



Delaware River Basin Commission

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**MINUTES
 WATER QUALITY ADVISORY COMMITTEE
 NOVEMBER 17, 2009**

ATTENDEES:

NY Not in attendance	DE DNREC (via telephone) Dave Wolanski
EPA Denise Hakowski, EPA Region III Izabela Wojtenko, EPA Region II	PA DEP Thomas Barron (Committee Vice-Chair)
NJ DEP Debra Hammond, Water Quality Standards & Assmt.	Academia Representative John Jackson, Stroud Water Res. Cntr. (Committee Chair)
Environmental Organization Representatives Maya van Rossum, Delaware Riverkeeper Network	Regulated Community Representatives Alfred Pagano, E.I. DuPont Mary Neutz, City of Wilmington (Alternate)
National Park Service Not in attendance	Local Watershed Organization Not in attendance
DRBC Robert Limbeck, Watershed Scientist Ron MacGillivray, Environmental Toxicologist William Muszynski, Manager, Wtr. Res. Mgmt. Kenneth Najjar, Manager, Plan. & Info. Tech. Jessica Sanchez, Basin Planner Ed Santoro, Monitoring Coordinator Erik Silldorff, Aquatic Biologist, Stds. & Assmt. John Yagecic, Supervisor, Stds. & Assmt.	Other Attendees: Jason Cruz, Philadelphia Water Dept. Suzanne Hall, US EPA, Region 3 Josef Kardos, Philadelphia Water Dept. Bonita Moore, PA DEP Mary Ellen Noble, Del. Riverkeeper Network

The meeting was called to order at 9:45 am by Committee Chair, John Jackson.

Approval of Agenda & Minutes

The agenda was approved by the committee.

Minutes from the September 15, 2009 meeting were approved by the WQAC with the following changes:

- Add, Colleen Arnold of City of Wilmington, to list of attendees.

Rule Amendment to Address “Stacked Waters”

Ken Najjar distributed a map for this discussion and explained that the Water Quality Revisions 3-year plan includes review of DRBC Water Quality policies and regulations, including: uniform standards for shared interstate waters, authority over “stacked” interstate tributary waters, the extension of toxics criteria into Water Quality Zones 1 and 6, updating basin-wide designated use requirements, and revising current “regionalization” policy language for consistency. Recently, the issue of “stacked waters” was discussed with the commissioners. “Stacked” waters are those which flow from one state into another, as compared to interstate waters which flow between (and therefore divide) two or more states. The proposal was to change DRBC Water Quality Regulations to remove those “stacked” waters where segments were clearly under the jurisdiction of one state. DRBC’s jurisdiction had pre-dated state water quality programs. State programs now are able to monitor water quality and meet the standards of the downstream state as required.

Administrative Agreement with New Jersey

Bill Muszynski of DRBC presented a discussion regarding updating Administrative Agreements with states. Current agreements are at least 30 years old and don’t reflect how states and DRBC work with each other. During the update of the agreements, DRBC also thought it would be a good time to review what authorities each state and the commission have, and where there are overlaps. In most cases, the states are at least as stringent as, and sometimes more stringent than, the DRBC. This issue has also been discussed with the WMAC, as well as the WQAC. DRBC is developing a prototype agreement with New Jersey first, and then will look to update agreements with the other three states. Over the past year, a significant effort was put into the agreement with New Jersey. Wording for the agreement is extremely close to being finished, but is not yet finalized. However, we are far enough along in this process to know that the agreement is imminent and DRBC expects to have it completed and signed before the end of 2009.

DRBC and the state were concerned about having procedures for dealing with each other and also regarding redundancy of review with no real value added. DRBC tried to separate out what was thought to be redundant with no value added and develop a procedure to handle those issues without requiring a separate review from both agencies. Obviously, DRBC was also concerned that it retain Commission authorities that were given under the compact; just as the states are concerned about retaining authority for their water programs.

A key provision of the agreement is that DRBC will continue to review, approve and issue dockets for ground or surface water withdrawal and wastewater projects for shared waters of the basin. If an entity is discharging directly into – or diverting supply from - the shared interstate waters, it is subject to obtaining separate approval from the DRBC. For the Special Protection Waters, DRBC will still be involved in issuing dockets for discharge projects that are in tributary waters as well as diversions and discharges on the mainstem river.

All projects involving interbasin transfers of water and wastewater are still subject to DRBC approval no matter where they occur in the basin. The agreement with New Jersey also provides

DRBC the opportunity to review waste management plans and provide comments, and to pass a resolution approving the plan as well.

The projects that DRBC will no longer routinely review and approve are the ground and surface water withdrawal projects for the non-shared waters of the basin in New Jersey. New Jersey's review process includes well drilling regulations and water quality standards for drinking water, and is therefore stronger than DRBC's process. In all the cases where DRBC is no longer going to be reviewing and issuing separate dockets, the agreement provides that the state can ask for DRBC's technical assistance at any time. The agreement also provides that any single Commissioner may request that a project be reviewed by the Commission. It also provides that the Executive Director can make a determination as to whether the project would have an impact on the shared waters and should be reviewed by the Commission. DRBC will not be reviewing wastewater discharge projects in the tributaries not included in the Special Protection Waters program.

The implementation process expected with the agreement will be through a resolution presented to the Commissioners at a future commission meeting, the agreement would then be signed by the DRBC Executive Director and state representatives. The effective date will be the date on the agreement. For any application that DRBC has internally as of the date of the signing, will not be reviewable under the new agreement; comment will simply be given to the state by DRBC. For any applications that are received after the agreement date, applicants will be advised that they no longer need to come to DRBC, and that they can go directly to the state, unless the state asks DRBC for technical assistance.

DRBC anticipates that the Administrative Agreement with the state of Delaware will be the next to be updated. Also note there are areas in Pennsylvania in which the state does not have certain water withdrawal authorities. Same thing is true in New York, there are some water withdrawal areas the state does not have authority over. DRBC will continue to review projects where states lack programs and/or authority. In conclusion, Bill asked that any comments or be submitted in writing to DRBC.

Report by WQAC at Commission Meeting 12/09/09

On 12/9/09, the Chair of the WQAC will be reporting a summary of the work the WQAC has done, as well as future plans, to the Commissioners. At this time, the key points to be covered in the presented summary include:

- Nutrient Subcommittee work
- Biological Subcommittee work
- Mainstem Water Quality Assessment – Draft 2010 Integrated Assessment Methodology
- Update on Water Quality Criteria revisions for pH, temperature, bacteria, DO, nutrients, and biological criteria

Note: A minority opinion can be included in the Commissioners' packets regarding the interim protective measures for nutrients.

The committee Chair, John Jackson, would like to keep the report simple and give 4 points that were voted upon for the protective measures, but also inform the Commissioners of the minority report that is in the hands of DRBC. The WQAC is seeking authorization, from the Commissioners, to proceed with the pH criteria revision. Maya van Rossum, Delaware Riverkeeper Network, would like approval to move forward with the nutrients protective measures and to be able to put a resolution forth a resolution at a future Commission meeting.

Review of Water Quality Revisions 3-Year Plan

Biocriteria: DRBC proposed to revise its first biocriteria for the river in May, with a revision in July, work was done with the biological advisory sub-committee, but there are still a lot of comments of uncertainty. And so in the integrated assessment, DRBC is stopping at category 3. Those that don't meet the biocriteria will be highlighted as waters of concern that will have to be revisited in the next round of assessments. The idea is that by June of 2010, DRBC will complete a more thorough biocriteria development with a finished report for the biological advisory sub-committee to approve and present to the WQAC. This item on the 3-year plan is on schedule. The sub-committee is expected to have at least 2 or 3 meetings between now and June 2010. The final report of 2001-2008 monitoring program is expected by June 2010. The sub-committee will try to report progress to the WQAC at the 2nd and 3rd meetings of the WQAC in 2010.

Temperature (D.O): For D.O. there are two steps that were agreed to at the July 2009 WQAC meeting.

- Step 1 is to capture the existing use and redesignate designated uses up to the existing use, which will likely slightly increase D.O.
- Step 2 is to assemble an expert panel to establish the benefits of the criteria and how we can achieve the levels.

Denise Hakowski commented that EPA would like to see step 1 sooner, rather than later, for grant purposes.

The issue with temperature is that New York and Pennsylvania are trying to work on a joint position about the thermal regime that should be maintained below NYC reservoirs. As such, it's not just a criteria revision but it's a use revision, which means that the timeline is something that cannot be controlled by DRBC because the task involves more stakeholders.

Bob Limbeck stated that DRBC staff did meet with Daryl Pierce, PA Fish & Boat Commission. Mr. Pierce was working with Mark Hartle, PA, and Jim Dailey, NY, to decide what to do with temperature regimes and the releases from NYC. When temperature was first reviewed, it came out that some recreations possibly have an interim use. There is a real cold water use downstream of Cannonsville, then an interim use, and gradually tapers over to warm water. What has to be done is to redesignate uses and create new use categories based on what temperature regimes is demonstrated and that there is an existing use. There are very little fisheries in that area, so there is a limited data set. To revise temperature criteria DRBC is

looking to work with fisheries agencies to gather data to demonstrate an existing use and that a transition occurs from a trout fishery to a warm water fishery and what that would entail.

Task: Next meeting WQAC will discuss the timeline for this task.

Bacteria: DRBC and Pennsylvania still use fecal coliform as the criteria even though EPA has since suggested that e-coli (in freshwater) and enterococci (in fresh and marine waters) are more appropriate recreational use criteria endpoints. There is some push to revise the criteria to the EPA suggestions. EPA is also under the large task of trying to revise what the human health risks are for various either bacterial or non-bacterial endpoints. Denise Hakowski stated that EPA has a settlement agreement for coastal recreation waters from the Beach Act, so the protected beaches would have to be covered by the new criteria and that new criteria has to be out by 2012. EPA does recognize that inland waters need to be addressed as well. There is also a question whether or not part of Delaware Bay might qualify as Coastal Recreation Waters. All of this is happening in 2012, and although the 1986 criteria could be used, EPA would like new criteria. Although nothing has been finalized yet, it is the intention that EPA will be coming out with an inland waters recommendation as well. EPA is also aware that implementation guidance has to be part of the criteria this time. In 2011, there will be an idea of EPA's thoughts on some of these issues. The commitment is to have the criteria done by 2012, but the implementation and guidance may lag shortly behind in their release.

Task: End this task on the 3-year plan and allow EPA to take the first round.

Task: As criteria will not be developed next year, add "Data evaluation" to the schedule.

Nutrients: Based on the details from the subcommittee, there are certain checkpoints, including revisiting the issue in June of 2010. This, in theory, is going to involve a March/April subcommittee meeting before the WQAC meets. Is there anything else the WQAC needs to do on this matter?

Task: Move D.O. up under nutrients on the plan

Membership

Ken Najjar stated that any suggestions for members can be sent to DRBC via e-mail. Some WQAC members haven't been at meetings lately and staff are going to contact them to acknowledge their absence and offer them the opportunity to decline membership on the committee.

Other Business

John Jackson would like the next agenda to include a discussion on DRBC's role in the Marcellus Shale project.

Denise Hakowski would like the next agenda to include a discussion on how the EPA approves DRBC's standards because there is an Alaska Rule stating that unless EPA definitively says "yes this is approved," it's not effective.

WQAC Meetings for 2010

- January 12th
- March 23rd
- May 18th
- August 3rd (tentative date, if needed)
- October 19th

Meeting Adjournment

Meeting adjourned at 2:45 pm. The next WQAC meeting will be January 12, 2010, at 9:30 am, at the DRBC offices in West Trenton, NJ.