



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF WATER

December 1, 2022

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

Re: Rulemaking Petition to Revise the Designated Uses and Dissolved Oxygen Criteria for Three Zones of the Delaware Estuary

Dear Ms. van Rossum,

The U.S. Environmental Protection Agency (EPA) is responding to your Administrative Procedure Act (APA) rulemaking petition dated April 29, 2022.¹ The April 2022 petition requested that EPA use its federal rulemaking authority under Clean Water Act (CWA) Section 303(c)(4)(B) to revise the water quality standards (WQS) for Zones 3, 4, and River Miles 78.8 to 70.0 of Zone 5 of the Delaware River Estuary.

On December 1, 2022, EPA issued the attached Administrator's Determination under CWA Section 303(c)(4)(B) to the Delaware River Basin Commission (DRBC) and the states of New Jersey, Delaware, and Pennsylvania.² This Determination reflects EPA's finding, in accordance with CWA Section 303(c)(4)(B), that revised WQS are necessary to meet the requirements of the CWA. Specifically, EPA made an Administrator's Determination that the applicable aquatic life designated uses and corresponding dissolved oxygen criterion in Zones 3, 4, and River Miles 78.8 to 70.0 of Zone 5 of the Delaware River Estuary must be revised to protect the propagation of resident and migratory fish species. The water resources of the Delaware River Estuary are of local, regional, state, and national interest.³ Resident and migratory fish species that utilize habitats in the specified zones of Delaware River Estuary, including the endangered Atlantic and shortnose sturgeon, are likely experiencing adverse effects under the currently applicable WQS, established in 1967. Information that DRBC and other parties produced since the WQS were established identifies the need to revise the WQS. As your petition notes, prior attempts by DRBC and member states to revise the WQS have been delayed. Yet those prior attempts have contributed to a significant body of data and information that will support a

¹ EPA acknowledged receipt of the petition in May 2022. *See*: Letter from Catherine A. Libertz, Director, EPA Region 3 Water Division, to Maya K. van Rossum, Delaware Riverkeeper. (May 14, 2022).

² *See also*: <https://www.epa.gov/wqs-tech/federally-promulgated-water-quality-standards-specific-states-territories-and-tribes>.

³ Delaware River Basin Compact, art. 1, "Short Title, Definitions, Purpose and Limitations," § 1.3(a) & (c), "Purpose and Findings," pp. 3 & 4 (1961), *available at* <https://www.nj.gov/drbc/library/documents/compact.pdf>.

scientifically sound revision to the 1967 aquatic life designated uses and associated dissolved oxygen criterion that meets statutory and regulatory requirements.

CWA Section 303(c)(4) requires that the Administrator promptly prepare and publish proposed regulations setting forth new or revised WQS following a Determination that new or revised WQS are necessary to meet the requirements of the CWA. As noted in the attached Determination, in this particular case, given the readily available information that DRBC and other stakeholders have generated, EPA believes that 12 months is a reasonable timeframe to develop proposed federal regulations setting forth revised aquatic life designated uses that provide for propagation and corresponding protective criteria for the specified zones of the Delaware River Estuary.⁴

If you have any questions concerning this letter or the attached Determination, please contact either myself or Deborah G. Nagle, Director, Office of Science and Technology, at 202-564-1185 or nagle.deborah@epa.gov.

Sincerely,



Radhika Fox
Assistant Administrator

Cc:

Joseph Otis Minott, Esq., Executive Director and Chief Counsel, Clean Air Council
Jacquelyn Bonomo, President and CEO, PennFuture
Doug O'Malley, Director, Environment New Jersey
David Masur, Executive Director, PennEnvironment
Steven J. Tambini, Executive Director, Delaware River Basin Commission
Shawn M. Garvin, Secretary, Delaware Department of Natural Resources and Environmental Control
Shawn M. LaTourette, Commissioner, New Jersey Department of Environmental Protection
Ramez Ziadeh, Acting Secretary, Pennsylvania Department of Environmental Protection

⁴ In the event that DRBC adopts and New Jersey, Delaware, and Pennsylvania certify and submit revised WQS to EPA and then EPA approves revised WQS that sufficiently address EPA's Determination before EPA proposes or promulgates federal WQS, EPA would no longer be obligated to propose or promulgate those federal WQS.