

Hello Ms. Diehl,

Please find below my comments on the current proposed DC triennial review. Thank you for your consideration.

Sincerely,

Jennifer Brundage

I urge DOEE to update its recreational bacteria criteria to adopt the statistical threshold value (STV) to reflect the most updated science to protect human health during recreation in and on the water. Both elements of the recreational bacteria criterion – the geometric mean and the STV – are necessary to protect human health in both permitting and assessment contexts.

Federal water quality standards regulations at 40 CFR Part 131 require states and territories to adopt criteria based on science alone, irrespective of attainability or affordability. When DOEE is deciding what the recreational bacteria criteria should be for the district's waterways, the only relevant question is "what limits on the level of this pollutant are necessary to protect the designated primary contact recreational use for this waterway?" All flowing waters in the district are designated for primary contact recreation, and EPA's nationally recommended recreational bacteria criteria are necessary to protect human health from bacterial illness during recreation. Not adopting the STV doesn't change the fact that the value is necessary to protect the public from bacterial illness when recreating in the water; what it changes is transparency with the public. The public trusts that the city's criteria are adequate to protect human health, and that as long as the city's criteria are being met, it is safe to swim. The public will be dangerously mis-informed by D.C.'s failure to adopt the STV.

Footnote "e" to table 1 "*The geometric mean criterion shall be used for assessing water quality trends and for permitting. The single sample value criterion shall be used for assessing only water quality trends.*" should be deleted. This footnote appears to allow dangerous spikes in fecal bacteria concentrations in effluent from permitted dischargers that could make a recreator exposed to such water very sick. Under current DOEE regulations this is perfectly legal as long as over the course of 30 days these dangerous spikes are evened out by lower values. I would like D.C. to protect the health of our city's residents – including children and other sensitive groups - from dangerous fecal bacteria levels in our city's waterways at all times, not "on average" over the course of a month. Bacterial illness results from exactly the kind of acute exposure the STV is designed to protect recreators from, not from average exposure to a geometric mean of bacteria levels across a 30-day period. The recent opening of the Anacostia River tunnel which has significantly reduced the frequency of CSO events should allow permitted dischargers to meet the STV in all but the rarest situations.

Adoption of the STV and its application to NPDES permits also appear to be a reasonable path forward in order for DOEE to establish TMDLs in compliance with the August 12, 2019 district court decision in Anacostia Riverkeeper et al vs. Wheeler & DC Water & Sewer Authority that "EPA violated the plain text of the CWA when it approved 'total maximum daily loads' that did not establish daily maximum discharge limits." The STV would be a logical basis for total maximum daily loads the court orders be applied to the Blue Plains outfalls. The court also notes that EPA should have evaluated whether its

latest guidance for establishing recreational bacteria criteria – which includes the STV - was relevant to establishing TMDLs.

Although criteria must be based on science alone, the Clean Water Act and federal regulations are written so that impediments to attainability can be addressed through changes to designated uses, water quality standards variances (40 CFR §131.14), or implementation tools, as opposed to delayed updates or adjustments to criteria based on inadequate or out-of-date science. DC Water's December 2017 comments propose a use attainability analysis. I would be opposed to a use downgrade because D.C. should retain the long-term goal of fully fishable/swimmable waters for all of its waters. However, if DC Water or DOEE can demonstrate based on affordability criteria outlined in EPA's 1995 interim economic guidance or equivalent affordability criteria that meeting the STV would lead to "substantial and widespread social and economic impact" per 40 CFR 131.10(g)(6), then the city could adopt a water quality standards variance for its discharge, which would put in place a temporary downgrade of the designated use and associated criteria. A water quality standards variance would provide time to make the maximum amount of progress that is affordable. In addition, constructing the variance as a waterbody variance rather than a discharger-specific variance could address sources outside of the district's jurisdiction in Maryland mentioned in DC Water's comments. A temporary downgrade of the designated use and criteria through a variance could take into account seasonality of attainability. For example, if, as DC Water asserts in their comments, the STV is only exceeded at times of year when the water is too cold or stormy for recreation, then the variance could allow for temporary downgrade of the designated use and criteria only during those weather circumstances when the criteria cannot be attained while requiring the STV to be attained at other times of the year when it is feasible. TMDLs would continue to be based on the underlying designated use and criteria, but permit limits would be based on the applicable WQS, which is the variance.

I have read D.C. Water's comments reflecting a concern about cost impacts to city residents and undue burden to disadvantaged communities. However, this could be alleviated through rate subsidy programs that effectively shift the cost burden to residents who can better afford it. A variance could also reduce cost impacts to city residents. Any increased cost also should also have the side benefit of driving innovation in terms of water conservation efforts.

I also recommend that DOEE consider future adoption of biotic ligand model-based copper criteria to replace the current hardness-based copper criteria to protect aquatic life in freshwaters. The BLM represents the best available science with which to calculate copper criteria to ensure protection of aquatic life. The Navy Yard's current NPDES permit contains a copper limit, so it is important to have the most updated copper criteria on which to base those permit limits to protect aquatic life. I also recommend that DOEE adopt updated criteria for selenium to protect aquatic life in freshwaters to reflect the most updated science on selenium toxicity.

I strongly support DOEE's proposed adoption of the updated water quality criteria based on the latest science for ammonia and cadmium to protect aquatic life and 94 pollutants to protect human health.

Finally, I would like to request that for future water quality standards rulemakings DOEE provide a more detailed redline strikeout version of the standards to the public to make it easier for readers to see what is changing. The current version replacing the tables in their entirety requires the reader to pull up the current version of D.C. WQS and manually compare that to the proposal to understand the differences.