

OHIO RIVER VALLEY WATER SANITATION COMMISSION

MINUTES

**212th Commission Meeting
Clifty Inn at Clifty Falls State Park
Madison, Indiana
Thursday, June 18, 2015**

<u>Reports</u>	<u>Page</u>
Treasurer	1
Resolutions 2-15, 3-15 Recognition of Service.....	2
Chairman	3
Executive Director	3
Technical Committee.....	4
Pollution Control Standards Committee	5
Program and Finance Committee	7
Water Resources Committee	9
Public Interest Advisory Committee.....	10
Water Users Advisory Committee.....	10
Publicly Owned Wastewater Treatment Works Advisory Committee.....	11
Nominating Committee	11
Roster of Attendance	13
Attachment I: Summary of Pollution Control Standards Comments	14
Attachment II: FirstEnergy Variance.....	23
Attachment III: Koppers Variance Request	24
Attachment IV: Mountain State Carbon Variance Request.....	25
Attachment V: Valley Converting Variance Request.....	26
Attachment VI: Pollution Control Standards Prioritization Summary	27
Attachment VII: Report of the Program & Finance Committee	28

OHIO RIVER VALLEY WATER SANITATION COMMISSION

MINUTES

212th Commission Meeting
Clifty Inn at Clifty Falls State Park
Madison, Indiana
Thursday, June 18, 2015

Chairman Thomas Easterly, Presiding

Call to Order

Chairman Easterly called the 212th meeting of the Ohio River Valley Water Sanitation Commission to order at 9:00 A.M., Thursday, June 18, 2015.

Peter Tennant, at the Chairman's request, led the Commission in the Pledge of Allegiance.

Quorum Call

Commissioner Lovan certified that a quorum was present (see Roster of Attendance, page 13).

Action on Minutes

ACTION: Motion by Commissioner Duritsa, second by Commissioner Tomes and unanimously carried, that the minutes of the 211th meeting of the Commission and of the June 2015 Executive Session, electronically distributed on May 27, 2015, be adopted as presented.

Report of the Treasurer

Commissioner Lovan noted that a Treasurer's report as of March 31, 2015 was provided in the agenda materials for this meeting.

The report indicates a balance of \$201,420 in accounts receivable due the Commission as of March 31, 2015. The balance represents \$111,825 due from Signatory States, \$70,793 due from Federal sources, and \$18,802 due from other sources.

Additionally, the report indicates receipts of \$2,395,879, plus carryover of \$2,357,889, totaling \$4,753,768 through the end of March 2015. Of that amount, \$3,212,949 was expended on programs, leaving \$1,540,820 available for the continuation of ORSANCO's programs.

Commissioner Lovan also reported that, since this report, \$160,000 of the receivable balance has been collected, all signatory state dues are paid to date, the cash balance is approximately \$1.7 million, cash flow remains appropriate, and ORSANCO remains in a strong financial position.

ACTION: Motion by Commissioner FitzGerald, second by Commissioner Morgan and unanimously carried, to receive the Treasurer's Report as presented.

Recognition of Service

Commissioner Bruny presented the following resolution:

**RESOLUTION 2-15
RECOGNITION OF SERVICE
PAUL E. TOMES**

WHEREAS: Paul E. Tomes has served as a Commissioner to the Ohio River Valley Water Sanitation Commission from 2003 to 2015, representing the State of Ohio, and

WHEREAS: Mr. Tomes has provided faithful and diligent service to the Commission serving on numerous Committees including service as chair of the Personnel Committee, and

WHEREAS: Mr. Tomes served as Chairman of the Commission in 2010-11, and

WHEREAS: Mr. Tomes has earned the esteem and friendship of his fellow Commissioners, and

WHEREAS: Mr. Tomes has devoted his efforts to the cause of providing safe drinking water to the citizens of Greater Cincinnati,

Now therefore be it resolved, that the Commissioners of the Ohio River Valley Water Sanitation Commission express their heartfelt gratitude for Mr. Tomes' service, and wish him all the best in his future endeavors.

ACTION: Motion by Commissioner Bruny, second by Commissioner Frevert and unanimously carried, to adopt Resolution 2-15 as presented.

Commissioner Duritsa presented the following resolution:

**RESOLUTION 3-15
RECOGNITION OF SERVICE
GREGORY PHILLIPS**

WHEREAS: Gregory Phillips has served as a Commissioner to the Ohio River Valley Water Sanitation Commission from 2008 to 2015, representing the State of Pennsylvania, and

WHEREAS: Mr. Phillips has provided faithful and diligent service to the Commission serving on numerous Committees, and

WHEREAS: Mr. Phillips actively worked to help advance the Commission's goals, and

WHEREAS: Mr. Phillips has earned the esteem and friendship of his fellow Commissioners, and

WHEREAS: Mr. Phillips has devoted his career to the cause of conservation of the precious natural resources of Western Pennsylvania,

Now therefore be it resolved, that the Commissioners of the Ohio River Valley Water Sanitation Commission express their heartfelt gratitude for Mr. Phillips' service, and wish him all the best in his future endeavors.

ACTION: Motion by Commissioner Duritsa, second by Commissioner Frevert and unanimously carried, to adopt Resolution 3-15 as presented.

Report of the Chairman

Chairman Easterly began by noting that almost 80 years ago, on June 8, 1936, the United States Congress authorized the states along the Ohio River to work together to develop the Ohio River Valley Water Sanitation Compact. This work resulted in the formation of the Ohio River Valley Water Sanitation Commission on June 30, 1948.

As such, he reported that through the combined efforts of everyone in the Ohio River Valley, great progress has been made and the actual challenges that were known in 1936 have been satisfactorily addressed. For example, during 2015, ORSANCO completed the biological assessments of four pools and all were found to be in passing condition. However, the framers of the Compact had great vision and the Compact is just as relevant now as science continues to identify environmental concerns that were not recognized when the Compact was developed.

ORSANCO, with the support of the eight member states and federal partners, is a leader in the development of science that identifies and satisfactorily addresses emerging environmental concerns. Examples of issues that were not fully recognized when the Compact was developed include mercury concentrations in fish, nutrients, and the contamination of drinking water from chemical spills. Chairman Easterly mentioned several activities completed over the past year to address these issues.

Chairman Easterly concluded by stating that ORSANCO's success is a direct result of the high quality of its personnel. During 2015, Peter Tennant, Executive Director since 2012, retired after 39 years of dedicated service. He thanked Peter for his long and dedicated service. Looking forward, ORSANCO has selected Richard Harrison as Executive Director to lead ORSANCO into the future.

Report of the Executive Director

Executive Director Richard Harrison began by thanking Peter Tennant for his support and guidance during his transition to ORSANCO. He also recognized and thanked staff for being very supportive during this transition.

Mr. Harrison reported that he had completed visits with Commissioners and agency staffs of five Compact states and continues to schedule others. These meetings have been valuable in providing an understanding of ORSANCO's role in working effectively with the states and understanding their needs.

Mr. Harrison provided an update on the Toxic Release Inventory (TRI). ORSANCO was notified by Duke Energy that a number they had presented for mercury of 250 lbs. was actually zero. ORSANCO received confirmation that Duke Energy had made a request to EPA to update this number. With this verification, ORSANCO updated its website reflecting this TRI data change.

Mr. Harrison further reported that, in budget planning for the next few years, staff is working with EPA to utilize approximately \$600,000 remaining STAG Grant funds. A possible extension and revisions to the grant remain under consideration. Although this grant has a 45% match requirement, it appears that we may be able to utilize water utility partnership in-kind services as part of this match. This provides an opportunity, subject to EPA approval, to utilize these funds to cover longer-term Organics Detection System maintenance agreements and other related costs.

Mr. Harrison reported that staff is taking steps to pursue reimbursement from Duke Energy for direct cost of resources used during the recent spill event. It is his understanding that ORSANCO will seek reimbursement for costs incurred during spill response activities whenever there is a viable entity from which to seek reimbursement.

Mr. Harrison briefly reported on outcomes of the Program & Finance Committee meeting. He noted that staff has been tasked with developing projected five-year program plans and associated budgets prior to the 2016 Committee meeting. Staff will continue working with state agencies to help ensure that future activities are focused on their needs. This undertaking will possibly identify funding gaps that can then be addressed.

Mr. Harrison then reported on outcomes of work by the Congressional Liaison Committee. He had the opportunity to observe staff working with Commissioner Flannery to develop concept language to hopefully advance the funding efforts for source water protection, in particular the Organics Detection System. Through these efforts, some advice received indicates the need to undertake this in a step process and pursue language in the current appropriations bill, specifically in the Interior, Environment and Related Agencies appropriations bill. This is currently under consideration by the Committee. He also mentioned that through discussions with Commissioner Hedman and Tim Henry of US EPA, there appears to be a genuine desire to work with ORSANCO on a long-range plan for source water protection.

Mr. Harrison noted that the 2015 Ohio River Sweep was scheduled for Saturday, June 20th and that site information was available on the ORSANCO website. Some locations might have to reschedule due to weather and high river levels.

Mr. Harrison concluded by mentioning that, for the October Commission meeting, he is planning to include recent articles relating to Ohio River issues in the agenda packet to keep Commissioners informed of such activities being reported on by the media.

Report of the Technical Committee

Commissioner Frevert, Committee Chairman, reported that the 208th Technical Committee meeting took place on June 16-17, 2015. Eight states, three federal agencies, and four advisory committees were represented. He then provided this brief overview of the meeting outcomes.

Biological Accumulation Factor (BAF) Study

The Committee recommends approval of an initial BAF study for the Ohio River. A draft was presented at the February Technical Committee meeting, comments were received and incorporated, and a revised report was presented at the June Committee meeting.

ACTION: Motion by Commissioner Frevert, second by Commissioner Flannery and unanimously carried, to authorize the publication and distribution of the BAF study.

Compilation of State and Federal Programs on Management of Above-Ground Storage Tanks

A draft report on state and federal programs and regulations pertaining to the management of above-ground storage tanks was presented. Comments on the draft report are to be submitted to staff by September 1, 2015 and incorporated into a final draft to be considered at the October Technical Committee meeting.

Commissioner Flannery inquired if the draft report would first be submitted to the state agencies for input prior to releasing for public comment. Commissioner Flannery commented on errors identified in the characterization of the West Virginia program which could be addressed if vetted again with the state agencies. These issues should be addressed prior to releasing to the public for comment. Commissioner Frevert commented that the Committee would certainly delay the broad public review until such time that the state agencies are able to submit additional input on the report.

ACTION: Motion by Commissioner Frevert, second by Commissioner Duritsa and unanimously carried, that the draft report be resubmitted to the state agencies for input, then authorizing the release of the draft report for public for comment.

2016 305b Assessment Methodology for the Ohio River

Proposed methodologies presented by staff for the 2016 305b assessments of the Ohio River were endorsed by the Technical Committee. These methodologies are for the most part the same methods used in developing the 2014 305b Report.

Variances from the Pollution Control Standards

The Committee endorses the recommendations contained in the Pollution Control Standards report which include adoption of the FirstEnergy variance as proposed and holding a public comment period on draft variiances for Koppers, Inc., Mountain State Carbon, and Valley Converting Company.

Report of the Pollution Control Standards Committee

Commissioner Bruny, Committee Chairman, reported that the Pollution Control Standards Committee met by conference call on March 6, 2015 to prepare for a public comment period on proposed standards revisions, a draft FirstEnergy Corp. variance, and to begin evaluation of variance applications by Mountain State Carbon, LLC and Valley Converting Company, Inc. The committee then met on May 22 and May 26 to review public comments received on proposed 2015 revisions to the Pollution Control Standards, to review public comments received on the draft FirstEnergy variance, to consider variance applications received from Koppers, Inc., Mountain State Carbon, LLC, the City of Toronto, Ohio POTW, and Valley Converting Company, Inc., and to review results of a prioritization exercise on future standards issues that was conducted during the previous Technical Committee and roundtable meetings.

The Commission held a public comment period and hearing on proposed revisions to its Pollution Control Standards and a draft FirstEnergy variance. The hearing was held on April 14, 2015 and the public comment period closed on May 14, 2015. The Hearing Board included Commissioners Bruny, FitzGerald, Frevert, Kupke, and Potesta. Attachment I includes a summary of public comments received on the proposed revisions and draft FirstEnergy variance. The Standards Committee will be meeting this summer to more fully review the public comments received on the proposed standards revisions and decide what proposals to forward to the Commission at its October 2015 meeting.

After review of the public comments received regarding the draft FirstEnergy Corp. variance, the Pollution Control Standards Committee is recommending adoption of the FirstEnergy Corp. variance as proposed in the hearing and public comment period (Attachment II).

The Pollution Control Standards Committee is also recommending that the Commission authorize a public comment period and hearing regarding draft variances for Koppers, Inc., Mountain State Carbon LLC, and Valley Converting Company, Inc. These draft variances are included as Attachment III, Attachment IV, and Attachment V, respectively. All of these variances are to allow mixing zones for total mercury and include proposed expiration dates that coincide with the expiration of their current permit. Staff will be working with the respective permitting authorities to develop effluent limits for total mercury to be included in the variances (where not already specified) prior to the initiation of the public comment period. In addition, they all include requirements for implementing a mercury reduction plan, Ohio River monitoring of water and fish, and providing status reports to the Commission. Regarding the City of Toronto, Ohio variance application, the committee will be asking the applicant for additional information.

Lastly, the Committee reviewed results of the prioritization exercise on future standards issues that was completed at the last Technical Committee meeting and roundtable. Results of that prioritization exercise are included as Attachment VI. That exercise was conducted in an effort to help direct future work of the Commission on standards issues. The committee recommends that the staff weigh in on the prioritizations, and that it be taken to the states as well as the Commission's Research Committee for further review.

ACTION: Motion by Commissioner Bruny, second by Commissioner Frevert and carried (Commissioners Hedman, Flannery abstaining, Commissioners Conroe, FitzGerald, Wilson voting no) that a variance from the requirements as set forth in the Ohio River Valley Water Sanitation Commission Pollution Control Standards for Discharges to the Ohio River 2013 Revision, Chapter 4.F, Mixing Zone Prohibition for Bioaccumulative Chemicals of Concern be granted to FirstEnergy Corp., Pleasants Power Station.

Commissioner FitzGerald stated that in the summary of comments submitted by FirstEnergy, FirstEnergy indicated that it restates its strong objection to the characterization of the regulatory history of the Pleasants Power Station as having been in any manner remiss or ill-informed of the status of the science of regulatory law relative to mercury. It doesn't matter why FirstEnergy submitted an application for a variance that does not begin to meet the standards that have been adopted by ORSANCO for consideration in granting such variances. Commissioner Fitzgerald asked the Commission, who previously voted to send this variance request out for public comment, to rethink the endorsement of an application that is so wanting in compliance with mandatory standards that have been adopted by the Commission. The variance procedure requires that the permittee shall submit an application which includes information on alternatives considered including elimination of the discharge. This variance request, in summary, asks for additional time to figure out where the problem is, and no alternatives have been considered, including elimination of the discharge. In addition, it does not provide information required in the third section of the variance application. Commissioner Fitzgerald stated his opinion that we cheapen the process of consideration of variances when we grant a variance for an application that is so wanting of compliance with the standards that apply. However, Commissioner Fitzgerald will be supporting the other three variances being considered for public comment.

These applications meet the standards required for consideration. He further asked the Commissioners to vote against the FirstEnergy variance request.

ACTION: Motion by Commissioner Bruny, second by Commissioner Frevert and carried (Commissioners Hedman, Potesta abstaining, Commissioner Fitzgerald voting no), to authorize a public comment period and public hearing on the proposed variance request by Koppers Inc. from the prohibition on mixing zones for BCCs in their discharge permit.

Commissioner Fitzgerald inquired as to what a vote to send out a variance for public comment constitutes, if in fact it constitutes a tacit endorsement. He believes that it only means that the application meets the requirements of the procedure and is not a decision on the merits of the request. Commissioner Bruny stated he believes that the Commission is proposing to issue a variance, and before doing so, is seeking public comment on the proposed action. The Commission will then consider the comments and make a final recommendation.

ACTION: Motion by Commissioner Bruny, second by Commissioner Frevert and carried (Commissioner Hedman abstaining, Commissioner Fitzgerald voting no), to authorize a public comment period and public hearing on the proposed variance request by Mountain State Carbon, LLC from the prohibition on mixing zones for BCCs in their discharge permit.

ACTION: Motion by Commissioner Bruny, second by Commissioner Frevert and carried (Commissioners Hedman, Potesta abstaining, Commissioner Fitzgerald voting no), to authorize a public comment period and public hearing on the proposed variance request by Valley Converting Company, Inc. from the prohibition on mixing zones for BCCs in their discharge permit.

Commissioner Fitzgerald stated that voting no is not prejudging if the variance should or should not be granted. He has a differing view of what the procedure is regarding public comment.

Report of the Program and Finance Committee

Commissioner Conroe, Committee Chairman, reported that The Program and Finance Committee met at Commission Headquarters on April 21, 2015. Seven member states and the federal government were represented.

A detailed report of the meeting (Attachment VII) was provided in the meeting agenda packet.

Proposed Program and Budget for Fiscal Year 2016

The Committee carefully reviewed the proposed program and budget for fiscal year 2016. The Committee recommends Commission adoption of the proposed program and budget, which was included in the meeting agenda packet.

Recommended Levels of State Funding for Fiscal Year 2018

The Committee gave serious consideration to future funding needs and concluded that a 1% increase in state funding for fiscal year 2018 should be considered for adoption.

Committee Recommendations

1. Recommend adoption of the FY16 program plan and balanced budget as presented.
2. Recommend a 1% state funding increase for FY18 for Commission adoption.
3. Continue work to develop both a short-term and long-term funding strategy for continued operation and future refurbishment of the Organics Detection System (ODS).

4. The Committee endorses the intent of the Executive Director to develop a 3-5 year program and budget forecasting.
5. The Committee endorses the plan of the Pension Committee to continue with a comprehensive review of the Pension Plan.

Commissioner Conroe presented the following resolutions for consideration:

**RESOLUTION 4-15
PROGRAM PLAN AND BUDGET FOR FISCAL YEAR 2016**

WHEREAS: The Commission has established the sum of \$1,390,400 as the amount of appropriations to be requested from the signatory states for fiscal year 2016; and

WHEREAS: Funds from the United States Government for approximately \$1,569,206 may be allocated to the Commission for fiscal year 2016; and

WHEREAS: Funds amounting to \$356,725 may be available from a variety of sources to support the Ohio River Sweep, ORSANCO/USGS Gaging Stations, Life Below the Waterline, EPRI ORB Trading Development; and

WHEREAS: The Commission is anticipated to carry over obligated resources of \$1,405,135 into the 2016 fiscal year.

NOW, THEREFORE, BE IT RESOLVED THAT: The 2016 Fiscal Year Program Plan for all activities and the budget contained therein and in support thereof be approved as presented.

BE IT FURTHER RESOLVED THAT: The Executive Director is hereby authorized to make application for funding as may be available from US EPA, for other Federal funding and funding from other sources as may become available.

BE IT FURTHER RESOLVED THAT: The expenditures in fiscal year 2016 be substantially within the framework of the following guidelines, which are made a part of this Resolution.

2016 FISCAL YEAR BUDGET

Payroll	\$1,219,953
Employee Benefits	700,153
Staff Travel	161,275
Commission Travel	119,234
Advisory Committees	28,647
Supplies	249,356
Telephone	17,150
Equipment Purchases	37,720
Mortgage, Utilities	76,782
Repairs & Maintenance	70,769
Contractual Services	329,050
Printing & Reproduction	6,300
Lab Fees & Delivery	<u>421,159</u>
Total Expenditure Budget	\$3,437,548

ACTION: Motion by Commissioner Conroe, second by Commissioner Fitzgerald and unanimously carried, to adopt Resolution 4-15 as presented.

STATE FUNDING LEVEL FOR FY2018

BACKGROUND

The Commission has the responsibility of setting levels of state funding to support its programs. By policy, such state funding is to be established two years in advance to facilitate legislative/fiscal processes of the individual states. In developing its recommendations, the Program and Finance Committee relied, in part, on current and future budget information, the current rate of inflation, and the current level of funds in the escrow account. The Program and Finance Committee was presented with alternative increases in the states' 2018 funding and agreed to recommend a 1 percent increase in state funding for the 2018 fiscal year. The attached listing displays each state's proportional share of the Commission's budget for 2018, as increased by the 1 percent, in comparison with their most recent funding levels.

RESOLUTION 5-15 STATE FUNDING LEVEL FOR 2018

WHEREAS: Article V of the Compact provides that the Commission shall submit to the Governor of each state, at such time as he may request, a budget of its estimated expenditures for such period as may be required by the laws of such state for presentation to the legislature thereof;

NOW, THEREFORE, BE IT RESOLVED THAT: The sum of \$1,418,400 be budgeted for operating expenses of the Commission in the Fiscal Year July 1, 2017 to June 30, 2018. Such sum is to be prorated among the signatory states in accordance with the provisions of Article X of the Compact.

ACTION: Motion by Commissioner Conroe, second by Commissioner Duritsa (Commissioner Hedman abstaining) and carried, to adopt Resolution 5-15 as presented.

Report of the Water Resources Committee

Commissioner Potesta, Committee Chairman, reported on the following items:

The Water Resources Committee met for the eighth time on June 3, 2015 in Northern Kentucky. Representatives were in attendance from five states and four federal agencies including the US Army Corps of Engineers, US Geological Survey, National Weather Service, and the Tennessee Valley Authority. Key agenda items included: 1) a review of water resource characterization reports, 2) a presentation on the Integrated Water Resources Science and Services initiative, and 3) a discussion of the future direction of ORSANCO in water resources management.

Water Resource Characterization Reports

Staff has completed draft reports for three water resources topics including: 1) characterization of water use in the Ohio River Basin, 2) an inventory of state and federal water resource laws and regulations, and 3) a review of inter-basin transfers. These reports were previously distributed to the Water Resources Committee, the Technical Committee, and the Headwaters Resource Committee for review. The reports have been revised to reflect the comments received. The Water Resources Committee endorsed all three reports and recommends the Commission approve the reports for publication.

ACTION: Motion by Commissioner Potesta, second by Commissioner Frevert and unanimously carried, to approve the Water Resources Characterization Reports for publication.

Integrated Water Resources Science and Services

Mary Mullusky, Chief of the Hydrologic Services Branch of the National Weather Service, briefed the committee on the Integrated Water Resources Science & Services (IWRSS) initiative. IWRSS is a partnership among federal agencies which share complementary missions in water science, observation, prediction, and management. Current participants include NOAA, USGS, US Army Corps of Engineers, and newly added FEMA.

A series of stakeholder meetings have been held in six basins across the country, including the Ohio River Basin, to prioritize water resource needs, define information gaps, and to develop potential pilot projects that could capitalize on the capabilities of the IWRSS partners. Two pilot projects emerged from the Ohio River Basin meetings for further consideration. These include the development of a decision support tool for spill response which would link contaminant plume modeling with geospatial databases to improve spill response capabilities and to develop a large-scale watershed model that could simulate water quality impacts from changes in land-use, climate, industrial activity, and population shifts.

Future Direction

Grant funding for the Water Resources Initiative will run out at the end of this month. All programmatic activities associated with the water resources effort, including meetings of the Water Resources Committee, have been funded through the initiative. No future meetings of the Committee are planned at this time until additional funding can be secured. Members believe the Water Resources Committee provides value to the states and federal partners and are hopeful the Commission will be successful in getting support for the Water Resources Cooperative Agreement.

Report of the Public Interest Advisory Committee (PIACO)

Betsy Mallison, Committee Chairman, reported that the Committee met on June 1, 2015 by conference call and discussed a number of topics.

The Committee supports retaining the deadline for ending mixing zones and encourages states to consider a drop-dead date to determine which companies should be permitted mixing zones.

Ms. Mallison recommended Mike Huff, of West Virginia DEP, for membership on the Committee. Mike's skills and experience will be of great value to the Committee.

ACTION: Motion by Commissioner Frevert, second by Commissioner Fitzgerald and unanimously carried, to approve the appointment of Mike Huff to the Public Interest Advisory Committee.

Report of the Water Users Advisory Committee

Bruce Whiteberry, Committee Chairman, began by reporting that there had been no significant spills or other issues over the past several months, although now the concern shifts to the upcoming period of possible algae issues. The Committee is pleased regarding ORSANCO's movement on its harmful algal bloom response strategy to assist the utilities.

The Committee continued its discussion on whether or not to increase the calibration list for the Organics Detection System. There are expenses and logistical issues to consider. The system has the capability to monitor for many additional chemicals but is not currently calibrated for them. Additional work needs to be done to identify the chemicals of most significant risk within the watershed.

Additional concerns include the risk involved due to the increase of bock and crude transportation within the watershed and obtaining proprietary chemicals of concern during spill events. No solution is currently proposed.

Mr. Whitteberry concluded by reporting that he had recently attended the National AWWA Conference and learned of a couple of possible research options to closely follow relative to bromide levels.

Report of the Publicly Owned Wastewater Treatment Works (POTW) Advisory Committee

Alex Novak, Committee Chairman, reported that the Committee met by conference call on May 8, 2015. The primary agenda item was to provide Committee recommendations on the proposed Pollution Control Standards. The Committee's main concern is the "not to exceed" reference regarding bioaccumulative chemicals of concern, and he asked that this issue be reconsidered.

Mr. Novak reported that he had attended the recent Residuals and Biosolids Conference in Washington, DC. The Conference provided some valuable research ideas, such as nutrient recovery and phosphorous research, for Committee consideration.

The Committee also discussed energy issues. Many utilities, particularly in the West, are moving towards energy neutrality. Actions should be taken by POTWs to reduce their energy consumption.

Report of the Nominating Committee

Commissioner Frevert reported that the Committee recommends the following slate of officers for 2015-2016:

Chair: Douglas Conroe
Vice Chair: Ron Lovan
Secretary/Treasurer: Stuart Bruny

ACTION: Motion by Commissioner Frevert, second by Commissioner Duritsa and unanimously carried, to accept the slate of officers as recommended.

Comments by Guests

Judy Peterson, Kentucky Waterways Alliance (KWA), presented a petition to the Commission for consideration of forming a Non-Profit Advisory Committee to the Commission. Ms. Peterson understands that this request will be considered at the Commission's October 2015 Executive Session of Commissioners. No action on membership or By-laws of the proposed committee will be undertaken until outcomes of the Commission's decision are known. Ms. Peterson clarified that the intent of this committee is not to replace the Public Interest Advisory Committee.

Ms. Peterson also noted that copies of a public opinion survey summary, conducted in Kentucky and West Virginia, had been provided to Commissioners for review. No action was requested.

Commissioner Lovan commented on the special nature of last evening's event, honoring Peter Tennant's retirement. The Commissioners then applauded Mr. Tennant recognizing his long dedicated service to the Commission.

Upcoming Meetings

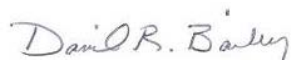
Chairman Easterly noted the following schedule for upcoming Commission meetings:

- October 6-8, 2015 Buffalo, New York
- February 9-11, 2016 Cincinnati, Ohio
- June 7-9, 2016 Pittsburg, Pennsylvania

Adjournment

The 212th Commission meeting was adjourned at 11:00 A.M.

Prepared by:



David Bailey
Director of Administration

Date: August 31, 2015

Approved by:



Ron Lovan
Secretary/Treasurer

Date: August 31, 2015

ROSTER OF ATTENDANCE
212th Commission Meeting
June 18, 2015

Commissioners

Illinois	Toby Frevert Phillip Morgan
Indiana	Thomas Easterly John Kupke Joseph Harrison, Jr.
Kentucky	Ron Lovan Bruce Scott (PROXY for Leonard Peters) Peter Goodmann (PROXY for Lt. Governor Luallen)
New York	Douglas Conroe Mike Wilson
Ohio	Paul Tomes Craig Butler Stuart Bruny
Pennsylvania	Charles Duritsa Ron Schwartz (PROXY for John Quigley)
Virginia	Melanie Davenport (PROXY for David Paylor)
West Virginia	David Flannery Ron Potesta Scott Mandirola (PROXY for Randy Huffman)
Federal	Susan Hedman Tom FitzGerald George Elmaraghy
Legal Counsel	Ross Wales

Executive Director

Richard Harrison

Guests

Tim Henry – US EPA Region 5; Betsy Mallison – PIACO; Bruce Whitteberry – WUAC; Alex Novak – POTW; Judy Peterson – KWA; Randy Payne – Kentucky; Karl Gebhardt – OEPA; John Hirschfield – Axiall; Erich Emery – USACE; Kenny Akins – Axiall Corporation; William Shane – Smith Management Group

Staff

David Bailey, Jason Heath, Sam Dinkins, Jerry Schulte, Peter Tennant, Rob Tewes, Jeff Thomas, Joe Gilligan

Summary of Comments Received from Public Comment Period for Revisions to Pollution Control Standards for Discharges to the Ohio River 2015 Revision

Categorized Comments (primarily emails) From “General Public”

15,422 third party emails through National Wildlife Federation Action Fund:

- Not in favor of proposal to remove mixing zone ban given the mercury issues in the Ohio River and that the Ohio River tops the list of most polluted rivers.

1011 third party emails through National Audubon Society:

- ORSANCO must enforce the October 2015 prohibition on mixing zones. Vote no on the proposed amendment to the mixing zone prohibition.

505 third party emails through Sierra Club:

- Maintain the October 16, 2015 deadline for the expiration of mixing zones. Invite discharges not able to meet the requirement to propose a settlement agreement or consent decree.
- Do not grant any new variances or exceptions to the standards.
- The ammonia standards must support mussels and allow them to re-populate areas where they have been extirpated.
- The 110 deg F temperature requirement does not adequately protect human health.
- The 500 mg/L TDS requirement is too high.

388 emails (possibly third party) marked “ORSANCO PCS Triennial Review Comments” stating that they are a resident of Indiana or Kentucky:

- Proposal to remove the mixing zone ban is not acceptable. All facilities should be required to meet the October 2015 deadline.
- Maintain the existing mercury standards until proposing a more stringent standard.
- Use only the new ammonia standard that will be more protective of mussels.
- Don't understand why ORSANCO would ask the public for input on the 130 individual standards (input on duration and frequency).

27 emailed comments opposed to both proposed mixing zone revisions and FirstEnergy Variance.

90 emailed comments to keep the mixing zone ban in place.

10 emailed comments with general concern about mercury in the Ohio River.

56 postcard comments to keep mixing zone ban in place.

123 signed petition from Sierra Club (Cumberland Chapter) :

- Supports Hank Graddy Comments (Sierra Club Cumberland Chapter comments).
- Opposed to mixing zone proposal and FirstEnergy variance.

1 email in favor of FirstEnergy Variance.

79 Citizens of Northern Kentucky opposed to mixing zone proposal and FirstEnergy Variance (signed petition).

Results of Public Hearing (30 Attendees, 12 speakers)

- 2 speakers support continuing ban on mixing zones (opposed to mixing zone proposal).
- Mike Miller who stated that he represents Rivers Unlimited – see written comments later.
- 1 speaker in favor of having access to waters that support healthy recreation.
- 1 speakers against mixing zone proposal and FirstEnergy variance.
- 1 speaker against mixing zone proposal, FirstEnergy variance, and wants enforcement.
- Tim Joice, KWA – see written comments later.
- Judy Peterson, KWA – see written comments later.
- Rich Cogen, Ohio River Foundation – see written comments later.
- Tim Guilfoile on behalf of International Federation of Fly Fishers, 34 clubs, 12,000 members. Written comments will mirror KWA. Will work with congressional representatives to defund ORSANCO and work with EPA.
- Hank Graddy, Cumberland Chapter Sierra Club – see written comments later.
- Rich Koster, Chair Northern Kentucky Sierra Club – ORSANCO accountability to the public and FirstEnergy accountability to ORSANCO.

Detailed Comments from Organizations

Rivers Unlimited

- Hg levels are sustained in fish since 1997 and tissue concentrations appear to trend upward in a downstream direction.
- Tripling the effluent concentration as proposed in the FirstEnergy variance could result in a 3000-fold increase in Hg concentrations in fish tissue due to the specific hydrology at that location.
- The TDS limit of 500 mg/L for the protection of drinking water may not be protective of aquatic life.

Kentucky Waterways Alliance (KWA)

- The mixing zone ban for BCCs by October, 2015 must be retained.
- The variance procedure for the mixing zone ban must be removed.
- The existing total mercury water quality criterion must be retained.
- If ORSANCO retains the variance procedure, all permittees must agree by October 2015 to implement necessary controls and substantiate their request with information on treatment options/costs, options for elimination or reduction of mercury, and project discharge levels. ORSANCO must receive regular reports from variance holders on their discharge of mercury, developments in treatment technologies with costs, and results of annual water and fish monitoring requirements.
- Variance holders should make defined payments into a fund to support mercury research.
- ORSANCO should prepare an annual report on discharges with mixing zones for mercury, including the level of mercury in each discharge, the cumulative discharge of mercury, and control technology options. The report should be adopted into the standards.
- KWA supports the new ammonia criteria, but only with the mussels present tables.
- ORSANCO should clarify its temperature criteria for aquatic life that it also applies inside and outside the mixing zone.
- Regarding the specification of frequency and duration, ORSANCO should refer to EPA's National Recommended Water Quality Criteria.
- KWA made several recommendations for future triennial reviews.

Ohio River Foundation

- Adopts KWA's comments.

- Specifically states opposition to the allowance of mixing zones for BCCs and the FirstEnergy variance.

Sierra Club, Cumberland Chapter (over 4,800 members)

- ORSANCO must set and maintain its standards to reduce mercury pollution.
- The water quality mercury criterion should be retained along with the “not to exceed” requirement. Changing the “not to exceed” requirement would constitute “backsliding” which is prohibited by the Clean Water Act.
- The mixing zone prohibition with the October 2015 deadline must be retained.
- ORSANCO should not be in the business of granting variances due to the lack of opportunity for meaningful judicial review.
- ORSANCO must deny all current and future variance requests.
- ORSANCO must invite all discharges not able to meet the mixing zone prohibition by October 2015 to “confess judgment” and propose a settlement agreement or consent decree.
- The 500 mg/L TDS standard is too high.
- Supports the new ammonia standards but only with the mussels present tables.
- The 110 deg F temperature criterion does not protect human health.
- Question why ORSANCO is opening the door to weakening all water quality standards (request for public input on frequency/duration).
- Question why POTWs are excluded from the requirement to report upsets, bypasses and spills.

Ohio Valley Environmental Coalition

- Oppose removal of the ban on mixing zones for BCCs. The West Virginia DHHR has already listed the Ohio River as impaired for fish consumption due to mercury.
- Supports proposed clarification of the human health temperature criterion.
- Recommend aquatic life temperature criteria also apply inside and outside the mixing zone.
- Supports the proposed ammonia criteria, but with mussels present tables only.
- Stated additional concerns about “fracking” and bromide levels.

West Virginia Municipal Water Quality Association

- Supports proposed revisions to the mixing zone ban. The current requirements are impractical for POTW discharges.
- Recommends specific changes to the mixing zone proposal, subsection 1(ii) criteria: “The concentration and duration of the discharge, bioaccumulation factors and exposure considerations for each BCC for which the mixing zone is sought to be continued, and for POTWs whether the POTW collection system is a meaningful source of BCC loadings of the BCC loadings originate in source waters or from other generic environmental sources.”
- Recommends the following addition to the section on variances:
 “Variances to the aquatic life criteria for ammonia may be granted by the permitting authority in the event of substantial adverse economic or social impact from the immediate application of the criteria. Such variances may incorporate a phase-in of new treatment technologies and alternate permitting parameters under Chapter 4 (Mixing Zones) and Sections 5.2 (Critical Flow) and 5.3 (Wastewater Discharges). The permittee shall submit an application to the permitting authority which includes...”
- Frequency and duration for human health criteria are effectively addressed through proper designation of design stream flow. The use of 7Q10 for human health non-carcinogens is incorrect. For criteria based on consumption of fish or fish and water, the correct design flow is 30Q5, and the harmonic mean for criteria exerting effects over

lifetime or particularly long-term (EPA Technical Support Document for Water Quality-Based Toxics Control section 4.6.1).

WVDEP

- Regarding the mixing zone prohibition, asks ORSANCO to clarify its interpretation of “new discharges”. For example, does it include discharges in existence prior to October, 2003, but that since have expanded their discharge to include those from new FGD wastewater?
- Regarding the proposed mixing zone revisions, the determination of “as soon as practicable” should be the responsibility of ORSANCO, not the permitting authority (rationale provided).
- ORSANCO should note that if it moves forward with the mixing zone proposal transferring authority to the permitting agency, that the criteria for determining compliance and how compliance is obtained also transfers to the permitting agency.

SD1

- ORSANCO should update the mercury criterion to be consistent with current science and USEPA which dropped its 0.012 ug/L criterion.
- Should ORSANCO retain the mercury criterion, it should be applied as an annual average with an allowable exceedance frequency of once in three years.
- Supports the clarification to the TDS criterion.
- ORSANCO should not adopt the federal ammonia criteria during this triennial review, as Oregon is currently the only state to do so. Instead, ORSANCO should compile additional information (specifics included with comment).
- Regarding the request for input on frequency and duration, ORSANCO should allow adequate time for stakeholder input.
- SD1 supports the proposed revisions regarding the notification of upsets and bypasses.

ORSANCO POTW Advisory Committee

- Points out that many facilities currently do not have mercury limits. Requests that existing facilities that receive new limits for mercury be allowed adequate time to use mixing zones until they can comply with new requirements.
- POTWs were not designed to remove mercury and therefore should not be subject to more stringent mercury regulations.
- Mercury criteria should be applied as an annual average.
- Supports the proposed clarification to the TDS criterion.
- Regarding the ammonia proposal, a more holistic approach should be taken on nitrogen limits. Design and operation of POTWs for nutrients control is best accomplished with an overall goal rather than piecemeal with ammonia criteria.
- Regarding the request for input on duration and frequency, ORSANCO should undertake an effort to obtain further stakeholder input.
- Supports the proposed revisions regarding upsets and bypasses.

Greater Cincinnati Water Works

- Does not support the proposed revisions to the mixing zone provisions.
- Supports proposed revisions regarding TDS clarification.
- No objection to the proposed ammonia revisions.
- Supports proposed revisions regarding the temperature clarification.
- Supports proposed revisions regarding the notification of upsets and bypasses.

Keepers Of The Mountains Foundation

- There is no scientific basis for the use of mixing zones for BCCs.
- Revision of the total mercury criterion is not warranted.

- Does not support the FirstEnergy variance due to the lack of work to identify sources or use of best technology for mercury removal.
- Does not support future variances for Koppers, Mountain State Carbon, and Toronto (rationales stated).

League of Women Voters of West Virginia

- Opposed to the proposed revisions to the mixing zone ban.
- Supports ORSANCO's work on nutrients.
- Urges ORSANCO to set standards for the protection from "fracking" operations.

Kentucky Environmental Foundation

- Address concerns around rising levels of mercury contamination.
- Maintain the existing total mercury water quality criterion.
- Develop numeric nutrients criteria.
- Set standards for TENORM, bromide and other constituents associated with "fracking".

Three Rivers Waterkeeper

- The mixing zone ban for BCCs must be retained.
- The variance procedure for mixing zones must be removed.
- The existing mercury water quality standard must be retained.
- If ORSANCO does retain the variance procedure, it must ensure sufficient safeguards are in place and justifications for continuing and variances.
- ORSANCO must require milestones for progress on mercury minimization and demonstrated progress on reducing mercury.
- Variance holders should submit regular progress reports to ORSANCO including information on loadings, developments regarding mercury removal technologies, costs, and results of required annual water and fish monitoring programs.
- Variance holders should make defined payments to a fund for mercury research.
- ORSANCO should prepare an annual report on the status of all of its variance holders (specific information listed).
- Adopt new ammonia criteria, but only with mussels present tables.
- ORSANCO should clarify its temperature criteria for aquatic life to apply both inside and outside the mixing zone.
- ORSANCO should refer to the EPA's National recommended Water Quality Criteria regarding the specification of frequency and duration.
- ORSANCO should propose criteria for nutrients and nutrient-related response variables such as microcystin and chlorophyll-a.
- ORSANCO should propose standards for various constituents of TDS (listed).
- Set a "non-detectable" threshold for TENORM and bromide, and investigate various other constituents found in "fracking" wastes.

Environmental Law & Policy Center

- The mixing zone ban must be retained.
- The variance procedure for mixing zones must be removed, it is inadequate to ensure protection of the uses.
- The existing mercury water quality criterion must be retained.
- If ORSANCO does retain the variance procedure, it must ensure sufficient safeguards are in place and justifications for continuing and variances.
- ORSANCO must require milestones for progress on mercury minimization and demonstrated progress on reducing mercury.

- Variance holders should submit regular progress reports to ORSANCO including information on loadings, developments regarding mercury removal technologies, costs, and results of required annual water and fish monitoring programs.
- Variance holders should make defined payments to a fund for mercury research.
- ORSANCO should prepare an annual report on the status of all of its variance holders (specifics information listed).
- Adopt new ammonia criteria, but only with mussels present tables.
- ORSANCO should clarify its temperature criteria for aquatic life to apply both inside and outside the mixing zone.
- ORSANCO should refer to the EPA's National recommended Water Quality Criteria regarding the specification of frequency and duration.
- ORSANCO should propose standards for various constituents of TDS (listed).
- Set a "non-detectable" threshold for TENORM and bromide, and investigate various other constituents found in "fracking" wastes.

Hoosier Environmental Council

- Same as Environmental Law & policy Center immediately above and others.

Knob and Valley Audubon Society

- Opposed to mixing zone proposal that eliminates the October 2015 deadline.
- Enforce the prohibition on mixing zones.
- Immediately initiate a TMDL for mercury.
- Asks IDEM and ORSANCO to respond to how and when IDEM will proceed to promulgate regulations in Indiana's standards to eliminate mixing zones for BCCs.

Oxbow Of Indiana

- Supports comments of Rivers Unlimited.
- Would have expected more stringent standards to reduce allowable discharges. At a minimum, ORSANCO should hold the line on existing discharge standards.

Chemical Industry Advisory Committee

- Do not transfer responsibility for implementing the mixing zone ban to the states. Instead, eliminate the ban as there is no scientific basis for it.
- Supports reassessment of the total mercury water quality standard, and in the meantime, the standard should be implemented as not to be exceeded more than once in three years.
- Supports clarification to the TDS standard that it applies at drinking water intakes.
- Recommends that ORSANCO address the presence/absence of mussels before or in tandem with the adoption of the new ammonia criteria.
- Regarding temperature criterion, recommends that ORSANCO define "any location where public access is possible."
- Supports adoption of EPA's frequency & duration recommendations which include a one-hour average for acute aquatic life criteria and a four-day average for chronic aquatic life criteria. Both of these averages should not be exceeded more than once in three years.
- Opposed to the addition of "spills" to the list of notification requirements because it is duplicative of existing state and federal programs, and because "spills" are not defined by ORSANCO.

West Virginia Chamber

- Supports comments of the ORSANCO Chemical Industry Advisory Committee.
- Recommends elimination of the mixing zone prohibition.
- Urges reassessment of the total mercury water quality criterion. It is not in line with USEPA's recommended criteria.

- Supports clarification that the TDS criterion applies at drinking water intakes.
- Conduct studies to determine the presence absence of mussels for application to the proposed ammonia criteria.
- Regarding temperature criterion, recommends that ORSANCO define “any location where public access is possible.”
- Supports adoption of EPA’s frequency & duration recommendations which include a one-hour average for acute aquatic life criteria and a four-day average for chronic aquatic life criteria. Both of these averages should not be exceeded more than once in three years.
- Opposed to the addition of “spills” to the list of notification requirements because it is duplicative of existing state and federal programs, and because “spills” are not defined by ORSANCO.

WV Manufactures Association

- Supports removal of the October 2015 deadline for the mixing zone prohibition, but recommends complete elimination of the mixing zone prohibition.
- If the mixing zone ban is retained, recommends that ORSANCO make the determination of “as soon as practicable” with consultation with the state permitting authorities.
- ORSANCO should follow USEPA’s lead and remove the total mercury criterion of 0.012 ug/L.
- WV’s fish tissue methylmercury criterion is 0.5 mg/kg based on EPA’s recommended approach to develop regionally-appropriate criteria due to differences in fish consumption patterns. ORSANCO should make allowance for use of these regionally-appropriate criteria, or conduct its own fish consumption surveys.
- ORSANCO should adopt guidance for determining the presence/absence of mussels with regard to its proposed ammonia criteria.
- Supports adoption of USEPA’s recommended frequency and duration values for its criteria.
- Opposed to the addition of “spills” to the list of notification requirements because it is duplicative of existing state and federal programs, and because “spills” are not defined by ORSANCO.

Axiall Corporation (submitted by Gradient)

- Urges ORSANCO to give due weight to the Ohio River specific conditions and data that have been collected by ORSANCO and other organizations when making its decision about mixing zones. The decision to eliminate mixing zones in the Great Lakes was based on hydrologic conditions not present in the Ohio River.
- ORSANCO should adopt the scientifically-sound approach used by the USEPA in its decision to drop the total mercury water quality criterion of 0.012 ug/L.
- Additionally, the original criterion of 0.012 ug/L was developed as a methylmercury criterion by the USEPA, but conservatively applied as a total mercury criterion.

Valley Converting (submitted by Amendola Engineering)

- ORSANCO should consider removing the mixing zone prohibition until information and data are collected and evaluated to make a sound scientifically-based decision.
- The standards should provide for a *de minimus* cutoff regarding the mixing zone prohibition (specific language offered). Valley Converting’s mercury discharge is less than 0.01 percent of the assimilative capacity of the river.
- The Ohio River is not impaired for mercury, and as such, a blanket prohibition on mixing zones is unnecessary.

AK Steel

- Recommends elimination of the mixing zone ban.

- Conduct studies to better understand air emissions and atmospheric deposition, and surface runoff from contaminated soils on Ohio River mercury levels.
- Complete pool-by-pool assessments for mercury similar to what was submitted by Mountain State Carbon in their variance application.
- Continue ORSANCO's water and fish monitoring programs for mercury.
- Increase Ohio River water monitoring for mercury to better understand relationships with flow.
- Conduct studies to understand relationships between water concentrations and fish tissue concentrations for mercury.
- Conduct studies to understand the fate of mercury in the Ohio River.
- Conduct studies to understand the methylation processes in the Ohio River.

Constellium Rolled Products-Ravenswood LLC

- Adopts comments of ORSANCO Chemical Industry Advisory Committee, Ohio Utility Group and the West Virginia Manufacturers Association.
- Recommends elimination of the mixing zone ban, there is no scientific basis for it.
- If the mixing zone ban is retained, the current deadline should be extended to 2020 or later. To allow ORSANCO adequate time to understand the science.
- Does not support the "as soon as practicable" deadline due to the increased uncertainties associated with such a deadline.
- The total mercury water quality criterion of 0.012 ug/L is not scientifically sound.

FirstEnergy

- Until a permitting authority imposes ORSANCO's standards in a permit, ORSANCO's standards are not applicable to the discharge. In the absence of a permit condition, there is no obvious path forward. Pleasants had no expectation that in 2013 it would be confronted with a mercury limit. The Company therefore restates its strong objection to the characterization of the regulatory history of the Pleasants Power Station as having been in any manner remiss or ill informed of the status of the science and regulatory law relative to mercury.
- The two-year variance proposed by ORSANCO does not allow adequate time to conduct the comprehensive evaluation necessary to conduct the work to achieve the required mercury reductions.
- Pleasants had a mercury discharge concentration of 0.0554 ug/L in 2009 and believes there is a possibility of these discharge levels recurring. Therefore, the effluent values in the proposed variance of 0.022 ug/L and 0.044 ug/L are too stringent. They recommend that ORSANCO adopt WVDEP's interim limits of 0.187 ug/L and 0.577 ug/L.
- Indicates it is appropriate to submit their first progress report on January 25, 2016 and semi-annually thereafter.
- Recommends that the starting date for monthly water sampling begin December 1, 2016, and the starting date for fish monitoring begin January 1, 2016.

Ohio Utility Group

- The mixing zone ban is not appropriate to the Ohio River. The Ohio River's hydrology is much different from the Great Lakes, which is what the mixing zone ban was originally promulgated to protect. In addition, the EPA stated that another reason was the mercury fish consumption advisories on the Great Lakes, whereas there is only one small segment of the Ohio River covered by a mercury fish consumption advisory.
- The "as soon as practicable" effective date is insufficient.
- ORSANCO needs to further study mercury before re-evaluating the criterion.
- Options in lieu of the mercury criterion include: 1) Framework whereby the fish tissue criterion is used to determine reasonable potential, and if RP is determined, then allow

the permittee to develop site-specific criteria, or 2) Utilize the water and fish criteria, but allow the permittee to develop site-specific criteria using a methylmercury translator.

- Regarding the proposed ammonia criteria, recommend ORSANCO develop guidelines for determining mussels presence/absence.
- ORSANCO should revoke its human health temperature criterion, there is no scientific basis for it. ORSANCO does not have jurisdiction under the Compact to regulate “heat” or condenser cooling water.
- ORSANCO must define the term “spills” so it is clear what must be reported under the proposal.

Utility Information Exchange of Kentucky

- Supports elimination of the October 2015 deadline and transferring responsibility to the permitting authority.
- ORSANCO should re-evaluate its total mercury water quality criterion, as it appears to be more stringent than many of the states.
- The 110 deg F temperature criterion is not appropriately set. In addition, the language should be revised such that the criterion applies at locations that could reasonably be accessed by recreational swimmers.
- Regarding the request for input on frequency and duration, ORSANCO should make it clear that the averaging periods used by the permitting authorities will control the issuance of NPDES permit limits.
- ORSANCO should define the criteria for reporting spills, which should exclude spills not reportable under federal requirements.
- Supports the clarification that the TDS standard applies at drinking water intakes.
- The authority to grant variances should lie with the state permitting authorities, not ORSANCO.

NGR Power Midwest

Supports the mixing zone proposal and the allowance of variances to the mixing zone prohibition.

Appendix F (DRAFT)

Approved Variances from Pollution Control Standards

II. FirstEnergy Corp, Pleasants Power Station, Willow Island, WV (Permit WV0023248)

- 1) A variance from the requirements as set forth in the Ohio River Valley Water Sanitation Commission Pollution Control Standards for Discharges to the Ohio River 2013 Revision, Chapter 4.F, Mixing Zone Prohibition for Bioaccumulative Chemicals of Concern is granted to FirstEnergy Corp., Pleasants Power Station (NPDES Permit WV0023248) for a period not to exceed two years, beginning October 16, 2015.
- 2) FirstEnergy Corp. will be allowed a mixing zone as specified above; however, at WV0023248 Outfall 001, the monthly average limit for Total Hg shall not exceed 0.022 ug/L, and the daily maximum limit for Total Hg shall not exceed 0.044 ug/L.
- 3) FirstEnergy Corp's mercury reduction plan submitted to the Commission in its application dated November 26, 2014 shall be fully implemented.
- 4) FirstEnergy Corp. shall submit to the Commission and WVDEP semi-annual progress reports beginning October 16, 2015 including the status of implementing its mercury reduction plan and all mercury monitoring data collected as a requirement of this variance and NPDES Permit WV0023248.
- 5) Beginning October 16, 2015, monthly Ohio River in-stream sampling for Total Hg shall be conducted upstream of WV0023248 Outfall 001 and downstream of Outfall 001 at the downstream and lateral edge of the regulatory mixing zone as specified by WVDEP in the NPDES permit. Samples shall be representative of the entire water column at each location.
- 6) Beginning October 16, 2015, annual fish tissue monitoring for total and methyl mercury shall be conducted downstream, in the vicinity of WV0023248 Outfall 001. A minimum of three samples each from trophic levels three and four fish shall be collected annually. FirstEnergy shall develop a monitoring and analytical work plan to be approved by ORSANCO prior to sampling.
- 7) The Commission shall have the sole authority and discretion to modify, renew, or revoke the variance being granted herein. Further, if the Commission modifies or revokes this variance, the Commission shall formally notify the WVDEP in writing of any such modification or revocation once finalized by the Commission. Nothing in this variance shall be construed to limit the WVDEP's authority to impose any additional requirements or more stringent requirements in WV/NPDES Permit No. WV0023248 for Outfall 001.

Approved Variances from Pollution Control Standards (DRAFT)

III. Koppers Inc., Carbon Materials and Chemicals, Follansbee, WV (Permit WV0004588)

- 1) A variance from the requirements as set forth in the Ohio River Valley Water Sanitation Commission Pollution Control Standards for Discharges to the Ohio River 2013 Revision, Chapter 4.F, Mixing Zone Prohibition for Bioaccumulative Chemicals of Concern is granted to Koppers Inc., NPDES Permit WV0004588, with regard to its discharge of mercury from Outfall 001, for a period beginning October 16, 2015, and not to exceed its permit expiration date of June 30, 2016.
- 2) Koppers will be allowed a mixing zone as specified above; however, at WV0004588 Outfall 001, the monthly average limit for Total Hg shall not exceed (to be determined) ug/L, and a maximum daily limit of (to be determined) ug/L.
- 3) Koppers mercury reduction plan submitted to the Commission in its application dated April 29, 2015 shall be fully implemented.
- 4) Koppers shall submit to the Commission and WVDEP semi-annual progress reports beginning April 16, 2016 including the status of implementing its mercury reduction plan and all mercury monitoring data collected as a requirement of this variance and NPDES Permit WV0004588.
- 5) Beginning October 16, 2015, monthly Ohio River in-stream sampling for Total Hg shall be conducted upstream of WV0004588 Outfall 001 and downstream of Outfall 001 at the downstream and lateral edge of the regulatory mixing zone as specified by WVDEP. Samples shall be representative of the entire water column at each location. Koppers shall develop a monitoring and analytical work plan to be approved by ORSANCO prior to sampling.
- 6) Beginning October 16, 2015, annual fish tissue monitoring for total and methyl mercury shall be conducted downstream, in the vicinity of WV0004588 Outfall 001. A minimum of three samples each from trophic levels three and four fish shall be collected annually. Koppers shall develop a monitoring and analytical work plan to be approved by ORSANCO prior to sampling.
- 7) The Commission shall have the sole authority and discretion to modify, renew, or revoke the variance being granted herein. Further, if the Commission modifies or revokes this variance, the Commission shall formally notify the WVDEP in writing of any such modification or revocation once finalized by the Commission. Nothing in this variance shall be construed to limit the WVDEP's authority to impose any additional requirements or more stringent requirements in WV/NPDES Permit No. WV0004588 for Outfall 001.

Approved Variances from Pollution Control Standards (DRAFT)

IV. Mountain State Carbon, LLC, Follansbee, WV (WV0004499)

- 1) A variance from the requirements as set forth in the Ohio River Valley Water Sanitation Commission Pollution Control Standards for Discharges to the Ohio River 2013 Revision, Chapter 4.F, Mixing Zone Prohibition for Bioaccumulative Chemicals of Concern is granted to Mountain State Carbon, NPDES Permit WV0004499, with regard to its discharge of mercury from Outfall 006, for a period beginning October 16, 2015, and not to exceed its permit expiration date of June 30, 2017.
- 2) Mountain State Carbon will be allowed a mixing zone as specified above; however, at WV0004499 Outfall 006, the monthly average limit for Total Hg shall not exceed 0.234 ug/L, and a maximum daily limit of 0.417 ug/L.
- 3) Mountain State Carbon's mercury reduction plan submitted to the Commission in its application dated January 20, 2015 shall be fully implemented.
- 4) Mountain State Carbon shall submit to the Commission and WVDEP semi-annual progress reports beginning April 16, 2016 including the status of implementing its mercury reduction plan and all mercury monitoring data collected as a requirement of this variance and NPDES Permit WV0004499.
- 5) Beginning October 16, 2015, monthly Ohio River in-stream sampling for Total Hg shall be conducted upstream of WV0004499 Outfall 006 and downstream of Outfall 006 at the downstream and lateral edge of the regulatory mixing zone as specified by WVDEP. Samples shall be representative of the entire water column at each location. Mountain State Carbon shall develop a monitoring and analytical work plan to be approved by ORSANCO prior to sampling.
- 6) Beginning October 16, 2015, annual fish tissue monitoring for total and methyl mercury shall be conducted downstream, in the vicinity of WV0004499 Outfall 006. A minimum of three samples each from trophic levels three and four fish shall be collected annually. Mountain State Carbon shall develop a monitoring and analytical work plan to be approved by ORSANCO prior to sampling.
- 7) The Commission shall have the sole authority and discretion to modify, renew, or revoke the variance being granted herein. Further, if the Commission modifies or revokes this variance, the Commission shall formally notify the WVDEP in writing of any such modification or revocation once finalized by the Commission. Nothing in this variance shall be construed to limit the WVDEP's authority to impose any additional requirements or more stringent requirements in WV/NPDES Permit No. WV0004499 for Outfall 006.

Approved Variances from Pollution Control Standards (DRAFT)

V. Valley Converting Company, Inc., Toronto, OH (0IA00006)

- 1) A variance from the requirements as set forth in the Ohio River Valley Water Sanitation Commission Pollution Control Standards for Discharges to the Ohio River 2013 Revision, Chapter 4.F, Mixing Zone Prohibition for Bioaccumulative Chemicals of Concern is granted to Valley Converting Company, Inc., NPDES Permit 0IA00006, with regard to its discharge of mercury from Outfall 001, for a period beginning October 16, 2015, and not to exceed its permit expiration date of February 29, 2020.
- 2) Valley Converting Company will be allowed a mixing zone as specified above; however, at 0IA00006 Outfall 001, the monthly average limit for Total Hg shall not exceed (to be determined) ug/L, and a maximum daily limit of (to be determined) ug/L.
- 3) Valley Converting Company's mercury reduction plan submitted to the Commission in its application amendment dated May 12, 2015 shall be fully implemented.
- 4) Valley Converting Company shall submit to the Commission and Ohio EPA semi-annual progress reports beginning April 16, 2016 including the status of implementing its mercury reduction plan and all mercury monitoring data collected as a requirement of this variance and NPDES Permit 0IA00006.
- 5) Beginning October 16, 2015, monthly Ohio River in-stream sampling for Total Hg shall be conducted upstream of 0IA00006 Outfall 001 and downstream of Outfall 001 at the downstream and lateral edge of the regulatory mixing zone as specified by Ohio EPA. Samples shall be representative of the entire water column at each location. Valley Converting Company shall develop a monitoring and analytical work plan to be approved by ORSANCO prior to sampling.
- 6) Beginning October 16, 2015, annual fish tissue monitoring for total and methyl mercury shall be conducted downstream, in the vicinity of 0IA00006 Outfall 001. A minimum of three samples each from trophic levels three and four fish shall be collected annually. Valley Converting Company shall develop a monitoring and analytical work plan to be approved by ORSANCO prior to sampling.
- 7) The Commission shall have the sole authority and discretion to modify, renew, or revoke the variance being granted herein. Further, if the Commission modifies or revokes this variance, the Commission shall formally notify the Ohio EPA in writing of any such modification or revocation once finalized by the Commission. Nothing in this variance shall be construed to limit the Ohio EPA's authority to impose any additional requirements or more stringent requirements in OH/NPDES Permit No. 0IA00006 for Outfall 001.

Summary of Prioritization for Pollution Control Standards Items for Carryover to 2018 Review

Number of Votes for Priority Categories (out of 14)

	<u>High</u>	<u>Medium</u>	<u>Low</u>	<u>Score</u>	<u>Rank</u>
Total mercury water quality criterion (numeric value).	12	1	1	39	1
Nutrients criteria.	9	5	0	37	2
E. coli criteria for protection of contact recreation.	8	3	3	33	3
Criteria for individual constituents of TDS.	4	4	6	26	4
Radionuclide criteria.	1	7	6	23	5
Chloride criterion for aquatic life protection.	0	8	6	22	6
Development of additional metals translators.	0	6	8	20	7

Write-Ins:

<u>Handle duration/frequency of criteria in 2018 review</u>	High
<u>Bromide</u>	Medium
<u>Copper Ligand Model Update & Toxicity data</u>	High
<u>Selenium (2 votes)</u>	Medium
<u>General review of all criteria against USEPA national criteria (2 votes)</u>	High
<u>Investigate shale gas discharges regarding TDS & chloride</u>	None

Report of the Program and Finance Committee

The Program and Finance Committee met at Commission Headquarters on April 21, 2015. Committee Chair Douglas Conroe convened the annual budget preparation meeting of the Committee at 10 AM in the headquarters conference room. Present were representatives from seven states and the federal government including Commission officers and the Technical Committee chair (Douglas Conroe, Commission Vice-Chair, NY; Charles Duritsa, PA; Thomas Easterly, Commission Chair, IN; George Elmaraghy, Federal; Toby Frevert, Tec Chair, IL; David Flannery, WV; Karl Gebhardt, OH; Ron Lovan, Commission Secretary-Treasurer, KY; Phillip Morgan, ILL; Bruce Scott, KY) and staff (Richard Harrison, Executive Director; Peter Tenant, Retiring Executive Director; David Bailey, Director of Administration & Human Resources; Sam Dinkins, Water Resources Assessment Manager; Joe Gilligan, Comptroller; Jason Heath, Technical Programs Manager; Jerry Schulte, Manager of Source Water Protection, Emergency Response & External Relations; Jeff Thomas, Biological Programs Manager). USEPA Region 5 staff (Daniel Cozza and Lee Phan) joined in briefly by telephone to summarize various 106 Program funds that would be available during the upcoming year.

The Committee first received a presentation from the Director of Administration & Human Resources reviewing previous recommendations that had been made by the Committee in regard to budget implementation and preparation along with information about follow-ups that had occurred. Executive Director Richard Harrison then followed with an overview briefing of perceived resources and expenditures trends as anticipated for the next couple of budget cycles. He informed the Committee that he will be recommending that the use of any uncommitted yearend fund balances be postponed until staff has had the opportunity to implement a funding plan to offset anticipated future expenditures. He informed the Committee that the budget being presented contains program expenditures that will be at a 15 year low and staffing levels that are at a 15 year low down from a high of 30 to the current level of 20. He provided a brief outline that additional Organic Detection System (ODS) operating expenditures will be needed as a result of the completion of the ODS Renovation Project/Upgrade and identifying funding to cover this increase will be a significant driver towards staff's upcoming fund raising efforts.

During the remainder of the morning the Committee received detailed presentations from the managerial staff describing the various programs and funding relating to such (Administrative Programs, Biological Studies, Pollution Control Standards, Public Information, Special Projects, Water Quality Assessment, Water Quality Monitoring, and Work Groups). An active discussion occurred amongst the committee members and staff throughout the presentations. No changes to the planned programs work plan resulted from the review.

During a working lunch and into the afternoon an extensive presentation and discussion centered upon the ODS Program – its history, evolution and predictable future. See Attachment A for a comparison chart of the system pre-federal grant status and its current status. Extensive discussion occurred regarding the value of the system to the 5 million water consumers that it protects along with the industries and water utilities that rely upon it and about how it can possibly be enhanced as it evolves. System operating and replacement cost realities were thoroughly reviewed along with a discussion about how to afford the system going forward with the understanding that much work remains to be accomplished to formulate a funding plan. See Attachment B for a cost summary for the program. The discussion also included efforts that are currently being undertaken by the Congressional Liaison Committee in support of the ODS Program along with outreaches to other funding sources that are being considered. The Executive Director committed staff to developing an action strategy for presentation to the Commission by

year end understanding that full implementation of the strategy would entail several years although some implementations will likely fall into place earlier.

The programs presentations portion of the meeting was concluded with a listing of non-funded programs that the staff had developed as a consensus of programs that should be added to the FY2016 budget when and if funding might become available. See Attachment C.

A budget analysis then followed with the Comptroller exhibiting charts that portrayed the financial relationships amongst the various program expenses and their funding in addition to overall budget details. A lengthy follow-up discussion occurred in regard to the committee's February reserved funds posture discussion. Upon the Executive Director's request and committee consensus it was agreed to retain the reserve funds at their FY2015 level for FY2016. The Committee also followed-up upon its February discussion regarding appropriate levels of pension funding and how such might free-up funds for future program funding. Staff noted that a subsequent meeting of the Pension Committee had occurred and that the Pension Committee had recommended that no changes in budgeting occur until after such time as the Pension Committee has completed a thorough review of the pension system. The Pension Committee's review is intended to be completed prior to the FY 2017 budget development season.

Staff presentations were then concluded with remarks by Executive Director Harrison addressing perceived trends and financial challenges that the budget development process had surfaced might lie ahead for the organization. He presented a trend analysis that demonstrated that the yearend carry-over fund balance could be incrementally depleted over the next five years without additional stakeholder funding, based upon current projections of ODS operating expenses and indirect cost trends. He provided a high level overview of staff's plans to reach out to drinking water utilities and other stakeholders to request funding for the ODS system and other ORSANCO activities. He requested that decisions to otherwise utilize any surpluses gained from restricted reserve funds consolidations that might occur as a result of on-going committee discussions be postponed until staff is given the opportunity to determine if additional funding can be obtained to offset increased expenditures. He will report preliminary progress to the Program & Finance Committee members prior to the June Commission Meeting and will present a more detailed report prior to renewing the equipment maintenance agreements at year end that are driving a large portion of additional ODS operating costs.

The committee's work concluded with a discussion and decision about funding request recommendations to make of the various states for FY 2018. An across-the-board 1% increase was agreed upon. See Attachment D.

The committee meeting concluded at 3:15 P.M. with the following recommendations decided to be referred to the Commission for adoption:

1. The Committee recommends adoption of the staff proposed balanced budget of \$3,437,547 for FY 2016. (See Attachment E)
2. The Committee recommends adoption of a 1% increase in state funding for FY 2018.
3. The Committee recommends that work be continued to develop both a short-term and long-term funding strategy for the continued operation and future refurbishment of the Organics Detection System.
4. The Committee endorses the intent of the Executive Director to work on 3-5 year budget forecasting.
5. The Committee endorses the plan of the Pension Committee to undertake a comprehensive review of the Pension Plan.