

Action to Amend the Ban on Swimming in the Potomac River

Final Rulemaking

Response to Comments

Public Hearings and Comments -- December 17, 2010 Notice

Earlier, pursuant to the December 17, 2010, notice of proposed rules, the Department conducted a public hearing (*see* Notice of Public Hearing, 57 DCR 01936 (December 17, 2010), and 58 DCR 001099 (February 4, 2011)) on February 17, 2011, at the DDOE headquarters, 1200 First Street, NE, Washington, DC 20002. A 33-page transcript was produced. At the hearing eight (8) witnesses testified, including District residents and triathletes, the past president of the DC Triathlon Club, and other athletes. The founder of the Nation's Triathlon and the DC Triathlon testified that the groups had conducted more than a dozen swim events and put more than 15,000 triathletes safely into and out of the Potomac River, and had conducted Potomac River events in the immediately preceding years. He stated that every such swim event had met the District's Class-A water quality standards for bacteria, that safety boats and equipment were part of each event, and that participants were monitored with electronic chips. All of the witnesses supported the proposed rules' event-specific suspension of the prohibition on swimming in the Potomac River for the triathlons.

In addition, the Department received a total of 68 written comments on the December 17, 2010, proposed rules. Among the comments, the medical director for the Nation's Triathlon, for another triathlon and for the preceding year's DC Triathlon (DC Tri), stated that for four (4) years there had been no health issues with the Potomac. All of the comments were favorable, many describing the two (2) events as important nationally.

Public Hearings and Comments -- June 29, 2012 Notice

The June 29, 2012, *D.C. Register* Notice at 59 DCR 7970, provided that written comments could be submitted for the Department's consideration through July 31, 2012. The Department also emailed a copy of the June 29 Notice and the proposed rules to over a dozen stakeholders who had expressed interest in the 2010 proposed rules. Also, a notice of public hearing was published in the *D.C. Register* on June 29, 2012, at 59 DCR 7847.

The stakeholder mailing included the EPA's Region III, DC Water, DC Triathlon, Earth Justice, Washington Aqueduct, the Washington Metropolitan Council of Governments, the Interstate Commission on the Potomac River Basin (ICPRB), the Anacostia River Keeper, the DC Environmental Network, the Maryland Department of Environment, and the Virginia Department of Environmental Quality.

The public hearing was held on July 18, 2012. Pursuant to notice, the Department received through July 31, 2012, twenty-three (23) written comments, fifteen (15) delivered by email and eight (8) by hard copy at the public hearing.

At the hearing, 10 witnesses testified in support of the rules as proposed. (References to written comments are by last name, and references to oral remarks are to witness name and transcript page “(T ___)”.) The hearing transcript and written comments are available for review at DDOE’s Water Quality Division, 1200 First Street NW, Washington DC 20002.

The witnesses included the director of a youth triathlon club, a triathlete representing his company’s 30-person team, the open water chair of the Potomac Valley Swimming committee of the Eastern Zone United States Swimming (Thiel T 29), the head coach of Team in Training (Bell T 24), a group that uses triathlons to raise money for cancer treatment (Bowen T 14; Kelly T 33), and the vice president of the Nation’s Triathlon (Quinn T 18).

Testimony as to water quality included statements that in 2003 the District Department of Health shared data showing Contact 1 status for 325 days per year just south of Memorial Bridge (Thiel T 31), that many people interacting with a Virginia-based local river services business now swim or have considerable contact with the river on a regular basis with no ill effects (Staples T 27-28), and that over 1,000 triathlete students from outside the District offer praise for the Potomac River’s quality (Siehndel T 23). Other witnesses, with decades of triathlon experience, compared the Potomac River favorably to other public triathlon venues – the Schuylkill River in Philadelphia, the Hudson River in New York City, and Lake Erie by Cleveland. (Harris T 9; Siehndel T 23))

Present users of the Potomac for swimming near District waters include a youth swim team at the National Harbor (Nelson, T 10-13), and DC Triathlon Club members in open water swimming events off the Maryland shore (Siehndel T 22).

The Department’s response is that the Department is aware of the performance and data of the quality of water during triathlon events over the past five years, and that the proposed rule was formulated in great part on the experience gained from the regulatory activities related to those events.

The benefits of the rules’ allowing open water swimming were addressed by the September-scheduled Nation’s Triathlon’s Vice President Molly Quinn. She testified that the District’s six years of Potomac River triathlon swim events have contributed to the District’s being voted the fittest city in the US for three years on the American Fitness Index. (Quinn T 20) The First Lady’s “Let’s Move” initiative has recognized the event for helping combat obesity. (Quinn T 21) The Guinness Book of World Records finds the Tri to be the largest international distance triathlon event in the US. (Quinn T 21) Ms. Quinn pointed out that this triathlon event has raised over \$11 million to support research and a cure for blood cancers (Quinn T 21-22) and that a study shows that the triathlon brings \$6.8 million to the local economy (Quinn T 21).

The Department’s response is that, while the charitable and economic benefits of Potomac River swim events are of note, the Department’s decision to adopt the rules must be based on the data and experience relating to public health and safety.

The September Nation's Tri swim event will have in place a number of redundant systems for swimmer safety from that organization, and from D.C. Fire EMS, DC Harbor Police, and the US Park Police. (Quinn T 19-20)

The Department's response is that the rules address the environmental health and safety of the river resource, with the physical safety of participants and spectators being the responsibility and result of the systems which swim event sponsors put into place, the demands of their insurers, and the regulation and guidance of the District's public safety agencies.

The Open Water Chair of Potomac Valley Swimming proposed that, in addition to the proposed rule, the District institute a system overseen by the D.C. Department of Health with routine testing of the main channel of the river, incorporating a radio contact check-in-check-out system with the harbor master, proper water safety qualified and certified coaches, and escort boats to "open the Potomac River as a major training venue for open water swimming." (Thiel T 32)

The Department's response is that the writer's proposal goes beyond the scope of the rules, particularly in its implication that the District Government take on the significant expenses now borne by the triathlons through the fees they charge their participants and their managing the procurement, supply, coordination and training activities of the events. The rules are predicated on the concept of user fees covering the testing and reporting costs of these limited swim events.

One commenter urged that the new rules be seen as "a pragmatic first step to removing the [full body contact] ban totally." (Staples email)

The Department's response is that the rules provide a limited basis for the use of the Potomac. Whether the ban could be lifted totally depends upon a number of factors beyond the scope of this limited rulemaking.

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