



Delaware River Basin Commission

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**MEETING SUMMARY
WATER QUALITY ADVISORY COMMITTEE
MARCH 26, 2015**

ATTENDEES:

NYS DEC <i>(not represented)</i>	DE DNREC David Wolanski **Chair of WQAC**
NJ DEP Frank Klapinski	PA DEP Tom Barron <i>(via telephone)</i>
EPA Wayne Jackson, EPA, Region II <i>(via telephone)</i> Kuo-Liang Lai, EPA, Region III	Academia Representative John Jackson, Stroud Water Research Center
Environmental Organization Representatives Maya van Rossum, Delaware Riverkeeper	Regulated Community Representatives Al Pagano, E.I. DuPont Bryan Lennon, City of Wilmington <i>(via telephone)</i>
National Park Service Al Ambler <i>(via telephone)</i>	Local Watershed Organization <i>(not represented)</i>
DRBC: Pamela Bush, Commission Secretary / Asst. General Counsel Tom Fikslin, Manager, Modeling, Monitoring & Assessment Branch Ron MacGillivray, Senior Envir. Toxicologist Ken Najjar, Manager, Planning & IT Branch Erik Silldorff, Senior Aquatic Biologist Namsoo Suk, Supervisor, Modeling Section Steve Tambini, Executive Director John Yagecic, Supervisor, Standards & Assessment Section	Other Attendees: Chris Arnott, Delaware Riverkeeper Network Jason Cruz, PWD Brenda Gotanda, Manko-Gold Ed Hale, DE Fish & Wild. <i>(via telephone)</i> Denise Hakowski, EPA, Region III <i>(via telephone)</i> Rhonda Manning, PADEP <i>(via telephone)</i> Jaime Myers, National Park Service <i>(via telephone)</i> Ian Park, DE Fish & Wild. <i>(via telephone)</i> Angela Padeletti, Part. Del. Estuary Peter Sharpe, National Park Service <i>(via telephone)</i> Kristen Schlauderaff PADEP <i>(via telephone)</i> Vimal Vijaykumar, DuPont Edgemoor Eric Vowinkel, Rutgers Univ.

1. Announcements

- DRBC reminded all attendees that advisory committee meetings are recorded, with the recordings used to develop meeting minutes and meeting summaries; the recording is not used to develop a meeting transcript.
- An action item from the November 2014 WQAC meeting was the development of a draft policy for WQAC meeting presentations and handouts; this will be discussed at the next WQAC meeting instead of at the current meeting.
- DRBC briefly described the One Process / One Permit initiative for collaboration with state permitting programs, and reminded the WQAC that a joint meeting of the WQAC and

WMAC (Water Management Advisory Committee) will be held on May 5th, 2015, here at DRBC's office to fully describe this program.

2. Approval of Minutes

Three revisions were identified and agreed upon for the November 2014 WQAC meeting (attendance, wording on presentations/handouts, and wording on "Existing Use"). The revised minutes were approved by the Committee.

3. "Existing Use" Evaluation & Next Steps

The Committee began with a discussion of DRBC's draft report entitled "Existing Use Evaluation for Zones 3, 4, & 5 of the Delaware Estuary" (circulated prior to meeting; available on DRBC website at www.state.nj.us/drbc/about/advisory/quality/). The Committee evaluated the report's conclusion that partial attainment of a "propagation" use (but not full attainment of this use) with general support for the overall concept. However, issues were raised as to the specificity of the conclusions and the degree that conclusions could be quantified. The Committee encouraged DRBC to finalize the report relatively quickly. Because an "Existing Use" evaluation has not previously been conducted by DRBC, a number of possible ways for DRBC to recognize the report and its findings need to be considered and evaluated.

Action Item: DRBC will finalize the "Existing Use" report, and DRBC, the federal representatives, and the state representatives will discuss next steps.

The discussion then shifted to water quality standards and the appropriate and/or necessary steps following the finalization of the DRBC staff report. DRBC provided a handout to the Committee (available on DRBC website at www.state.nj.us/drbc/about/advisory/quality/) providing excerpts of both regulations and guidance from USEPA on questions of "Existing Use" and related issues. This handout helped frame the discussion and the options available. DRBC now recognizes that a use attainability analysis would be needed to adopt any use less than full "maintenance and propagation" (equivalent to the Clean Water Act 101(a)(2) interim goals). This use attainability would identify either full "maintenance and propagation" as attainable or an alternate and lower "highest attainable use" which could then be set as the designated use for Zones 3, 4, and upper Zone 5. Thus, two broad steps are envisioned, only one of which involves rulemaking. First, a finding that the "Existing Use" is higher than the current "Designated Use" is needed. Second, rulemaking will commence once a "highest attainable use" has been identified and can be used as the new goal formalized as the "designated use".

Many aspects of this approach were discussed by the Committee. Members asked about the timeline for an appropriate estuary model given its role in defining the Highest Attainable Use. DRBC explained its current efforts toward model development, and the efforts that will be needed in the coming years. The implications for permit-writing were also discussed, particularly the different approaches for acknowledging "Existing Uses" by the states and what criteria might be associated with those "Existing Uses". It was emphasized that recognition of the higher "Existing Use" is indeed needed, with the possibility of a DRBC resolution providing both the recognition and a description of the path forward. The Committee also debated the timing and merits of a

rulemaking step now for the Existing Use, and a second later rulemaking for a Highest Attainable Use.

Because USEPA guidance emphasizes that aquatic life data and water quality data supporting the aquatic life use both be included in a finding of “Existing Use”, the dissolved oxygen conditions for the matching data window (2000-2014) of the fisheries data were highlighted as having a place in the path forward. Multiple options for recognizing the recent dissolved oxygen conditions in Zones 3, 4, and upper Zone 5 were identified. The Committee agreed that an appropriate place for such a data description would be in DRBC’s “Existing Use” report along with the evaluation of the fishery data itself. Highlighting just one of the many factors that may be affecting current fishery populations could lead to presumptions of a causal link, but DRBC felt that the historic context of the use designations and dissolved oxygen criteria provided a clear link and precedent for associating the fishery and oxygen data while still being able to acknowledge that the dissolved oxygen data were one of a number of stressors that need to be considered when evaluating the health of fish populations in the estuary. DRBC and the Committee agreed that a description of the 2000-2014 data distributions for dissolved oxygen would be a valuable addition to the “Existing Use” report along with the rationale for why dissolved oxygen alone was selected.

Action Item: The “Existing Use” report will be revised to include a summary of dissolved oxygen data for the period 2000-2014 (matching fishery data), with clear rationale for this inclusion.

The discussion ended by again talking about timelines as well as the multiple (not just modeling) steps ahead for identifying the highest attainable use. Recognition of the substantial progress that has been made since 1967 was also highlighted as an opportunity to both highlight the health of the estuary and recognize the ways that the Clean Water Act, DRBC, the States, and key stakeholders together have contributed to the substantial progress in the Delaware Estuary.

The Committee discussed deadlines for comments and feedback on the draft “Existing Use” report, with a longer timeline needed to allow DRBC to incorporate a dissolved oxygen data description into the draft report. DRBC will tentatively target mid-April for distribution of a revised draft report that includes a summary of dissolved oxygen data, with the subsequent detailed review and comment by WQAC members prior to finalizing the report.

Meeting Adjourned @ 12:51 pm.