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August 13, 2025

Ms. Tiffany Crawford
Office of Information and Regulatory Affairs, Natural Resources & Environment
Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

In Re: Review of the Final Water Quality Standards to Protect Aquatic Life in the Delaware River, RIN: 2040-AG30

Dear Ms. Crawford,

The National Association of Clean Water Agencies (NACWA) appreciated the opportunity to meet yesterday with the Office of Management and Budget (OMB) as the Administration considers adoption of final federal aquatic life water quality standards for portions of the Delaware River (RIN: 2040-AG30). NACWA represents over 350 public clean water agencies across the country tasked with protecting human health and the environment by managing and treating billions of gallons of wastewater and stormwater every day. Several NACWA members in Pennsylvania, New Jersey, and Delaware will be directly impacted by the final federal standards currently under review by the White House.

If finalized as originally proposed in December 2023,[1] the federal standards under review will impose significant unjustified costs on impacted communities in multiple states and conflict with several recent Executive Orders. NACWA therefore encourages the Administration to instead consider adoption of a modified standard of 4.5 mg/L of dissolved oxygen, coupled with a flexible implementation plan. Such a standard is justified by the scientific record, including a substantial amount of data that was inappropriately excluded from consideration by EPA in its development of the proposed criteria. Most importantly, such a standard would protect aquatic life in the Delaware River without imposing overwhelming economic hardship on local communities through unfunded federal mandates.

Background

This federal action involves a highly unusual instance of EPA overriding state primacy with respect to water quality and directly imposing federal Clean Water Act (CWA) standards on a waterbody. Specifically, in response to a petition from environmental organizations, in December 2022 EPA took the rare step of utilizing its authority under CWA section 303(c)(4)(B) to issue an

[1] EPA's proposed federal criteria vary from 5.4 mg/L to 8.3 mg/L, depending on the season. *See* Table 7 in EPA's proposed Federal Water Quality Standards To Protect Aquatic Life in the Delaware River.

Administrator's Determination claiming that federal standards were needed for sections of the Delaware River to protect the propagation of certain fish species, including the Atlantic sturgeon.

EPA took this unprecedented action in spite of the fact that the states of Delaware, New Jersey, and Pennsylvania, working together through the well-established 60-year old Delaware River Basin Commission (DRBC), were actively engaged in reviewing the existing standards to determine what changes may be necessary to protect aquatic life.[2] EPA's primary justification for prematurely stepping in and overriding the states' ongoing deliberative process was that the DRBC was simply taking too long.

On December 13, 2023, EPA then signed a proposed rule to federally revise the aquatic life designated use and dissolved oxygen water quality criteria applicable to certain portions of the Delaware River. Multiple entities, including several NACWA public utility members, filed comments strongly objecting to EPA's proposed standards. In addition to outlining the enormous costs the proposed federal action would impose on local households, which EPA's economic analysis failed to adequately consider,[3] impacted stakeholders also pointed out several significant concerns with the underlying science upon which the federal standards were based.[4] These concerns included EPA's exclusion of compelling data, application of a novel model that was not subjected to appropriate peer review, and failure to produce sufficient supporting documentation.

EPA received hundreds of public comments on these admittedly complex proposed standards. Yet, despite justifying its federal takeover of the standards process on the DRBC's failure to move quickly enough, EPA itself then proceeded to do nothing for months. This inaction led the Delaware Riverkeeper Network (Riverkeeper) to file a lawsuit[5] in the U.S. District Court for Eastern District of Pennsylvania seeking finalization of federal standards.

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[2] To comply with CWA section 303(c), the Estuary states of Delaware, New Jersey, and Pennsylvania have provisions in their state water quality standards regulations that explicitly reference or implicitly incorporate DRBC's water quality standards as the applicable water quality standards for the portions of the river under their jurisdictions.

[3] The Philadelphia Water Department estimates that its compliance costs for the proposed federal standards would be $274 million/year, resulting in direct costs to the public ratepayers of $266/year per household. The City of Wilmington, Delaware likewise estimates increased sewer bills of $230/year per household resulting from imposition of the proposed federal standards. The City of Camden, New Jersey estimates that it would have to increase utility rates on households by nearly twenty percent to meet the proposed standards.

[4] *See, e.g.,* comments of the Philadelphia Water Department, City of Wilmington, and Delaware County Regional Water Quality Control Authority.

[5] Case No. 2:24-cv-05308.

As a result of the district court litigation, EPA and the Delaware Riverkeeper Network first proposed a Consent Decree[6] on January 21, 2025, before the incoming Administration had a chance to review the case. Several NACWA members objected to entry of that Consent Decree,[7] and ultimately it was not finalized. Troublingly, however, the U.S. Department of Justice on July 18, 2025 instead entered into a Stipulated Judgement finding in favor of Riverkeeper and requiring the establishment of federal standards by September 22, 2025.[8] DOJ entered into this Stipulated Judgment binding EPA to the hasty adoption of federal standards without undertaking any consultation with the stakeholders that had commented on the earlier proposed Consent Decree.

The Proposed Federal Standards are Scientifically Flawed, Would Impose Significant Costs on American Households, and Conflict with Multiple Executive Orders

EPA claimed in its 2023 proposal that federal standards were needed "to revise the aquatic life designated use and dissolved oxygen water quality criteria" applicable to sections of the Delaware River "to ensure that the aquatic life designated uses and dissolved oxygen criteria are set at levels that protect all stages of oxygen-sensitive species…including two species of sturgeon that are listed as endangered under the Endangered Species Act." However, the science upon which EPA based its criteria numbers[9] - and the need for the criteria itself – was incomplete and flawed.

As multiple commenters[10] pointed out in comments on both the proposed standards and the proposed January Consent Decree, EPA's analysis, among other things, ignored a substantial amount of compelling data from state agencies and other sources concerning the presence and survival of sturgeon in the segments of the Delaware River in question.[11] EPA also based the proposed standards on a novel and complex bioenergetic model that has not been peer-reviewed for water quality standards development and is not consistent with EPA's longstanding 1985

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[6] The January 21, 2025 Consent Decree would have mandated final federal standards by June 30, 2025.

[7] Multiple parties, including several NACWA members, objected to the proposed Consent Decree and asked the incoming Administration to review the case, including the appropriateness of the original Administrator's Determination and the subsequent proposed federal standards.

[8] While the litigation record is a bit sparse, the docket indicates that the court entered a Scheduling Order on April 1, 2025 setting discovery and other trial deadlines and referring the case to interim settlement negotiations. The next item in the docket is the July 18th Stipulated Judgment, which presumably resulted from those settlement negotiations.

[9] *See* Table 7, EPA's proposed Federal Water Quality Standards To Protect Aquatic Life in the Delaware River.

[10] *See, e.g.,* comments of the Philadelphia Water Department, City of Wilmington, and Delaware County Regional Water Quality Control Authority.

[11] *See, e.g.,* comments of the Philadelphia Water Department at pgs. 4-5.

Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses.[12]

Additionally, EPA failed to consider the significant costs such overly stringent standards would impose on the public. As noted above,[13] public clean water utilities in the impacted region estimate these costs, which include both up front capital investments and annual operation and maintenance costs, to be in the hundreds of millions to even billions of dollars per utility. Such costs will not only divert resources away from other critical infrastructure projects that would result in greater environmental and human health benefits, they will also result in hundreds of dollars per year in economic burden being placed on individual households, many of whom can least afford to pay for such unjustified federal mandates.

These additional costs are particularly troubling given that they will be imposed on top of the existing federal water quality requirements that are already hitting the public's wallets through increased utility rates, including those related to replacement of lead service lines, elimination of combined sewer overflows, and mandated nutrient reductions. Moreover, there is no guarantee that these significant public expenditures will actually improve fish propogation in the impacted portions of the Delaware River.

Such scientific and economic shortcomings not only potentially violate the CWA and the Administrative Procedure Act, they also directly conflict with multiple recent Executive Orders. In particular, the use of a novel and unvetted model to set overly stringent standards and lack of consideration of critical data runs afoul of Executive Order 14303, Restoring Gold Standard Science (May 23, 2025). The imposition of unfunded federal mandates that will cost U.S. cities hundreds of millions of dollars a year to implement and directly hit American households likewise contradicts Executive Order 14270, Zero-Based Regulatory Budgeting to Unleash American Energy (April 9, 2025) and Executive Order 14192, Unleashing Prosperity Through Deregulation (January 31, 2025).

EPA Should Finalize Modified Aquatic Life Standards

Ideally, the incoming Administration would have consulted with interested stakeholders and reviewed the scientific and procedural underpinnings for the Administrator's Determination and proposed federal standards to evaluate whether they were justified under CWA section 303(c)(4)(B) prior to entering into any Stipulated Judgements conceding those issues in court. However, because the July 18th federal district court Stipulated Judgement mandates prompt finalization of federal aquatic life water quality standards, NACWA encourages the Administration

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[12] Available at https://www.epa.gov/sites/default/files/2016-02/documents/guidelines-water-quality-criteria.pdf (last visited August 11, 2025).

[13] *See id.* at fn. 2.

to now focus on ensuring that those federal standards do not implicate the considerable economic and scientific concerns outlined above.

NACWA therefore requests that EPA consider finalizing a dissolved oxygen standard of 4.5 mg/L for the segments of the Delaware River at issue, combined with a flexible implementation plan consistent with the requirements of the CWA. Such a standard is protective of aquatic life, including the Atlantic sturgeon; it is in fact significantly more stringent than the criteria applicable to other portions of the Delaware River where sturgeon are known to successfully propagate and thrive. Such a standard is also supported by the robust technical comments submitted by the clean water community as well as the data collected by the DRBC state agencies and others, and would ensure the achievement of meaningful yet still relatively cost-effective water quality improvements.

NACWA appreciates your consideration of these comments as the Administration works to finalize its federal standards. Please do not hesitate to reach out to me at AAspatore@nacwa.org with any questions, or if more information is needed.

Sincerely

Amanda E. Aspatore

Amanda E. Aspatore
Chief Legal Officer

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