



May 3, 2016

Dear Commissioners of the DRBC and Executive Director Steve Tambini
Delaware River Basin Commission
25 State Police Drive, P. O. Box 7360
West Trenton, NJ 08628

Dear Commissioners and Mr. Tambini,

The Delaware Riverkeeper Network submits the attached petition urging you to implement long-ignored provisions of the Special Protection Waters (SPW) program. We first brought this “oversight” to your attention when we petitioned for SPW designation of the Lower Delaware River in 2001; while the designation was ultimately granted the request for full implementation of the program was not.

In 1992, in response to a petition submitted by the Delaware Riverkeeper Network, the DRBC designated the Middle and Upper Delaware River as Special Protection Waters and created a special body of regulations that mandated protection of the Existing Water Quality of the designated portions of the River. In 2008, following a second petition from the Delaware Riverkeeper Network, the DRBC designated the Lower Delaware River as Special Protection Waters as well.

In order to protect “existing water quality” the regulations discourage direct discharges of wastewater. Where such discharges are allowed, the regulations mandate a higher level of treatment. In addition to these provisions, the regulations were also meant to provide protections from nonpoint sources of pollution by requiring a prioritization of special protection water drainage areas that could have an adverse impact on the water quality of Special Protection Waters designated by the DRBC and to ensure creation and implementation of nonpoint source pollution control plans for those priority areas.

The prioritization of the Middle and Upper Delaware River was set to be completed by 1996; for the Lower Delaware River by, at latest, 2007. Nonpoint source pollution control plans should have been completed for the Middle and Upper Delaware River by 2001; for the Lower Delaware River by 2013. All such deadlines have been missed.

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Prioritization of watershed areas and the development of watershed management plans are fundamental elements of the Commission's Special Protection Waters program, and are fundamental for ensuring protection of the existing water quality of the Upper, Middle and Lower Delaware Special Protection Waters drainage areas. We request the Commission take immediate steps to meet the prioritization and watershed nonpoint source control plans obligations."

Respectfully,



Maya K. van Rossum
the Delaware Riverkeeper



PETITION TO SECURE FULL IMPLEMENTATION OF THE DRBC SPECIAL PROTECTION WATERS OBLIGATIONS

The Delaware Riverkeeper Network petitions the Delaware River Basin Commission to fully implement provisions of the Delaware River Basin Commission Special Protection Waters Program that have yet to be implemented.

Specifically, we request:

- 1) That the Commission comply with Section 3.10.3A.2e.3 of the Commission's Water Code which states that the Commission "shall . . . publish a report presenting its methodology for prioritizing watersheds in Special Protection Water Drainage areas." The Commission was required to generate such a report for the Middle and Upper Delaware Special Protection Waters drainage areas by February 1996, and prioritize watersheds in the Lower Delaware Special Protection Waters Drainage by January 19, 2007 (2 years after special protection waters designation was granted; please note that the temporary designation first granted in 2005 specifically preserves the obligation to meet the requirements in 3.10.3A.2e). We note in making this request that the deadlines for prioritization are long overdue.

A "Priority Watershed", according to Commission regulation, "is a watershed that has been evaluated in conjunction with other watersheds draining to Special Protection Waters and designated by the Commission as having a substantial potential pollution impact on the water quality of Special Protection Waters in comparison with other watersheds." *See* 3.10.3A.2a.22.

- 2) That the Commission comply with Section 3.10.3A.2e.5, which states that the Commission "shall develop, or encourage the development of," watershed nonpoint source management plans for each priority watershed within the Middle, Upper and Lower Delaware Special Protection Drainage Waters. We note in making this request that the 2001 deadline (i.e. 5 years after the adoption of a list of priority watersheds which was supposed to have been completed by 1996) in Commission regulations for development of watershed nonpoint source management plans for priority watersheds within the Middle and Upper Delaware Special Protection Drainage Waters areas has long passed; similarly, the deadline for the Lower Delaware Special Protection Drainage Waters areas was January 19, 2012 (i.e. 5 years after the adoption of a list of priority watersheds which was supposed to have been completed by 2007) and is also long overdue.

A "Watershed Non-Point Source Management Plan" is a plan prepared for a watershed that describes the basis for, and overall control strategy of, a plan for controlling, limiting, and abating all

relevant non-point source loadings within the watershed. The plan will identify and assess important natural and anthropogenic features and influences on water quality; existing local, state and other non-point source control programs; potential non-point source loads on Special Protection Waters; watershed-specific protection requirements; and the institutional needs and arrangements required to implement the plan.” See 3.10.3A.2a.20.

- 3) That the Commission comply with Section 3.10.3A.2e.7, which states that the Commission “shall encourage the voluntary development of watershed management plans for tributary watersheds entering Special Protection Waters and local non point source regulatory programs that conform to the goals and objects of the Special Protection Waters regulations as promulgated in Sections 3.10.3A2.” This request includes that the Commission consider the ways it can provide technical assistance, serve as a clearinghouse for non-point sources information, provide regulatory authority, support inter-agency coordination, and provide other services to local and other governmental units desiring to develop and implement stormwater and non-point source watershed plans and local regulatory programs as per the Commissions Special Protection Waters regulations. See 3.10.3A.2e.7.
- 4) That once watershed nonpoint source management plans are completed, that they be incorporated into the Commission’s Comprehensive Plan as mandated by 3.10.3A.2e.6.

Prioritization of watershed areas and the development of watershed management plans are fundamental elements of the Commission’s Special Protection Waters program, and are fundamental for ensuring protection of the existing water quality of the Upper, Middle and Lower Delaware Special Protection Waters drainage areas. We request the Commission take immediate steps to meet the prioritization and watershed nonpoint source control plans obligations.

It is important to note that the Delaware Riverkeeper submitted similar requests to the Delaware River Basin Commission in 2001 as part of our original petition seeking designation of the Lower Delaware River as Special Protection Waters. While the Commission, in 2008, eventually granted the Delaware Riverkeeper Network’s petition request regarding Lower Delaware River Special Protection Waters designation, our requests regarding watershed prioritization and watershed nonpoint source management plans was left unaddressed. As a result, the Delaware River Basin Commission has had ample notice by virtue of its own regulations and the Delaware Riverkeeper Network 2001 petition to fulfill these important obligations.

Respectfully submitted on this date, May 3, 2016,



Maya K. van Rossum, the Delaware Riverkeeper
On behalf of the Delaware Riverkeeper Network