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February 20, 2024

Hannah Lesch
Office of Water
Standards and Health Protection Division (4305T)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Submitted via e-rulemaking portal: <https://www.regulations.gov>

Re: NACWA Comments on U.S. EPA's Proposed Water Quality Standards to Protect Aquatic Life in the Delaware River (EPA-HQ-OW-2023-0222)

Dear Ms. Lesch:

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to provide written comments on the U.S. Environmental Protection Agency's (EPA) proposed rulemaking¹ to revise water quality standards for dissolved oxygen in certain zones of the Delaware River.

NACWA represents the interests of 350 public clean water utilities across the country that everyday provide the essential services of managing billions of gallons of wastewater and stormwater to ensure the continued protection of public health and the environment. Our members serve as anchor institutions in their communities and play a pivotal stewardship role in ensuring their discharges meet the requirements of the Clean Water Act.

NACWA supports the comments submitted by our members, the City of Wilmington, Delaware and the Philadelphia Water Department, who will be directly impacted by the proposed rulemaking. Our members have spent considerable time and resources engaging with the Delaware River Basin Commission (DRBC) for decades as it has proposed policies and regulations for the protection of the Delaware River basin.

More recently, as concerns over dissolved oxygen have grown, our members have participated in various stakeholder efforts, including providing thorough written comments to the DRBC to ensure their efforts strike the right balance protecting the designated uses of the Delaware River, while considering whether the water quality standards set to meet those uses are attainable and whether the criteria will have actual

¹ 88 Fed. Reg. 88315 (December 21, 2023).

meaningful benefit for Atlantic Sturgeon propagation. However, the stakeholder process with DRBC was unidirectional. Concerns raised by the regulated community went unanswered by DRBC and no response to comments was provided.

Many of NACWA's members have invested billions over the years in updating their aging infrastructure to continue to meet the increasing demands of the Clean Water Act and minimize wet weather and combined sewer overflows to protect public health and the river. For decades, there has been significant and proven progress in improving water quality in the Delaware River, due to the investments and dedication of our members. The simple fact that the federally-endangered Atlantic Sturgeon continues to spawn along the Delaware River and its populations thrive is a testament to these efforts. In fact, the DRBC found in 2015 that Atlantic Sturgeon and other fish species have been propagating in the specified zones of the Delaware River since 2000.

We recognize that EPA has the discretionary authority under the Clean Water Act to issue an Administrative Determination when a state with primacy, or in this case the DRBC, fails to issue or update the water quality standards necessary to protect the designated uses. The DRBC was going through a rigorous scientific study to better understand the impact of dissolved oxygen on Atlantic Sturgeon propagation in certain zones of the Delaware River Estuary and work in a coordinated lock-step effort with co-regulators and dischargers on attainability. Apparently, this effort was not at the pace or speed sought, leading to EPA intervening. EPA issued a rare Administrative Determination usurping the progress made by the DRBC, a break in tradition with the normal cooperative federalism embedded within the Clean Water Act between the efforts made by states with the federal government's oversight.

DRBC's longstanding adopted water quality standards include "maintenance of resident fish and other aquatic life," and the "passage of anadromous fish." It has set a dissolved oxygen criteria of 3.5 mg/L. EPA concluded in its Administrative Determination that DRBC's water quality standards are inconsistent with the goals of the Clean Water Act, simply because the standards do not include, incorporate or reference the word "propagation." Therefore, EPA is leveraging its authority to preferentially revise the designated use to include the word propagation, and consequently set more stringent dissolved oxygen standards for permittees to meet.

NACWA is concerned with the proposed designated use change and more stringent water quality standards imposed by EPA, and the significant investment that will be required of our members to install the necessary advanced treatment technology for reducing ammonia nitrogen from effluent to meet higher dissolved oxygen criteria. Notably, the endangered Atlantic Sturgeon are already propagating in the specific zones of the Delaware River at issue, and have done so since for at least two decades if not longer with the existing dissolved oxygen criteria of 3.5 mg/L. With the proposed change, clean water permittees will have no choice to reallocate limited resources and spend millions of dollars to install new treatment technologies in order to meet the more stringent dissolved oxygen concentrations. We are concerned that there is no direct correlation that meeting these new effluent limits for dissolved oxygen will directly benefit the Atlantic Sturgeon propagation.

Unfortunately, these additional costs also come on top of other accumulating clean water investment needs for local communities. Many clean water utilities including those along the Delaware River are finding themselves in the middle of a deluge of state and federal regulatory activity against a backdrop of limited financial resources. Between rising concerns over per- and polyfluoroalkyl substances – of which clean water utilities had no part in putting into the stream of commerce or the environment but will be required to remove – along with escalating costs to address combined sewer overflows (CSOs), meet more stringent nutrient limits and more, the affordability gap continues to widen and directly impacts households in the communities we serve. NACWA's members work tirelessly to ensure they are keeping costs as low as possible while still meeting their obligations under the Clean Water Act, and urge EPA and states, as they propose regulations, to consider the direct impact on ratepayers especially in Environmental Justice communities.

If there are questions or concerns, please contact Emily Rimmel, NACWA's Senior Director of Regulatory Affairs at 202/533-1839 or erimmel@nacwa.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Emily Rimmel". The signature is fluid and cursive, with a large loop at the end.

Emily Rimmel