

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FINAL RULEMAKING**Water Quality Criteria for Special Swimming Events**

The Director of the Department of Energy and Environment (DOEE), pursuant to the authority set forth in the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code §§ 8-151.01 *et seq.* (2013 Repl. and 2017 Supp.)), the Water Pollution Control Act of 1984, effective March 16, 1985 (D.C. Law 5-188; D.C. Official Code §§ 8-103.01 *et seq.* (2013 Repl.)), and Mayor's Order 2006-61, dated June 14, 2006, hereby gives notice of the adoption of the following amendments to Title 21 (Water and Sanitation), Chapter 11 (Water Quality Standards) of the District of Columbia Municipal Regulations (DCMR).

Background

On October 6, 2021, DOEE adopted an emergency and proposed rule to update its requirements for approval of special swimming events. The rule was published for a thirty (30) day public comment period in the October 15, 2021, issue of the *District of Columbia Register*, 68 DCR 010792. DOEE adopted the rule to ensure its regulations for special swimming events are adequately protective of public health. As water quality in District rivers and streams has improved, public and stakeholder interest in swimming and other water-based recreation has increased dramatically. Multiple stakeholder organizations have contacted DOEE expressing interest in hosting special swimming events. In light of this interest, DOEE determined it was important to clarify: 1) the water quality criteria DOEE will use when reviewing applications to authorize special swimming events in the District's portions of the Potomac and Anacostia Rivers, and 2) the circumstances that would preclude DOEE authorization for such an event.

Summary of Final Rulemaking

Swimming is currently prohibited in the District's portions of the Potomac and Anacostia Rivers, but DOEE may authorize special swimming events for limited amounts of time if monitoring data demonstrates that the water quality does not pose a threat to human health. When evaluating *E. coli* values, the District has historically used the 30-day geometric mean criterion of 126 MPN/100 mL. This rulemaking specifies that DOEE will use the single sample criterion of 410 MPN/100 mL for *E. coli* as adequately protective of human health. If monitoring data show that a single sample value exceeds 410 MPN/100 mL for *E. coli*, DOEE will not authorize the swimming event. If no value exceeds the criterion and values also comply with both the turbidity and pH water quality criteria requirements, DOEE will authorize the swimming event unless there are other circumstances indicating there is a danger to the health or safety of the participants. The rulemaking also clarifies that special swimming events may not be authorized if conditions other than pollution, such as river flow or physical debris, endanger the health or safety of participants.

DOEE is updating its regulations to use the single sample criterion of 410 MPN/100 mL for *E. coli* because it is the water quality criteria for *E. coli* of most relevance to a time-limited event

such as a triathlon or other swimming event. The single sample criterion better reflects the water quality conditions immediately preceding such an event, whereas the 30-day geometric mean criterion reflects the average water quality conditions during the entire month preceding the event. As a result, the single sample criterion is most useful in determining if water quality poses a threat to human health for the specific event to be authorized.

Discussion of Public Comments

A notice of Emergency and Proposed Rulemaking was published for public comment in the *District of Columbia Register* on October 15, 2021 at 68 DCR 10792. DOEE received 24 comment letters during the public comment period. These comments were all supportive of the proposed amendments and spoke to the benefits of open water swimming and of expanding opportunities for the public to engage in water-based recreation. No comments objected to the amendments, and no changes have been made to the text of the rules as proposed.

The rules were adopted as final on April 4, 2022, and the rules shall become effective upon publication of this notice in the *District of Columbia Register*.

Chapter 11, WATER QUALITY STANDARDS, of Title 21 DCMR, WATER AND SANITATION, is amended as follows:

Section 1108, RIVERS, is amended as follows:

Subsections 1108.2, 1108.6 and 1108.7 are amended to read as follows:

1108.2 The Director may authorize a special swimming event in the Potomac or Anacostia River if:

- (a) A study conducted by the special swimming event organizer in accordance with § 1108.3 shows:
 - (1) E. coli does not exceed a single sample value of 410 MPN/100 mL;
 - (2) Turbidity does not exceed 20 NTU above ambient turbidity as determined by DOEE; and
 - (3) pH is greater than 6.0 and less than 8.5; and
- (b) All other provisions of this section have been satisfied.

1108.6 The study and report shall include:

- (a) Each completed chain of custody form and lab report;
- (b) An assessment of whether the water quality criteria specified in § 1108.2 have been attained; and

- (c) An evaluation of each relevant factor, including:
 - (1) Rainfall;
 - (2) Upstream sewage or chemical releases; and
 - (3) Other environmental conditions that may affect the water quality.

1108.7 The Director shall not authorize a swim event in the Potomac or Anacostia River if the results of the study or the Director's independent investigation indicate:

- (a) The water quality criteria specified in § 1108.2 are not attained;
- (b) An emergency health or physical hazard caused by a hazardous pollutant or condition has occurred;
- (c) There may be a health risk from a known pollution source, including:
 - (1) Combined sewer overflow;
 - (2) Failing sewer infrastructure;
 - (3) Chemical release; or
 - (4) Wastewater treatment discharge; or
- (d) Any other circumstance that the Director finds may endanger the health or safety of event participants.