609 883 9522; by U.S. Mail to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628 0360; or by overnight mail to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628 0360.

Additional Information, Contacts: The full text of the draft resolution containing the proposed rule change, a map illustrating the proposed stream classifications for the Lower Delaware, a map illustrating the Wild and Scenic Rivers System designations in the Lower Delaware, and reports about the Lower Delaware will be posted no later than October 1, 2004 on the Commission's web site, <http://www.drbc.net>. The Commission will hold two informational meetings on the proposed rulemaking. One meeting will be held on Thursday, October 14, 2004 from 7:00 to 9:00 P.M. at the Delaware and Raritan Canal Commission office at the Prallsville Mills Complex, 33 Risler Street (Route 29) in Stockton, New Jersey. Another will be held on Wednesday, October 20, 2004 from 7:00 to 9:00 P.M. in Room 315 of the Acopian Engineering Building at Lafayette College, located on High Street in Easton, Pennsylvania. Directions to the meeting locations will be posted on the Commission's web site, <http://www.drbc.net> in advance of

the meeting dates. Please contact Pamela Bush, tel. 609-883-9500 ext. 203 with questions about the proposed rule or the rulemaking process.

Pamela M. Bush, Esquire
Commission Secretary
September 14, 2004

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