

NO. 2000-4

A RESOLUTION relating to the control of toxic pollutants from point sources discharging to the Delaware River Estuary (“the Estuary”), determining that allocations of the waste assimilative capacity of the Estuary are necessary for certain pollutants to maintain stream quality objectives, and directing further staff actions.

WHEREAS, the Delaware River Basin Commission (“the Commission”) has set forth in Articles 3 and 4 of the Delaware River Basin Commission, Administrative Manual - Part III, Water Quality Regulations (“the Water Quality Regulations”) standards and regulations to protect the quality of the waters of the Delaware River Basin; and

WHEREAS, the Commission has adopted additional regulations to sustain minimum streamflows to the Estuary to support instream uses, including public water supply, recreation and aquatic life; and

WHEREAS, the Commission, following public hearings, in Resolution No. 96-12 (“the Resolution”) amended its Comprehensive Plan and Water Code and adopted regulations relating to the control of toxic pollutants from point sources discharging to the Estuary; and

WHEREAS, the Resolution sets forth in Tables 5 and 6 stream quality objectives for toxic pollutants and carcinogens to protect human health and aquatic life; and

WHEREAS, Article 4 of the Water Quality Regulations authorizes the Commission to determine that allocations of a stream’s waste assimilative capacity are necessary to maintain stream quality objectives or protect water uses in a given zone; and

WHEREAS, Article 4 of the Water Quality Regulations specifies the design conditions for tributary flow and loading and for effluent flow and loading that shall be used in establishing wasteload allocations; and

WHEREAS, Commission staff were directed to conduct public hearings on whether the assimilative capacity of the Estuary is being exceeded for 1,2- dichloroethane, tetrachloroethene, chronic toxicity and acute toxicity (“the pollutants”); and

WHEREAS, public hearings on a proposed determination by the Commission that the assimilative capacity of the Estuary is being exceeded for these pollutants were held on May 3, 1999 in Wilmington, Delaware, on May 5, 1999 in West Trenton, New Jersey and on May 11, 1999 in Philadelphia, Pennsylvania; and

WHEREAS, the public record on the proposed determination remained open for 30 days from the final hearing date to receive comments, and oral and written comments were received from 23 individuals and organizations, including governmental organizations; environmental/ resource organizations; and industries, municipalities and county agencies with discharges to the Estuary, as well as from a coalition of 23 industrial and municipal dischargers to the Estuary; and

WHEREAS, these activities follow a ten-year effort that commenced in 1989 when the Commission initiated the Estuary Toxics Management Program; and

WHEREAS, the staff of the Commission, in a public hearing Response Document relating to the proposed determination, has recommended that the Commission take certain actions; and

WHEREAS, the Commission's Toxics Advisory Committee in a meeting on Monday, December 6, 1999 also made a series of findings and recommendations concerning the control of toxic pollutants from point sources discharging to the Estuary; and

WHEREAS, the Toxics Advisory Committee has concluded, based upon simple mass balances and complex mathematical modeling, that the assimilative capacity of the tidal Delaware River has been exceeded for 1,2-dichloroethane ("DCE") and tetrachloroethene ("PCE"), in Zones 2 and 3 under design conditions; and

WHEREAS, the Toxics Advisory Committee also has recommended that controls be implemented on acute and chronic toxicity for individual point sources and has made certain further findings and recommendations; and

WHEREAS, the Commission has reviewed the public record on this matter, including the recommendations of the Commission staff and the Toxics Advisory Committee; and

WHEREAS, in order to protect public health and aquatic life, the Commission seeks to ensure that its stream quality objectives for the Estuary are met and maintained, now therefore

BE IT RESOLVED by the Delaware River Basin Commission:

1. The Commission hereby determines that allocations of the waste assimilative capacity of the Delaware River Estuary are necessary to maintain stream quality objectives in Zones 2 and 3 for the following pollutants:
 - a. 1,2 - dichloroethane
 - b. tetrachloroethene
2. The Commission directs the Executive Director and staff of the Commission to establish a numerical value for the assimilative capacity for 1,2 - dichloroethane and tetrachloroethene in Zones 2 and 3, considering the loading of these two pollutants in Zones 4 and 5, for use by the signatory parties in establishing Total Maximum Daily Loads ("TMDLs") as appropriate under the federal Clean Water Act, 33 U.S.C. § 1251 *et seq.*
3. The Executive Director shall require dischargers of the aforementioned pollutants to collect one year of effluent data to measure the magnitude and variability of these pollutants. The Commission directs the Executive Director and staff of the Commission to work

cooperatively with the Commission's Toxics Advisory Committee to develop effluent sampling and analytical requirements. The Executive Director shall establish wasteload allocations or other effluent requirements, including monitoring, that may be necessary to meet stream quality objectives, taking into consideration the most recent data on effluent and tributary loadings. The wasteload allocations shall be referred to the regulatory agencies of the signatory parties for use as appropriate in developing effluent limitations, schedules of compliance, and other permit requirements in accordance with Section 4.30.7B.2.c(6) of the Commission's Water Quality Regulations.

4. The Commission hereby determines that allocations of the waste assimilative capacity of the Delaware River Estuary are necessary for certain individual discharges to maintain stream quality objectives in Zones 2, 3, 4 and 5 for the following pollutants:
 - a. acute toxicity
 - b. chronic toxicity
5. The Executive Director shall establish wasteload allocations or other effluent requirements for acute and chronic toxicity for individual discharges that exceed stream quality objectives. The wasteload allocations shall be referred to the regulatory agencies of the signatory parties for use as appropriate in developing effluent limitations, schedules of compliance, and other permit requirements in accordance with Section 4.30.7B.2.c(6) of the Commission's Water Quality Regulations.
6. The Commission directs the Executive Director and staff of the Commission to continue to work cooperatively with the Commission's Toxics Advisory Committee to study and characterize the nature and extent of toxicants contributing to chronic toxicity in the Delaware River Estuary, and to recommend to the Commission such further controls as may be necessary to address chronic toxicity in the Estuary resulting from the cumulative discharge from all sources.
7. This resolution shall take effect immediately.

/s/ Warren T. Lavery
Warren T. Lavery, Chairman pro tem

/s/ Pamela M. Bush
Pamela M. Bush, Secretary

ADOPTED: January 26, 2000

ESTUARY ZONES

