

**OHIO RIVER VALLEY WATER SANITATION COMMISSION**

**MINUTES**

**206<sup>th</sup> Commission Meeting  
Renaissance St. Louis Airport Hotel  
St. Louis, Missouri  
Thursday, June 6, 2013**

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## MINUTES

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Thursday, June 6, 2013

Vice-Chairman Toby Frevert, Presiding

### Call to Order

Vice-Chairman Frevert called the 206<sup>th</sup> meeting of the Ohio River Valley Water Sanitation Commission to order at 9:45 A.M., Thursday, June 6, 2013.

Commissioner Frevert led the Commission in the Pledge of Allegiance.

### Quorum Call

Commissioner Easterly declared that a quorum was present (see Roster of Attendance, page 9).

### Action on Minutes

**ACTION:** Motion by Commissioner Duritsa, second by Commissioner Nally and carried, that the minutes of the 205<sup>th</sup> meeting of the Commission and of the February 2013 Executive Session, electronically distributed on May 16, 2013, be adopted as presented.

### Report of the Treasurer

Commissioner Easterly noted that a Treasurer's report as of April 30, 2013 was provided in the meeting packet.

The report indicated a balance of \$516,450 in accounts receivable due the Commission as of April 30, 2013. The balance represents \$134 credit due to the State of New York, \$476,856 due from Federal sources and \$48,728 from other sources.

Additionally, the report indicated receipts of \$2,982,300 plus carryover of \$2,145,346 totaling \$5,127,646 through the end of April 2013. Of that amount \$2,972,679 was expended on programs, leaving \$2,154,967 available for the continuation of ORSANCO's programs.

Commissioner Easterly concluded by noting that the Commission has appropriate cash balance and is in good financial standing.

**ACTION:** Motion by Commissioner Tomes, second by Commissioner Lovan and carried, to receive the Treasurer's report as presented.

### Report of the Executive Director

Mr. Tennant began by noting that the Commission had previously met twice in St. Louis, first in 1987, then a joint meeting with the Gulf of Mexico Hypoxia Taskforce in 2002. He continued by indicating he felt that the previous day's joint meeting with the Upper Mississippi River Basin Association to discuss common areas of interest was very informative and worthwhile.

Mr. Tennant commented on past discussions and input identifying the need for ORSANCO to do a better job at communicating success stories and improvements to Ohio River water quality. He mentioned a request for access to a movie produced by ORSANCO years back titled "Crisis on the Kanawha." He indicated that a number of old films will be converted to digital media.

Mr. Tennant reported that Ohio Congressman Steve Chabot visited ORSANCO's office in May. Mr. Chabot appeared to take much interest in ORSANCO's activities. Mr. Tennant believed that this was the first time a Congressman had visited the office. In addition, Mr. Tennant noted that all Ohio River Basin Caucus members would be invited to participate in the 2013 Ohio River Sweep.

Mr. Tennant concluded by reminding Commissioners that the 2013 Ohio River Sweep will be held on Saturday, June 15<sup>th</sup>, and noted that the 2013 Sweep will be Jeanne Ison's last Sweep as an ORSANCO staff member. Lisa Cochran, ORSANCO staff, was introduced as the new Sweep coordinator.

### **Report of the Technical Committee**

Commissioner Frevert, Technical Committee Chairman, reported that the Committee met on June 4<sup>th</sup>. The meeting was conducted in one day to accommodate the joint meeting schedule.

Mr. Frevert reported on two particular substantive outcomes of the meeting. First, he reported that much discussion took place regarding the upcoming compliance date for the ban on mixing zones for bioaccumulative chemicals of concern. Mr. Frevert noted that the Pollution Control Standards Committee would offer a resolution later in the meeting regarding how to proceed once the October 16, 2013, deadline is reached. The Technical Committee unanimously endorsed the proposed resolution.

The second item involves the Organics Detection System (ODS). Several years back, ORSANCO received federal funds to support a modernization of the system, with an understanding that ORSANCO would develop a plan to sustain the system's long-term financial viability. Staff was asked to develop options regarding anticipated future costs of the system and potential solutions for funding. Water Users have been involved in the discussions and are aware of the future funding concern. There is no solution in place but there is a commitment to sustain the valuable program.

### **Report of the Nominating Committee**

Commissioner Duritsa reported that the Committee recommends the following slate of officers for 2013-2014:

Chair - Toby Frevert  
Vice Chair - Thomas Easterly  
Secretary/Treasurer - Doug Conroe

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

### **Report of the Water Resources Committee**

Commissioner Potesta, Committee Chairman, reported that the Water Resources Committee held its fifth meeting on April 9, 2013. Representatives from six states, the US Army Corps of Engineers, the US Geological Survey, the Tennessee Valley Authority, and the National Weather Service were in attendance. Key agenda items included presentations on the efforts related to the Water Resources Initiative, an update on the ecosystem flow studies in Pennsylvania, and a

discussion on the Commission's involvement in water resources after current grant funding runs out.

#### Water Resources Initiative

The Committee received an update from staff on the current and upcoming activities related to the Water Resources Initiative. Comments were solicited from the Committee on two draft reports: the first an inventory of the various laws and regulations that govern water resources in the Ohio Valley, and the second a characterization of water use in the Basin. Staff is now working on two separate reports regarding inter-basin transfers and the potential water resource impacts of shale gas development. The results of these assessments will be included as part of the water resources characterization reports to be completed in 2013.

#### Ecosystem Flow Studies (E-Flows)

The Nature Conservancy, under contract with Pennsylvania DEP, has been working on a series of studies to provide science-based flow recommendations for each of the major basins in the commonwealth. TNC completed an E-flows study for the Susquehanna Basin in 2011, and the Susquehanna River Basin Commission (SRBC) recently adopted a new low-flow protection policy based, at least in part, on the study's findings. A similar study has been undertaken for all streams in the Pennsylvania portion of the Ohio River Basin. The final report was just released in May. PA DEP is now evaluating the report to determine how it might guide future water withdrawal policy decisions.

#### Future Water Resources Involvement

The Committee discussed, at length, the Commission's involvement in water resource issues once current grant funding is depleted. Foundation support for the Water Resources Initiative is expected to last only through 2014. The Commission will need to implement a new funding strategy within the next 12 to 18 months in order to continue its involvement in this area. Execution of a Governor's MOU is seen as a critical step in securing a minimal level of funding sufficient to support the work of the Water Resources Committee. While several states have indicated support, others have yet to endorse the water resources MOU.

**ACTION:** Motion by Commissioner Easterly, second by Commissioner Nally and carried, to receive the Water Resources Committee report as presented.

#### **Report of the Pollution Control Standards Committee**

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

The Pollution Control Standards Committee met by conference call on April 11. This call was preceded by a February 28 call of an ad hoc committee on variances. The singular purpose of these meetings was to address the multiple issues surrounding the potential need for the Commission to consider variance requests resulting from the pending prohibition on mixing zones for mercury and other bioaccumulative chemicals of concern (BCCs) which goes into effect on October 16, 2013.

Commissioner Nally offered the following resolution for adoption, allowing states some flexibility in implementing the October 16, 2013, BCC deadline:

#### **RESOLUTION 1-13**

##### **Elimination of Certain Mixing Zones**

WHEREAS: The Ohio River Valley Water Sanitation Commission, which was created by the Ohio River Valley Water Sanitation Compact, effective June 30, 1948, as an agency representing eight sovereign states embracing territory from which waters

flow directly or indirectly into the Ohio River or its tributaries, is charged by the provisions of the Compact with responsibility for achieving, through control of pollution discharged into those waters, stated objectives deemed to be necessary in order to place and maintain those waters in condition suitable for uses contemplated by the Compact; and

WHEREAS: Article VI of the Ohio River Valley Water Sanitation Compact establishes minimum standards for the treatment of sewage discharged by municipalities or other political subdivisions, public or private institutions or corporations into the waters of the Ohio River Basin, specifies a basic level of modification or treatment of industrial wastes discharged or permitted to flow into those waters and, in addition, empowers the Commission, after investigation, due notice and hearing, to establish such higher degrees of treatment and modification as the Commission may determine to be necessary in order to achieve the objectives stated in the Compact; and

WHEREAS: On October 11, 2012, through exercise of the power thus granted to it, the Commission adopted and promulgated Pollution Control Standards -- 2012 Revision (PCS) which established levels of treatment and modification then considered to be required for both sewage and industrial wastes discharged into the Ohio River; and

WHEREAS: Section 3.3-B of the PCS establishes the criteria for acceptable concentrations of certain chemicals, including mercury, outside a "mixing zone," which is defined at Section 1.2-K of the PCS as "that portion of the water body receiving a discharge where effluent and receiving waters are not totally mixed and uniform with the result that the zone is not representative of the receiving waters and may not meet all ambient water quality standards or requirements of any signatory state applicable to the particular receiving waters. All applicable water quality criteria must be met at the edge of the mixing zone;" and

WHEREAS: Prior to 2012 the Pollution Control Standards had included provisions that would prohibit mixing zones for Bioaccumulative Chemicals of Concern (BCCs), including mercury, but only after October 16, 2013. These provisions were retained at Section 4-F of the PCS, which requires the elimination of mixing zones for BCCs by October 16, 2013. It was anticipated that such a standard would be technically feasible by such date; however, that expectation has not been fully realized under current circumstances; and

WHEREAS: It is the Policy of the Commission (most recently expressed in a June, 2005 Resolution) that the member states should take the lead in enforcing Commission's Standards. Each of the member states is authorized to administer the federal/state National Pollution Discharge Elimination System (NPDES) as established in Section 402 of the Federal Clean Water Act, and the states are the primary means by which Commission standards are implemented and enforced; and

WHEREAS: The member states are in the process of determining which dischargers are affected by the imminent requirement to eliminate mixing zones for BCCs,

NOW THEREFORE BE IT RESOLVED,

That the Commission will deem any discharger in compliance with Section 4-F of the Pollution Control Standards -- 2012 Revision relating to elimination of mixing

zones for Bioaccumulative Chemicals of Concern, so long as, on or before October 16, 2013, such discharger is subject to either an NPDES permit or a state enforcement order which incorporates a schedule of compliance providing in such permit or order the eventual elimination of the mixing zone for such BCCs.

**ACTION:** Motion by Commissioner Duritsa, second by Ron Schwartz and carried, to adopt Resolution 1-13 as presented.

Commissioner Nally offered the following resolution for adoption:

### **RESOLUTION 2-13**

#### **Proposal to Further Extend the Deadline for Implementing Section 4-F of the 2012 Pollution Control Standards**

RESOLVED, that the Commission directs the Pollution Control Standards Committee to develop a proposal to further extend the deadline for implementing Section 4-F of the 2012 Pollution Control Standards. Any such proposal would be subject to a public comment period and a public hearing to be conducted by August 15, 2013. The Committee shall submit its final proposal to the Commission by September 15, 2013, and such proposal shall be on the agenda at the October 10, 2013, meeting of the Commission.

**ACTION:** Motion by Commissioner Tomes, second by Commissioner Bruny and carried, to adopt Resolution 2-13 as presented.

Commissioner Nally reported that a draft white paper (Attachment 1) was prepared for the purpose of informing Commissioners as well as others who may wish for greater background information on the issue of variances, why they may be needed for certain discharges of BCCs, and how the Standards Committee is proceeding to address the issue. The paper includes a set of potential remedies that the committee has identified and is moving forward with at this time.

**ACTION:** Motion by Commissioner Conroe, second by Commissioner Bruny and carried, to receive the report of the Pollution Control Standards Committee as presented.

#### **Report of the Bylaws Committee**

Commissioner Phillips, Committee Chairman, reported that the Bylaws Committee met by conference call on May 6, 2013. The Committee had been requested to prepare draft language for a revision of the Bylaws that would eliminate the Water Quality Review Committee and transfer its function to the Executive Committee. The Executive Committee had convened by conference call on April 17 and accepted that function.

The Bylaws Committee proposes the following changes to the Commission Bylaws:

1. Deletion of Section XII.A.11 (description of the Water Quality Review Committee) and renumbering of Section XII.A.12.
2. Revision of Section XII.A.1 as follows:

**Executive Committee:** The Executive Committee shall consist of one Commissioner from each state, to be designated by the Commissioners from such state; one Commissioner of the United States, to be designated by the Commissioners representing the United States; the Commission Chairman, the Commission Vice-Chairman and the immediate past-Chairman of the Commission. The Secretary may be an ex officio non-voting member. Either of the other Commissioners from any state or the United States may serve as an alternate in the absence of

or disability of the designated member of the Executive Committee at any of its meetings. A member of the Executive Committee may not be represented by proxy, except as authorized by laws of his state, or in the case of the representative of the United States, except in accordance with federal law. The Executive Committee, during the interim between regular or special meetings of the Commission, shall act for the Commission within limits from time to time established by the Commission and shall make recommendations to the Commission with respect to changes in policies and strategies for implementation of program components as it may deem to be required or desirable under changing conditions and circumstances, **and shall evaluate emerging issues and, as appropriate, assign responsibility for addressing them to appropriate Commission Committees or Subcommittees.** In instances of Executive Committee action involving implementation of a Consent Decree or other similar order entered into by the Commission pursuant to its enforcement authority as provided in Article IX of the Compact, the Executive Committee, for purposes of such action, shall be expanded as necessary to include all three of the Commissioners from the state from which the discharge occurs; and any such Executive Committee action may be taken only with the assent of a majority of such state's Commissioners. Actions of the Executive Committee may be taken by mail, facsimile, electronically or by telephone conference, confirmed by mail, facsimile, or electronically.

The Bylaws Committee recommended that the Commission adopt these changes plus editing corrections as noted.

**ACTION:** Motion by Marcia Willhite, second by Commissioner Lovan and carried, to adopt the recommended changes to the Bylaws as presented.

#### **Report of the Program and Finance Committee**

Commissioner Frevert, Committee Chairman, reported that the Committee met April 3, 2013. Five member states and the federal government were represented. Mr. Frevert reported on the following items:

##### Status of Fiscal Year 2013 Programs

Staff reported that all Commission programs for fiscal year 2013 are essentially on schedule and that program outputs will be delivered as planned.

##### Funding Outlook

Some uncertainty remains over the level of available federal 106 grant funding for FY2014. Staff consulted with US EPA Region 3 to estimate the most likely amount of 106 funding and were directed to budget at the FY2012 award level. There remains the possibility of a slight additional reduction from this funding level. Staff will continue to develop contingency plans in the event that future cuts are made to the federal funds.

State funding for FY2014 will reflect no increase from FY2013. A 1% state funding increase was previously adopted for FY2015.

##### Proposed Program and Budget for Fiscal Year 2014

The Committee carefully reviewed the proposed program and budget for fiscal year 2014. The Committee recommends Commission adoption of the proposed program and budget, which is attached to this report.

##### Recommended Levels of State Funding for Fiscal Year 2016

The Committee gave serious consideration to future funding needs and concluded that a 1% increase in state funding for fiscal year 2016 should be considered for adoption. As in recent

years, this 1% increase could be considered for rescission if current financial difficulties the states are experiencing continue into 2016.

Commissioner Frevert offered the following resolutions for adoption:

**RESOLUTION 3-13**

**PROGRAM PLAN AND BUDGET FOR FISCAL YEAR 2014**

**WHEREAS:** The Commission has established the sum of \$1,363,000 as the amount of appropriations to be requested from the signatory states for fiscal year 2014; and

**WHEREAS:** Funds from the United States Government for approximately \$1,935,393 may be allocated to the Commission for fiscal year 2014; and

**WHEREAS:** Funds amounting to \$461,463 may be available from a variety of sources to support the Ohio River Sweep, River Users, ORSANCO/USGS Gaging Stations, and Life Below the Waterline, Wabash Continuous Monitoring, EPRI Trading, Water Resources programs; and

**WHEREAS:** The Commission is anticipated to carry over obligated resources of \$1,332,339 into the 2014 fiscal year.

**NOW, THEREFORE, BE IT RESOLVED THAT:** The 2014 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 2014 be substantially within the framework of the following guidelines, which are made a part of this Resolution.

**2014 FISCAL YEAR BUDGET**

Payroll	\$1,156,180
Employee Benefits	595,831
Staff Travel	205,773
Commission Travel	120,900
Advisory Committees	28,600
Supplies	245,433
Telephone	20,725
Equipment Purchases	507,000
Mortgage, Utilities	91,669
Repairs & Maintenance	41,980
Contractual Services	504,847
Printing & Reproduction	10,500
Lab Fees & Delivery	<u>256,940</u>
Total Expenditure Budget	\$3,786,378



**ACTION:** Motion by Commissioner Easterly, second by Commissioner Lovan and carried, to adopt the 2014 Fiscal Year Budget Resolution 3-13 as presented.

**RESOLUTION 4-13**  
**STATE FUNDING LEVEL FOR 2016**

**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 \$1,390,400 be budgeted for operating expenses of the Commission in the Fiscal Year July 1, 2015 to June 30, 2016. Such sum 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 Phillips and carried, to adopt Resolution 4-13 as presented.

**Report of the Water Users Advisory Committee (WUAC)**

Mary Armacost, on behalf of Committee Chairman Ron Bargiel, reported that the Committee met in early May. Jerry Schulte, ORSANCO staff, provided a report on financing options for sustainability of the Organics Detection System (ODS). Ms. Armacost indicated that the water utilities would continue to fully support the system with operations, advice, guidance, and data sharing but would not be in a position to provide direct funding to support the system.

Ms. Armacost then reported on a US EPA RARE study using source water from the Ohio River under different conditions, adding Bromide to the water, then monitoring for disinfection byproducts. The water utilities hope this study will help determine at what level Bromide begins causing treatment problems.

The Water Users Advisory Committee nominated Ron Bargiel, of Pennsylvania American Water Company, for election to the Registry of Distinguished Water and Wastewater Operators.

**ACTION:** Motion by Commissioner Tomes, second by Commissioner Phillips and carried, to elect Ron Bargiel to the Registry of Distinguished Water and Wastewater Operators.

**ACTION:** Motion by Commissioner Easterly, second by Commissioner Nally and carried, to receive the report of the Water Users Advisory Committee.

Virginia Commissioners Paylor and Dunn mentioned that they are unable to attend a Commission meeting in February and requested that consideration be given to moving the Commission's February meeting to mid-March. Commissioner Frevert indicated that an alternate date will be considered and discussed at the October 2013 Commission meeting.

**Upcoming Meetings**

Vice-Chairman Frevert noted the following schedule for upcoming Commission meetings:

- October 8-10, 2013                      Charleston, West Virginia
- February 12-14, 2014                  Cincinnati, Ohio

**Adjournment**

The 206<sup>th</sup> Commission meeting was adjourned at 10:25 A.M.

Prepared by:

*David R. Bailey*

Date: June 24, 2013

\_\_\_\_\_  
David Bailey  
Director of Administration

Approved by:

*Thomas Easterly*

Date: July 30, 2013

\_\_\_\_\_  
Thomas Easterly  
Secretary/Treasurer

**ROSTER OF ATTENDANCE**  
**206<sup>th</sup> Commission Meeting**  
**June 6, 2013**

**Commissioners**

Illinois	Toby Frevert Marcia Willhite (PROXY for Lisa Bonnett)
Indiana	Thomas Easterly
Kentucky	Ron Lovan Bruce Scott (PROXY for Leonard Peters) Sandy Gruzesky (PROXY for Lt. Governor Abramson)
New York	Douglas Conroe Mike Wilson
Ohio	Paul Tomes Scott Nally Stuart Bruny
Pennsylvania	Charles Duritsa Greg Phillips Ron Schwartz (PROXY for Michael Krancer)
Virginia	David Paylor Robert Dunn
West Virginia	David Flannery Ron Potesta Scott Mandirola (PROXY for Randy Huffman)
Legal Counsel	Ross Wales

**Executive Director**

Peter Tennant

**Guests**

Erich Emery – US Army Corps of Engineers; Ron Riecken – Public Interest Advisory Committee; Mary Armacost –Water Users Advisory Committee; Tim Henry – USEPA; Jim Rock – Axiall Corporation; Steve Dye – McCallister & Quinn; Lori Leffler – Axiall Corporation

**Staff**

David Bailey, Jason Heath, Jeff Thomas, Jeanne Ison, Tracey Edmonds, Sam Dinkins, Joe Gilligan, Jerry Schulte, Lisa Cochran

**-- DRAFT --**

**White Paper  
Variances from ORSANCO's Pollution Control Standards**

**Background**

As specified in the Commission's Pollution Control Standards (PCS), variances are allowed only to the sections on wastewater discharge requirements and the prohibition on mixing zones for Bioaccumulative Chemicals of Concern (BCCs). Variances are a temporary modification to the standards as applied to a specific permitted discharge and must conform to the Variance Application and Review Process adopted by the Commission February, 2013.

In October, 2003, the Commission adopted a prohibition on mixing zones in permits for BCCs, with a ten-year period before the provision would become effective on October 16, 2013, for existing discharges, or immediately for new discharges. There are fifteen BCCs listed in the standards, one of which is mercury which has a criterion of 0.012 ug/L. When the mixing zone prohibition goes into effect, criteria for BCCs will need to be met by discharges at "end of pipe" with no mixing zone allowance.

The mixing zone prohibition was modeled after the provision in the Great Lakes Initiative (GLI). Criteria for BCCs are established to prevent undesirable bioaccumulation in fish tissue. In the case of mercury, the 0.012 ug/L criterion theoretically protects against bioaccumulation of methylmercury in fish tissue above 0.3 mg/kg which is the criterion established by the USEPA to protect human health from eating fish. The GLI implemented a prohibition on mixing zones to reduce the bioaccumulation of BCCs in fish tissue.

**Variance Procedures**

Both Indiana and Ohio developed streamlined mercury variance approval procedures to facilitate the granting of variances to their prohibition on mixing zones for Great Lakes discharges. These processes for both Indiana and Ohio have been approved by USEPA Region 5 (attached). ORSANCO adopted a Variance Application and Review Process in February, 2013 (attached) which establishes a process and requirements for the Commission to grant a variance from its Pollution Control Standards. The Commission's process includes a request for specific information from the applicant, a public notification and involvement process, and specific criteria for the approval of a variance request.

**Current Situation**

The Commission received a first request from PPG Industries, Natrium, WV, for a variance from the Commission's prohibition on mixing zones, specifically regarding mercury, on September 30, 2011. A substantial amount of staff time was required to obtain and evaluate all the necessary information as well as move the request through the Commission's hierarchy for approval, prior to granting the variance at the October, 2012 Commission meeting. The entire process took about one year.

Since then, the Commission has received additional requests from the City of Ironton, OH (on Jan. 29, 2013) and Koppers Inc., Follansbee, WV (on Feb. 11, 2013). Kopper's request is in regards to its discharge of mercury, as well as its discharge of hexachlorobenzene which also is one of the fifteen BCCs listed in the standards. The City of Ironton's information submittal does not appear to meet the requirements of ORSANCO's process, and Koppers has indicated that an information package will be forthcoming.

At the same time, staff was hearing that there may be an onslaught of variance requests, so in response, staff compiled a list of mercury discharges to the Ohio River based upon data in the USEPA's discharger database (ICIS). Based on that data, there are an estimated 97 Ohio River discharges that report mercury discharge data and 59 discharges that have any discharge data above the Commission's mercury criterion of 0.012 ug/L. There are several reasons why some, many or all of these discharges will not need a variance, but the list does seem to indicate that more variances will be requested. This list has been vetted through the Commission's NPDES Subcommittee so that the states' permitting entities are aware of the situation. It is unclear at this time whether discharges needing a variance will be identified at the time of the states' permit renewal processes, or before then.

### Consequences

There are several consequences of the current situation, including discharges that may become out of compliance with their permit and the Commission's standards without the immediate means to implement pollution control measures necessary to achieve compliance, the need by discharges to implement potentially cost or technologically prohibitive pollution control measures to meet the Commission's requirements, and significant staffing requirements necessary to evaluate future variance requests as well as reviewing discharger performance in complying with the requirements of an approved variance.

### Potential Remedies

The Commission's Pollution Control Standards Committee is charged with developing an approach to address this issue that would be considered by the full Commission before the prohibition goes into effect on October 16, 2013. The PCS Committee has developed six action items and is considering potential alternatives to the Commission granting individual variances as outlined in items #2 and #3 below:

- 1) ORSANCO send a letter to the states requesting that they determine the need to notify applicable Ohio River discharges of the potential need for a variance from ORSANCO (this has been completed).
- 2) State permitting agencies could include compliance schedules within NPDES permits to provide temporary relief while establishing interim permit limits for mercury and requiring the discharge to implement measures that will ultimately result in meeting the Commission's standards. A resolution is being developed by the PCS Committee which will be provided to TEC for comment at the June, 2013 meeting before being considered by the full Commission after that.
- 3) States could issue enforcement orders that would provide temporary relief while requiring discharges to implement measures to ultimately achieve compliance with the Commission's standards. As in #2 above, a resolution is being developed by the PCS Committee to address this and it will be provided to TEC prior to consideration by the full Commission.

- 4) ORSANCO staff will develop a streamlined mercury variance procedure to address discharges of BCCs that will not be able to meet the mercury criterion at end of pipe when the mixing zone prohibition takes effect October 16, 2013. The streamlined variance procedure will address discharges with lower level discharges of mercury, while the currently adopted rigorous evaluation process will be used to address discharges with higher levels of mercury.
  
- 5) The Commission's current criterion of 0.012 ug/L for total mercury is specified in the standards as "not to exceed". The PCS Committee believes that the criterion should be applied over an averaging period such as monthly or possible some other period. This issue should be resolved during the next triennial review of the standards for mercury as well as for all other criteria in the standards.