Delaware County Regional Water Quality Control Authority (DELCORA)

Meeting with US Office of Information and Regulatory Affairs

August 20, 2025

Key Concerns With WQS for the Delaware River
Docket ID No. EPA-HQ-OW-2023-0222

I. **EPA should withdraw the Biden Administration's unprecedented and inappropriate step of taking this water quality criteria development from the DRBC** – which was acting on behalf of the delegated states of PA, DE, and NJ.

- EPA should withdraw the novel Biden EPA's determination that EPA must push DRBC aside and develop these criteria
- That would moot the litigation
- EPA would then return the criteria development to DRBC to complete
- Delaware Riverkeeper could sue EPA over the withdrawal but DRBC would develop criteria in the interim and we think the Riverkeeper would lose (discretionary act).
- This approach avoids subjecting the criteria to Pres. Trump's EOs

II. **If EPA decides to continue to favor the Delaware Riverkeeper (over the public) by adopting criteria in lieu of DRBC, it should adopt an instream year-round standard of 4.5 mg/L weekly average DO**

- Such an instream criterion lines up in terms of magnitude with the well-supported and broadly accepted Chesapeake Bay approach
- Make progress while avoiding the controversial percent saturation approach to regulating instream DO
- Would impose moderate cost and operational impacts to DELCORA treatment plant
- Greater impacts to PWD (which DELCORA has a cost-share interest)

III. **If EPA insists on adopting the Biden EPA's unnecessarily stringent DO standards, then EPA should impose both an interim and final standard with implementation schedules that would allow EPA, DRBC, and the delegated states an opportunity to revisit the final criteria**:

- Adopt a 4.5 mg/L weekly average DO criterion as an interim standard to become effective on 1/1/30.

- The States would implement the criterion in NPDES Permits reissued after 1/1/30.

- Adopt the final DO Standard as proposed by the Biden EPA to become effective on 1/1/40.
  - Expressly note that compliance schedules after the trigger dates are up to the states and can be informed by an Integrated Plan (CWA Section 402(s))

This approach would put an interim criterion in place (with a modest implementation period of five years) while also giving EPA, DRBC, or one of the three affected delegated states an opportunity to develop and propose an alternative criterion. If such criterion were approved by USEPA in advance of 1/1/40 it would supplant the final criterion.

IV. EPA's determination that the annualized compliance costs would be $137M is clearly erroneous

- Kleinfelder study did not assume year-round nitrification
  - Achieving 1.5 mg/L in the shoulder months (April/May; October/November) will be much more costly because it requires year-round nitrification. We can't just turn the technology on in April. Nitrification challenges in the shoulder months is a well-established issue. Thus, the Kleinfelder study does not account for true treatment costs.

- There will be over a $1B impact to Philadelphia and DELCORA ratepayers alone
  - DELCORA pays 23 percent of upgrades to PWD's Southwest Treatment Plant

- Also, EPA assumed that the nine plants had completed their CSO LTCPs for the purpose of reaching this cost figure. That is a crucial error that assumes away any conflict between additional ammonia control technology and CSO control options. For example, several of the plants are land locked. Imposing heightened ammonia control could limit CSO control options making CSO controls much more expensive. EPA made no effort to assess this critical treatment conflict.

V. EPA's benefits analysis is woefully inadequate and incorrect.

- EPA admits that it did not consider this to be a significant rule but found annualized compliance costs for the next 30 years in excess of $137 million.
- Over 20 years (uninflated), EPA estimates an approximately $2.7 billion cost to achieve incrementally better instream DO levels that may marginally improve Sturgeon habitat.
- EPA's analysis is fatally flawed in that it assumes that all approximately 15 million households affected by these criteria would be willing to pay $8.18 per year to support the rule.
    - That is not how the controls are funded. In fact, a much smaller number (approx.. 400,000 households) will pay the full cost.
    - Moreover, not all of the 15M households EPA contends are willing to pay would be benefitted.
    - Further EPA should have discounted the willingness to pay of households that would actually be benefitted by say 50 percent rather than assuming that every household is willing to pay.
        - We suspect that at most 50 percent of households would be willing to pay. Such an adjustment further demonstrates that the costs of this misguided proposal far outweigh any theoretical benefit.
        - Inner city residents, especially those on low and fixed incomes are extremely unlikely to think raising their sewer bills forever is worth a marginal improvement in instream DO levels (even if that outcome were likely).
    - EPA also understated costs by assuming the POTW treatment upgrades in a vacuum – ignoring the conflicts with other programs (such as CSO) that will likely make these ammonia control upgrades even more costly.
    - EPA also erred by assuming that POTW reductions translate perfectly to instream pollutant loading reductions. In most cases, that is not the reality and we end up spending enormous dollars on point source improvements that translate into little or no real instream benefits due to other sources that EPA's analysis ignores. That is another reason EPA's cost-benefit analysis should be compelling before EPA proceeds and the analysis for this rule is anything but compelling.

- Finally, EPA ignored the energy impact from the necessary ammonia technology. Ammonia reduction technologies are highly energy intensive. We calculate that an equivalent of approximately 26,000 metric tons of carbon dioxide would be emitted per year to remove the necessary ammonia to comply with the proposed DO criteria. That is the equivalent of 5600 cars driving 12,000 miles annually in the watershed. EPA's benefits analysis should be revised downward to reflect this off-setting environmental impact.

VI. EPA's Novel Seasonal Percent Dissolved Oxygen Saturation Approach will be treated as precedent setting and will likely be used by special interest groups to press EPA and the States to adopt similar criteria in other watersheds.

We are concerned that EPA's adoption of the Biden EPA's novel percent saturation approach will have broad national ramifications going forward. We don't believe the science underlying the approach is valid (see our comments).

EPA should include an express disclaimer in any final rule that included percent saturation-based criteria that such an approach to criteria development is limited to the specific circumstances of this rulemaking for the Delaware River.

VII. **EPA should not be given a waiver from applicable regulatory Executive Orders for this rule.**

Public utility ratepayers are struggling like never before to pay their water and sewer bills. There is no end in sight to the cost of these essential services continuing to outpace inflation and incomes. We have old systems that must be rehabilitated, we have to implement CSO controls that will cost affected ratepayers billions. We have emerging contaminant costs on both the water and sewer side. We have to address lead and copper on the water side. We face tariff impacts and federal and state disinvestment due to budgetary realities. This is not an appropriate unfunded mandate to impose that will rob our ability to address more meaningful issues or simply further crush low and fixed income ratepayers.

VIII. We incorporate our attached prior comments on EPA's proposed rule.

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