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U.S. Environmental Protection Agency
EPA Docket Center
Office of Water
Docket, Mail Code 2822IT
1200 Pennsylvania Avenue NW
Washington DC 20460

Re: Docket ID No. EPA-HQ-OW-2023-0222 (Water Quality Standards To Protect Aquatic Life in the Delaware River)

Dear U.S. EPA,

Citizens for Pennsylvania’s Future, Environment New Jersey, PennEnvironment Research & Policy Center, and Clean Air Council (“Environmental Nonprofits”), respectfully submit these Joint Comments for U.S. Environmental Protection Agency’s (“EPA”) Docket ID No. EPA-HQ-OW-2023-0222, Water Quality Standards to Protect Aquatic Life in the Delaware River (“Proposed WQS”).

Environmental Nonprofits strongly support the EPA proposal to upgrade the designated uses of Delaware River Zones 3, 4, and 5 to include “propagation.” For years, regulatory entities have refused to upgrade the designated use of these zones of the river to reflect a body of accumulating evidence showing that various iconic fish species of the Delaware River—including striped bass, American shad, and the endangered Delaware River Atlantic Sturgeon—all have been successfully propagating within these zones. Now, the Delaware River Atlantic Sturgeon are on the brink of extinction, with fewer than 250 spawning adults left. Stronger water quality standards and dissolved oxygen (“DO”) levels are essential if we are to restore these majestic creatures to full population health, and to provide critical protections to other fish that are important to the river system and support recreational and commercial fishing.

We also strongly support the EPA’s determination that existing water quality standards with regards to dissolved oxygen are insufficient to ensure the protection of all life stages of Delaware Estuary aquatic life species, particularly our genetically unique population of Atlantic Sturgeon. We write to request several specific changes that should be made in order ensure that the Proposed WQS achieves its goal of protecting the river and aquatic life.

I. The Proposed Water Quality Standards Fall Short of The Full Protections That Are Needed.

We are concerned that EPA has not fully fulfilled its commitment to rely only on the scientific data, without succumbing to pressure from industry or other agency representatives, who would seek lower standards below what the science clearly demonstrates our Atlantic Sturgeon require.

In order to ensure dissolved oxygen levels that are fully protective of all life stages of Delaware River Atlantic Sturgeon and aquatic life, EPA must make certain revisions to the Proposed WQS.

First and foremost, rather than use percentage saturation as the standard for compliance and enforcement, we agree with the Delaware Riverkeeper Network that it will be more protective, clear and enforceable if EPA establishes the DO criteria as a concentration of mg/l. Furthermore, it is critical that the Proposed WQS be revised to set a minimum level of dissolved oxygen. Simply relying on medians, averages, and percentiles fails to ensure the sturgeon and other aquatic life have, at all times, a level of oxygen that can sustain them. In order to represent the best science for protecting aquatic life, including Delaware River Atlantic Sturgeon, the criteria should therefore include an instantaneous minimum of 6 mg/l, and set a 6.65 mg/l median criterion across all seasons. The Proposed WQS should also be modified such that compliance assessments be made monthly. The reasons for these recommendations are connected: First, while a median oxygen level calculated over a period of months may appear acceptable at first blush, in reality it allows for serious, prolonged dips in DO levels. It is well established that fish, including the Delaware River Atlantic Sturgeon, can suffer damage and death if DO levels fall below their required minimums for extended lengths of time. Setting a minimum level and monthly assessments will prevent these foreseeable outcomes. This improved compliance assessment protocol—which is also clearly laid out in the scientific literature and analysis put forth by the Delaware Riverkeeper Network—will ensure EPA has relied upon the most protective science and ensured the obligations of the Clean Water Act and Endangered Species Act are being fulfilled.

If, instead of setting criteria as a concentration of mg/l, EPA determines to continue with the proposed percentage saturation methodology, EPA should revise the standard to set an 85% saturation median. We agree with the well-reasoned and scientifically supported adjustments put forth by the Delaware Riverkeeper Network that to fully support all life stages of aquatic life and the Delaware River Atlantic Sturgeon, an 85% saturation median criterion is warranted by the body of scientific literature.

In the alternative, EPA must, at minimum, revise its mandates to reflect a 74% saturation as the 10th percentile and 80% saturation as median monthly criteria. While this standard would not be fully supportive of aquatic life, it would set a more supportive standard. In both cases, as we stated above, it is essential that the proposed standards include an instantaneous minimum level of dissolved oxygen that can never be violated. An instantaneous minimum of 6 mg/l is well supported by the science, and there is no justification in setting a minimum below 5.0 mg/l. Assessment for exceedances must, at a minimum, be monthly; the currently-proposed seasonal approach allows for significant windows of violation ranging from 10% of the time to 50% of the time, and would allow for dangerously low oxygen levels for more than 2 months during the most dangerous summer months and could result in population scale adverse impacts—this is

unacceptable and unsupported by the science or biological needs of the Delaware River Atlantic Sturgeon and other fish of the estuary.

All of these recommendations are based on the best available data and science, which is the singular criteria by which EPA should set these protections. With fewer than 250 spawning adult Delaware River Atlantic Sturgeon returning to spawn each year, we are at a critical and urgent juncture in time. Furthermore, the increasing pressures placed on the river from climate change, industry, and wastewater operations compound the need for high, life-sustaining baseline levels of dissolved oxygen.

II. Industry and Discharger Efforts to Delay the Rule Should be Rejected

Industry and wastewater dischargers are urging the EPA to extend, by an additional 30 days, the current comment period regarding EPA's Proposed Water Quality Standards to Protect Aquatic Life. Environmental Nonprofits urge the EPA to reject this request and maintain the current February 20, 2024 deadline for comments. For over a decade, wastewater treatment facilities, other regulatory agencies, and industry throughout the greater Delaware region have been well aware of ongoing efforts to secure increased dissolved oxygen standards, and have been actively involved in discussions surrounding these efforts. None of the technologies or practices necessary to achieve the new standards are new or novel. Industry, wastewater operators, and government agencies are fully aware of the technologies and practices necessary to address ammonia nitrogen and restore healthier oxygen levels to the Delaware River. Moreover, industry and private groups have ample funding, technical expertise, and legal resources available to them and are capable of fully reviewing, understanding, and commenting on the proposed changes during the current comment period without an extension. An extension will not change the ability of these groups to respond to the proposed WQS. It will, however, delay changes that are already long overdue, threatening the health of the Delaware River, its surrounding environment, and its endangered Atlantic Sturgeon population.

Unfortunately, some of these very same dischargers are making a last-ditch effort to delay the implementation of this scientifically supported water quality upgrade by disseminating misleading information and raising confusion and anxiety with the public. For example, it is disappointing that officials from the Philadelphia Water Department (PWD), with barely 48 hours left in the comment period, chose to push out information attacking the body of scientific data and claiming exorbitant rate increases if the proposed protections are put into place. PWD's eleventh-hour efforts to spin certain data, while simply disregarding information that contradicts their position, must be dismissed. PWD itself admits that its results are "preliminary" and "have not been peer-reviewed." Similarly, PWD's claims of dramatic rate increases appear to be not based on the Proposed WQS themselves, but taken from the highest possible estimate scenario within a 2021 analysis of costs at different levels of denitrification. It is also noteworthy that PWD simply questions the scientific conclusions of others, while proposing no alternative standard. After 10 years of consideration and study, we are long past the time for additional delay, and comments like PWD's should not stop EPA from moving full steam ahead with protections that have been researched, reviewed, and validated for years.

III. Higher Dissolved Oxygen Levels Will Help Improve Water Quality For Other Human and Environmental Health Outcomes

In addition to the well-established need for high levels of DO to sustain aquatic life, DO is an important indicator of overall water quality. Low levels of dissolved oxygen in the Delaware River thus not only imperil aquatic life, but can also have adverse health impacts on people who recreate in the river or live nearby and impact drinking water quality. Low dissolved oxygen levels, known as hypoxia, can lead to an overgrowth of bacteria and algae. This can produce harmful or toxic bacteria that harm the health of people and wildlife who come into contact with or ingest the water. The Delaware River is an important source of drinking water for the region and a popular source of recreation. Furthermore, Zones 3, 4, 5 include several environmental justice communities that have long been impacted by years of both poor water quality and access to safe water for drinking or recreation.

Environmental Nonprofits thank EPA for the opportunity to provide this comment on the Proposed WQS. We hope that the above suggestions will serve to further improve the Proposed WQS and support the health of the Delaware River and the people and environments that it supports.

Respectfully submitted,

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