

OHIO RIVER VALLEY WATER SANITATION COMMISSION

MINUTES

**209th Commission Meeting
Tropicana Executive Conference Center
Evansville, Indiana
Thursday, June 12, 2014**

<u>Reports</u>	<u>Page</u>
Treasurer	1
Chairman	1
Executive Director	1
Technical Committee	2
Pollution Control Standards Committee	5
Program and Finance Committee	5
Water Users Advisory Committee.....	7
Public Interest Advisory Committee.....	8
Nominating Committee	8
Personnel Committee.....	8
Roster of Attendance	10
Attachment 1: Position Paper on Need for Streamlined Mercury Variance Procedure....	11

OHIO RIVER VALLEY WATER SANITATION COMMISSION

MINUTES

209th Commission Meeting
Tropicana Executive Conference Center
Evansville, Indiana
Thursday, June 12, 2014

Chairman Toby Frevert, Presiding

Call to Order

Chairman Frevert called the 209th meeting of the Ohio River Valley Water Sanitation Commission to order at 9:00 A.M., Thursday, June 12, 2014.

Commissioner Frevert led the Commission in the Pledge of Allegiance.

Quorum Call

Commissioner Conroe declared that a quorum was present (see Roster of Attendance, page 10).

Action on Minutes

ACTION: Motion by Commissioner Conroe, second by Commissioner Duritsa and carried, that the minutes of the 208th meeting of the Commission and of the February 2014 Executive Session, electronically distributed on May 20, 2014, be adopted as presented.

Report of the Treasurer

Commissioner Conroe noted that a Treasurer's report as of May 31, 2014 was provided in the meeting packet.

The report indicates a balance of \$515,413 in accounts receivable due the Commission as of May 31, 2014. The balance represents \$35,275 due from Signatory States, \$458,016 due from Federal sources and \$22,122 due from other sources.

Additionally, the report indicates receipts of \$3,646,683 plus carryover of \$1,661,633 totaling \$5,308,316 through the end of May 2014. Of that amount \$2,546,916 was expended on programs, leaving \$2,761,400 available for the continuation of ORSANCO's programs.

Report of the Chairman

Chairman Frevert began by noting that this was his final meeting as Chairman of the Commission and expressed his appreciation for the active participation and input of all involved during his tenure as Chairman.

Report of the Executive Director

Mr. Tennant started by recognizing and welcoming the three newly appointed federal commissioners, noting that it had been a number of years since there was a full contingent of federal commissioners present at a meeting.

Mr. Tennant then communicated the fact that Commissioner Harrison was to be recognized during the meeting for his 32 years of service as a Commissioner. This tenure makes him the longest serving commissioner of all time. However, due to unforeseen circumstances Commissioner Harrison was unable to attend. It was anticipated that Commissioner Harrison's son would stop in to accept the recognition for his father.

Mr. Tennant then reflected on outcomes of the previous day's Technical Committee meeting. He first recognized the substantial accomplishments of ORSANCO's 22 person staff. He then noted the significant amount of collaboration with outside entities which is instrumental in these accomplishments.

Mr. Tennant then highlighted the March 2014 trading event during which the first three trades were consummated under the Water Quality Trading Program. This event led to interest from Congress and Mr. Tennant was invited to participate on a panel to testify during a House Subcommittee Panel on water resources on the benefits of water quality trading.

Mr. Tennant mentioned the 25th anniversary of the Ohio River Sweep which would be held on June 21st. He also noted that the Annual Report preparation was underway, recalling last year's transition to a fiscal year, rather than calendar year report.

Mr. Tennant concluded by reminding Commissioners about two outcomes of the previous day's Roundtable discussion requiring action. First, it was agreed that staff would update the spill protocol, including the identification of ORSANCO's role during such events, prior to the October Commission meeting. Second, there was agreement on the possibility of providing comments on the Waters of the United States. Comments will be compiled as developed by other groups and circulate to Commissioners and then advance the idea of ORSANCO possibly submitting comments.

ACTION: Motion by Commissioner Tomes, second by Commissioner Lovan and carried, to direct staff to provide draft documents relating to the spills protocol and comments on the Waters of the United States at the October Commission meeting for consideration.

Report of the Technical Committee

Commissioner Bruny, Committee Chairman, reported that the 205th Technical Committee meeting took place on June 10-11, 2014. Six states, three federal agencies, and 3 advisory committees were represented.

FY15 Technical Program

The Committee received a summary of the FY15 technical program and noted that many of its recommendations from the February meeting were incorporated into the program plan. However, the Committee's recommendations regarding updating the spill model and conducting new PCBs and dioxin monitoring to support 305b assessments were not included in the FY15 program due to budgetary constraints.

Subcommittee Reports

The Committee received reports from the NPDES Subcommittee, Stream Criteria Subcommittee, and Monitoring Strategy Subcommittee.

Review of Pollution Control Standards

The Committee reviewed the comments received during the initial public comment period for the 2015 review of the Commission's Pollution Control Standards. Thirty-five sets of comments were received on the eight initial issues identified by the Standards Committee, as well as a number of other issues. The Committee spent a significant amount of time considering these comments and has developed a set of recommendations to the Standards Committee for moving forward to develop specific proposals for the 2015 standards revision.

Fish Consumption Advisory Workgroup

The Committee received a report of the Fish Consumption Advisory Workgroup. ORSANCO has been working for several years to get all the mainstem states to sign a memorandum of understanding regarding a consistent approach to issuing fish consumption advisories for the Ohio River. To date, only half the states have signed the MOU.

Methyl Mercury Bioaccumulation Study

Staff presented results of a one-year methyl mercury bioaccumulation study conducted near Hannibal Locks and Dam. The study was undertaken in part to evaluate the Commission's current water quality criterion for total mercury. The study was well received by the Committee, and it recommends that an additional study be conducted of the lower Ohio River subject to obtaining the necessary funding that the FY15 budget will not support. In addition, the Committee recommends that the study be written up and peer reviewed so that results can be used with scientific confidence in the current standards review.

Bacteria TMDL Update

The Technical Committee would like to thank Jean Chruscicki of Region 5 for providing an update on the status of the Ohio River Bacteria TMDL. About two-thirds of the Ohio River is impaired for the contact recreational use due to fecal contamination and thus needs a TMDL. This TMDL is being spearheaded by Region 5 in cooperation with the states with support from ORSANCO.

Evansville Water and Sewer Utility

The Technical Committee would like to thank Mike Labitzke from the Evansville Water and Sewer Utility for providing a report on its Integrated Overflow Control Plan which addresses abatement of discharges from its combined sewer system.

Water Resources Update

The Committee received a status report on its water resources initiative. Funding for this initiative runs out at the end of the year. Final reports are being developed on: 1) characterization of the water resources of the Ohio River Basin, 2) an inventory of water resources laws and regulations, and 3) a recommendation report from the Water Resources Committee on the Commission's potential future role in water resources. In addition, ORSANCO has been involved in the coordination of stakeholder meetings for the Integrated Water Resources Science and Services. This is a partnership among NOAA, USGS, and the Corps of Engineers to collaborate on water resources issues in the Ohio River Basin. The upcoming stakeholder meetings take place in Cincinnati on June 25 and in Nashville on June 26. The Commission's Water Resources Committee will be meeting on June 24.

Source Water Protection Program Update

Staff received an update on USEPA Region 3 and Region 5 source water protection meetings. In addition, staff has identified a need to update ORSANCO's spill model which has played a critical role in providing drinking water utilities with information on spill travel times and plume concentrations. The Committee, along with the Water Users Advisory Committee, has recommended that the spill model be upgraded.

Nutrients

The Committee received a status report on the Ohio River Basin Nutrients Trading Program. The first interstate trades were completed earlier this year. The Committee also received a year-end report on the Wabash River nutrients monitoring project. In addition, a proposed change to ORSANCO's nutrients monitoring program for the future development of numeric nutrients criteria was endorsed by the Committee.

Variances

The Committee received a report from staff that a request for a mercury variance has been received from FirstEnergy's Pleasants Power Station located in West Virginia.

Commissioner Bruny presented the following motions for action:

ACTION: Motion by Commissioner Bruny, second by Commissioner Potesta and carried, to approve the report "Broad Scan for Unmonitored Pollutants."

ACTION: Motion by Commissioner Bruny, second by Commissioner Lovan and carried, to approve the report "Integrated Assessment Program Supplemental Analysis."

ACTION: Motion by Commissioner Bruny, second by Scott Mandirola and carried, to approve the report "Investigation of Mercury and Methyl Mercury Discharges from Flue Gas Desulfurization Systems at Four Coal-Fired Power Generation Facilities on the Ohio River."

ACTION: Motion by Commissioner Bruny, second by Commissioner Elmaraghy and carried (Commissioner Hedman abstaining), to approve the report "2014 Assessment of Ohio River Water Quality Conditions" otherwise known as the "305b Report."

ACTION: Motion by Commissioner Bruny, second by Peter Goodmann and carried (Commissioner Hedman abstaining), to approve the "Protocol for Use of Outside Data in 305b Assessments."

ACTION: Motion by Commissioner Bruny, second by Commissioner Duritsa and carried, to accept the Technical Committee's recommendation to make certain revisions to its nutrients monitoring program to better utilize resources for the future development of numeric nutrients criteria with authorization to utilize available West Virginia SEP funds totaling approximately \$35,000 which were earmarked for nutrients criteria development.

The Technical Committee will give consideration to the appropriateness of broader use of the protocol for use of outside data and report back at the October meeting.

Report of the Pollution Control Standards Committee

Commissioner Potesta, Committee Chairman, reported that at its February 2014 meeting, the Commission authorized a triennial review of its Pollution Control Standards, and the Committee met by conference call on March 18 to initiate the review. An initial public comment period was opened from March 20, 2014 through May 9, 2014 to accept comments on any aspect of the standards. In addition, eight specific issues were identified as potentially requiring revisions, including:

- 1) Specification of frequency and duration for all criteria.
- 2) Review of total mercury water quality criterion.
- 3) Review of total dissolved solids criterion.
- 4) Review of *E. coli* water quality criteria. The Technical Committee recommended no change be made to these criteria.
- 5) Review of human health temperature criterion.
- 6) Review of aquatic life ammonia criteria.
- 7) Evaluation of prohibition of mixing zones for bioaccumulative chemicals of concern.
- 8) Continued efforts to develop numeric nutrients criteria.

The initial public comment period was supported with detailed information provided through the Commission's website and two webinars. A total of six participants attended the two webinars, and a total of thirty-five sets of comments were received that address the eight initial issues as well as several additional issues.

The Pollution Control Standards Committee recommended that specific proposals be developed for each of the eight initial issues identified, as well as the additional issues identified through the public comments received. The target date for developing such draft proposals is the February 2015 Commission meeting.

Streamlined Mercury Variance Procedure

The Pollution Control Standards Committee was charged with reviewing a proposal by the NPDES Subcommittee for a streamlined mercury variance procedure. The potential need for a streamlined procedure resulted from the Commission's concern for the level of staff resources necessary to evaluate multiple variance requests that could occur caused by the prohibition on mixing zones for bioaccumulative chemicals of concern. A position paper developed by the PCS Committee on the need for a streamlined mercury variance procedure is attached which supports the following recommendation:

The Pollution Control Standards Committee recommended that a streamlined mercury variance procedure is not necessary at this time as supported by the attached position paper (Attachment 1).

Report of the Program and Finance Committee

Commissioner Easterly, Committee Chairman, reported that the Program and Finance Committee met at Commission Headquarters on March 27, 2014. Seven member states and the federal government were represented.

Status of Fiscal Year 2014 Programs

Staff reported that all Commission programs for fiscal year 2014 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 FY15. Staff consulted with US EPA Region 3 to estimate the most likely amount of 106 funding and were directed to budget at the FY14 award level. Staff will continue to develop contingency plans in the event that future cuts are made to the federal funds.

State funding for FY15 will reflect a 1% increase which was previously adopted by the Commission.

Proposed Program and Budget for Fiscal Year 2015

The Committee carefully reviewed the proposed program and budget for FY15. 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 2017

The Committee gave serious consideration to future funding needs and concluded that a 1% increase in state funding for FY17 should be considered for adoption.

Committee Recommendations

1. Recommend adoption of the FY15 program plan and budget as presented.
2. Recommend a 1% state funding increase for FY17 for Commission adoption.
3. Develop a long-term strategy to sustain the replacement and operation of the Organics Detection System (ODS).
4. Perform an assessment of the current method of maintaining reserve funds and carryover funds in the context of overall budget needs.

Commissioner Easterly offered the following resolutions for adoption:

RESOLUTION 4-14

PROGRAM PLAN AND BUDGET FOR FISCAL YEAR 2015

WHEREAS: The Commission has established the sum of \$1,376,600 as the amount of appropriations to be requested from the signatory states for fiscal year 2015; and

WHEREAS: Funds from the United States Government for approximately \$1,844,443 may be allocated to the Commission for fiscal year 2015; and

WHEREAS: Funds amounting to \$401,254 may be available from a variety of sources to support the Ohio River Sweep, River Users, ORSANCO/USGS Gaging Stations, Life Below the Waterline, Wabash Continuous Monitoring, EPRI Trading, Water Resources programs and the USFWS Web Based Assessment Tool; and

WHEREAS: The Commission is anticipated to carry over obligated resources of \$1,460,341 into the 2015 fiscal year.

NOW, THEREFORE, BE IT RESOLVED THAT: The 2015 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 2015 be substantially within the framework of the following guidelines, which are made a part of this Resolution.

2015 FISCAL YEAR BUDGET

Payroll	\$1,184,166
Employee Benefits	632,228
Staff Travel	166,751
Commission Travel	121,324
Advisory Committees	28,850
Supplies	231,647
Telephone	21,192
Equipment Purchases	272,000
Mortgage, Utilities	87,029
Repairs & Maintenance	45,710
Contractual Services	535,161
Printing & Reproduction	10,250
Lab Fees & Delivery	<u>315,689</u>
Total Expenditure Budget	\$3,651,997

ACTION: Motion by Commissioner Easterly, second by Commissioner Lovan and carried (Commissioner Hedman abstaining), to adopt Resolution 4-14 as presented.

RESOLUTION 5-14

STATE FUNDING LEVEL FOR 2017

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 \$1,404,400 be budgeted for operating expenses of the Commission in the Fiscal Year July 1, 2016 to June 30, 2017. Such sum to be prorated among the signatory states in accordance with the provisions of Article X of the Compact.

ACTION: Motion by Commissioner Easterly, second by Commissioner Tomes and carried (Commissioners Hedman, Elmaraghy, FitzGerald and Bruce Scott abstaining), to adopt Resolution 5-14 as presented.

Report of the Water Users Advisory Committee

Bruce Whitteberry, Committee Chairman, reported that the Committee met on May 14-15 and discussed a number of issues.

The Committee continues to support maintaining the current 500mg/L Total Dissolved Solids (TDS) standard. This is necessary to protect the River's designated use as a drinking water source.

The Committee believes that the Organics Detection System (ODS) proved its value during the Elk River spill incident. Response to this incident by water utilities would have been severely hampered without this system in place. Staff updates indicated that of the 16 ODS stations, an 87% average utilization rate was maintained, with several stations having 100% utilization during the January through April time period.

In addition to the Organics Detection System, ORSANCO's spill model was also a valuable tool during the spill response. The current Cascade based model will soon be outdated and replaced with the HEC-RAS model. The Committee recommends consideration of adding tributary information and GIS coverage during the update. The Committee recommends the Commission pursue efforts with US EPA to develop an Ohio River emergency response management tool that can be utilized by ORSANCO and the utilities to better respond to future spills.

ACTION: Motion by Commissioner Lovan, second by Commissioner Tomes and carried, to authorize Commission staff to develop a partnership with US EPA and other agencies to develop an emergency management tool to improve ORSANCO's spill modeling capabilities and enhance the security and protection of source water supplies.

Report of the Public Interest Advisory Committee (PIACO)

Committee member Ron Riecken reported that, although the Committee had not recently met, he wanted to compliment staff on their Elk River spill response activities. Mr. Riecken stated that he is proud of ORSANCO and the good work it does.

Report of the Nominating Committee

Commissioner Duritsa reported that the Committee recommends the following slate of officers for 2014-2015:

Chair: Thomas Easterly
Vice Chair: Doug Conroe
Secretary/Treasurer: Ron Lovan

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

Report of the Personnel Committee

Commissioner Tomes, Committee Chairman, reported that at the February meeting of the ORSANCO Commission, the Personnel Committee was charged with the task of developing a succession plan for the position of the Executive Director and to present that plan to the Commission at the June 12, 2014 meeting. The Personnel Committee met on April 28, 2014 at ORSANCO headquarters to craft a succession plan with the support of Peter Tennant, Executive Director, and David Bailey, Director of Administration and Human Resources. A proposed Succession Plan was presented to the Commission at the Executive Meeting of Commissioners held on June 11, 2014.

Having constructed and presented the Plan, the Personnel Committee requests that the Commission provide guidance on how and when to implement the Plan.

ACTION: Motion by Commissioner Easterly, second by Commissioner Duritsa and carried, to initiate the Executive Director Succession Planning process on July 1, 2014.

Upcoming Meetings

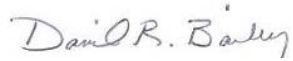
Chairman Frevert noted the following schedule for upcoming Commission meetings:

- October 7-9, 2014 Oglebay Park, West Virginia
- February 11-13, 2015 Cincinnati, Ohio
- June 16-18, 2015 Clifty Falls, Madison Indiana

Adjournment

The 209th Commission meeting was adjourned at 9:55 A.M.

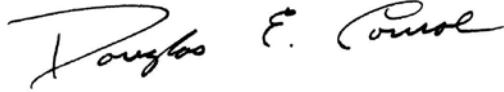
Prepared by:



Date: June 20, 2014

David Bailey
Director of Administration

Approved by:



Date: July 24, 2014

Doug Conroe
Secretary/Treasurer

ROSTER OF ATTENDANCE
209th Commission Meeting
June 12, 2014

Commissioners

Illinois	Toby Frevert Phillip Morgan
Indiana	Thomas Easterly
Kentucky	Ron Lovan Bruce Scott (PROXY for Leonard Peters) Peter Goodmann (PROXY for Lt. Governor Abramson)
New York	Douglas Conroe Mike Wilson
Ohio	Paul Tomes Craig Butler Stuart Bruny
Pennsylvania	Charles Duritsa Ron Schwartz (PROXY for Christopher Abruzzo)
Virginia	David Paylor Robert Dunn
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

Peter Tennant

Guests

Tim Henry – USEPA Region 5; Ron Riecken – PIACO; Bruce Whiteberry – WUAC; Mark Bender – US Coast Guard; Karl Gebhardt – Ohio EPA

Staff

David Bailey, Jason Heath, Sam Dinkins, Joe Gilligan, Jeff Thomas, Jerry Schulte

Position Paper on Need for Streamlined Mercury Variance Procedure

By recommendation of the Technical Committee, the NPDES Subcommittee was directed to work with the Pollution Control Standards Committee on development of a streamlined variance procedure to address the prohibition on mixing zones for BCCs. There was an original concern by the PCS Committee and Commission that the variance approval process could become overly burdensome should the Commission receive multiple variance requests from discharges as a result of the mixing zone prohibition for BCCs going into effect. There was recognition that IDEM and OEPA had streamlined mercury variance processes in place to address the same issue for Great Lakes discharges that was approved by USEPA Region 5.

The NPDES Subcommittee developed the following proposal which is most closely related to OEPA's process:

1. All states should require mercury monitoring using low-level test method (Method 1631 or 245.7) at facilities likely to have mercury in the discharge (coal fired power plants, steel plants and other primary metal processes, petroleum refining, coal mining, chlor-alkali facilities etc.) as well as Publicly Owned Treatment Works (POTWs) that are classified as major facilities (major is usually based on flow > 1 MGD).
2. If monitoring indicates a reasonable potential for discharge above 12 ppt, facilities will need to submit for either an individual variance or a streamlined variance.
3. A streamlined variance is available to facilities that cannot meet the 12 ppt as either a monthly or daily max limit but that are currently able to achieve or project that they will be able to achieve an annual average mercury effluent concentration of 12 ppt by the expiration date of their permit. As part of the streamlined variance process, facilities will need to develop and implement a Mercury Pollutant Minimization Plan (PMP).
4. An individual variance will be required if facilities are not able to meet or project that they will not be able to achieve an annual average mercury effluent concentration of 12 ppt by the expiration date of their permit.

Pollution Control Standards Committee Recommendation with Rationale

The consensus of the Pollution Control Standards Committee is that development of a streamlined mercury variance procedure to address the prohibition on mixing zones is not necessary at this time. Dischargers that need a variance are encouraged to meet directly with ORSANCO to better understand the variance application and review process. Variance applications from the mixing zone prohibition for BCCs must comply with the intent of Section 1.6 A. of the Pollution Control Standards. Variances that are approved by the Commission should require the discharges to meet the highest effluent quality achievable, and monitoring should be required to demonstrate it, as well as to demonstrate that the applicable criteria are met outside the mixing zone to protect the designated uses. Pollutant Minimization Plans may be required as indicated in the Commission's Variance Application and Review Process. The following reasons for the above consensus were discussed:

The Commission has a variance process to address requests for variances from the mixing zone prohibition. This process does not specify a level of rigor in meeting the requirements of the section. The above process could comply with Section 1.6 of the Pollution Control Standards, while not requiring dischargers to spend millions of dollars to meet a criterion that may not be necessary. For the same reason, an overly burdensome variance process does not make sense.

The Commission has not received any new variance requests since the PPG (Axiall) variance request, and it is unclear whether the Commission will receive requests in the future to the extent that the current process would become overly burdensome (one variance request subsequently received May 15, 2014).

The mixing zone prohibition for BCCs does not go into effect until October, 2015 and the current standards review is evaluating the appropriateness of the prohibition. In addition, the review also will include an evaluation of the current water quality criterion for total mercury. The Commission has gone on record as questioning the validity of both the mixing zone prohibition and the total mercury water quality criterion.

In addition to the Commission's Variance Application and Review Process, the Commission accepts the states' use of enforcement orders and compliance schedules in lieu of a variance.