

**OHIO RIVER VALLEY WATER SANITATION COMMISSION**

**MINUTES**

**207<sup>th</sup> Commission Meeting  
Charleston Marriott Town Center  
Charleston, West Virginia  
Thursday, October 10, 2013**

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# OHIO RIVER VALLEY WATER SANITATION COMMISSION

## MINUTES

207<sup>th</sup> Commission Meeting  
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Thursday, October 10, 2013

Chairman Toby Frevert, Presiding

### Call to Order

Chairman Frevert called the 207<sup>th</sup> meeting of the Ohio River Valley Water Sanitation Commission to order at 9:00 A.M., Thursday, October 10, 2013.

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 8).

### Action on Minutes

**ACTION:** Motion by Commissioner Duritsa, second by Commissioner Dunn and carried, that the minutes of the 206<sup>th</sup> meeting of the Commission and of the June 2013 Executive Session, electronically distributed on September 16, 2013, be adopted as presented.

### Report of the Treasurer

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

The report indicates a balance of \$955,268 in accounts receivable due the Commission as of September 30, 2013. The balance represents \$684,325 due from Signatory States, \$162,689 due from Federal sources and \$108,254 due from other sources.

Additionally, the report indicates receipts of \$1,723,508 plus carryover of \$1,741,124 totaling \$3,464,632 through the end of September 2013. Of that amount, \$670,803 was expended on programs, leaving \$2,793,829 available for the continuation of ORSANCO's programs.

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

### Report of the Chairman

Chairman Frevert presented a set of Commission flags to past Chairman Komoroski and thanked him for his service as Chairman. He then congratulated Jeanne Ison on her recent retirement from ORSANCO.

Chairman Frevert continued by thanking Commissioners for the honor of serving as this year's Chairman and for their willingness to accept committee assignments.

Chairman Frevert concluded by stating that although he had no specific agenda for his term as Chairman, that ORSANCO should focus on staying lean and effective during these challenging economic times with flat or reduced funding. He also noted the importance of ongoing succession planning.

### **Report of the Executive Director**

Mr. Tennant began by bringing attention to an ORSANCO and an Educational Foundation annual report in the meeting packet. He noted that ORSANCO's report was a fiscal-year based report for the first time to better coincide the Chairman's term and program accomplishments. Mr. Tennant requested that Commissioners advise him on their preference for submitting the report to their respective Governors.

Mr. Tennant noted that an appointment from Kentucky to replace Sandy Gruzesky, who served as Proxy for Lieutenant Governor Jerry Abramson, has not yet been made. He also mentioned that Congressman Thomas Massey of Kentucky visited ORSANCO's office and that he appeared very interested in and supportive of our Ohio River activities.

Mr. Tennant reported on some interest in forming a new industrial advisory committee possibly comprised of chemical and manufacturing industry stakeholders. Recently only the power industry has been active as an industry advisory committee. Further consideration will take place. He concluded by reporting that, at the conclusion of the meeting, Commissioners from Kentucky, Ohio and Indiana would be signing an amendment to the Water Quality Trading Plan.

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

Commissioner Bruny, Technical Committee Chairman, reported that the 203<sup>rd</sup> Technical Committee meeting was held on October 8-9, 2013. Due to the current federal government partial shutdown, no federal representatives were present at the meeting. Mr. Bruny reported on the following items:

#### **TDS Report**

Staff presented a draft report on total dissolved solids which was included with the agenda package. The Committee is recommending its adoption by the Commission with the addition of a section on further study needs based on comments received in the review process.

#### **2013 WQ Conditions**

Staff presented a summary of 2013 field activities and summer water quality conditions. All activities were completed on schedule. Higher flows and lower water temperatures were the trend this summer. The river experienced water quality criteria violations for bacteria, mercury, and temperature. Staff also reported on the expanding extent of invasive species including Asian carp in the lower river and hydrilla in the upper river.

#### **Report of the NPDES Subcommittee**

Paul Novak of Ohio EPA provided a report of the NPDES Subcommittee. The subcommittee reported on comments sent to EPA on their draft steam electric guidelines, the list of mercury discharges that could be affected by the mixing zone prohibition for BCCs, and continued work on the streamlined mercury variance procedure. TEC is referring a draft streamlined variance procedure to the Pollution Control Standards Committee for their consideration.

#### **Pollution Control Standards**

The Technical Committee received a report on the Standards Committee's recommendation concerning proposed revisions to the 2012 Pollution Control Standards. The Committee is recommending to the Commission adoption of the proposed revisions to extend the effective date of the prohibition on mixing zones and PPG's variance regarding the same prohibition.

### Report of 305b Workgroup

Randy Payne of KY Division of Water gave the report of the 305b workgroup. The workgroup has developed methodologies for the 2014 305b report. Draft assessments will be completed for TEC's approval at the February 2014 meeting, and then the draft report will be considered for approval at the June meeting. A protocol for use of outside data in the 305b process was presented and will be considered further at the February meeting.

### Bacteria TMDL

Staff presented an update on the Ohio River bacteria TMDL which is being carried out by USEPA Region 5. The TMDL is tentatively scheduled for completion September 2014.

### Stream Criteria Subcommittee

Kevin Coyne of WVDEP presented the report of the Stream Criteria Subcommittee. The subcommittee has begun developing a list of issues to be addressed during the 2015 triennial review of the standards. In addition, ORSANCO has received \$40,000 from a WV SEP that is earmarked for use in nutrients criteria development. The subcommittee put forth a number of potential activities that could be undertaken in utilizing the funding. A more specific proposal will be brought back to the Technical Committee for consideration in February.

### Ohio River Discharge Compliance Report

The Technical Committee received a report of compliance issues for Ohio River discharges. Because of concerns about the accuracy of information contained in EPA's system, the states were asked to look into the magnitude of violations as well as to confirm that appropriate actions are taking place to address violations.

### Trading Program

Staff provided an update on the water quality trading program which is currently administered by EPRI (Electric Power Research Institute). A trading registry has been established and several pilot trades have been executed to date, so it appears that the program is moving forward. However, the Commission's future role in trading is yet to be defined.

In addition, the Technical Committee received reports on the water resources initiative, source water protection activities, the status of CSO and storm water abatement, as well as updates from each of the committee members.

Finally, the US EPA has published a proposed rule in the federal register titled "Water Quality Standards Regulatory Clarifications" and is accepting comments until December 3<sup>rd</sup>. This is being directed to the Stream Criteria Subcommittee to consider developing comments on the proposed rule.

Chairman Frevert asked for clarification regarding the Technical Committee's Report, relating to the recommended approval of the TDS Report subject to further study in response to comments received. Such further study has not yet been conducted, therefore, Chairman Frevert wished to clarify that an affirmative vote to accept the Technical Committee Report does not constitute approval of the Draft TDS Report. Commissioner Bruny replied that the Committee understands his point, and noted that the Report contained other recommendations which he believes will be accepted by an affirmative vote on the motion.

**ACTION:** Motion by Commissioner Bruny, second by Commissioner Tomes and carried, to accept the Technical Committee report as presented.

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

Commissioner Potesta, Committee Chairman, reported that the Water Resources Committee held its sixth meeting on August 13, 2013. This meeting marked the first time water resource agency representatives from all six mainstem states were in attendance. Three federal agencies were also represented at the meeting, with participation by US Army Corps of Engineers, the US Geological Survey, and the National Weather Service. Key agenda items included discussions on: 1) the Commission's Water Resources Initiative; 2) the US Army Corps of Engineers' Civil Works Future Identity Initiative; 3) the US Geological Survey's WaterSMART Initiative; and 4) the role of the Upper Mississippi River Basin Association.

### **Water Resources Initiative**

The Committee received an update from staff on the current and upcoming activities related to the Water Resources Initiative. Staff has incorporated comments received from committee members 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. Current efforts now focus on completing two additional reports regarding inter-basin water transfers and the potential water resource impacts of shale gas development. Results of these assessments will be included as part of the water resources characterization reports to be completed in early 2014.

### **USACE Civil Works Future Identity Initiative**

Mark Lorie, a contractor to the USACE, gave a presentation on the Civil Works Future Identity Initiative. The goal of the effort is to use collaborative planning to develop solutions to current water resource issues in the Ohio River Basin, and to build the institutional framework to collaboratively resolve issues in the future. The concept is to build on current activities and engage stakeholders through Shared Vision Planning to work towards a fully integrated approach to water resources management. The Corps is meeting with several stakeholder groups, including the Ohio River Basin Alliance, the Tennessee Valley Authority, the National Weather Service, and others, to identify key water resources issues. Using the feedback from these meetings, the Corps would like to present their findings to the Water Resources Committee and discuss possible regional initiatives that could be employed to address current issues.

### **USGS WaterSMART Initiative**

Bill Guertal briefed the Committee on the USGS WaterSMART Initiative, which is an effort to develop a nationwide system to deliver information about key water availability indicators to enhance water resource management. The long-term goal of the effort is to provide detailed water availability information through a publically accessible, web-based interface at the HUC 12 level for the entire United States. Three initial pilot studies for the Delaware, Colorado, and ACF Basins are currently in-progress. Basins to be included in the next round of studies will be selected in the coming year. Mr. Guertal indicated there is a potential opportunity for the Ohio River Basin to be included in the program if a strong push was made. Engaging the Ohio River Basin Caucus to garner high-level support for the effort was suggested if inclusion in the program is desired.

### **Upper Mississippi River Basin Association**

Guest presenter, Dave Hokanson, provided some perspectives on the role of the Upper Mississippi River Basin Association and the value provided to its five member states. The Association, a non-regulatory, 501c(3) organization, operates under a Joint Governors' Resolution with the purpose to facilitate dialogue and cooperative action regarding water resource issues in the Upper Mississippi River Basin. Key areas of action include flood risk management, hydropower, navigation, water quantity and quality, and general coordination and vision planning. Member states benefit through information sharing, heightened awareness of basin issues, interface with federal agencies, advocacy in support of States' positions, and an

increased capacity to address emerging issues in consultation with other basin states. Mr. Hokanson noted the significant similarities of the Association's charter and the Commission's Water Resources Governors' Memorandum of Understanding. In this light, the manner in which the Upper Mississippi River Basin Association operates could serve as a model by which ORSANCO could effectively engage in water resource management activities in a non-regulatory capacity.

**ACTION:** Motion by Commissioner Potesta, 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 that the Commission, at its June, 2013 meeting, directed the Pollution Control Standards Committee to publish public notice of a proposed revision to the Standards and hold a hearing on the proposed revision. This was done along with holding a public comment period of 60 days. Public comments received are summarized in the responsiveness summary (Attachment 1).

Prior to a motion for adoption of a resolution, Commissioner Nally clarified two points. First, the next triennial review timeline will begin in spring 2014 and conclude in fall 2015. Second, the responsiveness summary to comment is substantively completed but some editing is needed. The Committee requested review and comments from Commissioners to finalize the summary, and then it would be placed on the Commission website along with the revised Standards, and e-mailed to all those submitting comments.

The Pollution Control Standards Committee requested Commission action on proposed revisions to its 2012 Pollution Control Standards for Discharges to the Ohio River. Those revisions include changing the effective date of the prohibition on mixing zones from October 16, 2013, to October 16, 2015, and changing the effective date of Axiall Corporation's variance from the prohibition, as contained in Appendix F (Attachment 2) of the Standards, to the new effective date of the prohibition October 16, 2015.

Commissioner Nally proposed the following resolution for adoption:

**RESOLUTION 5 -13**

**ADOPTION OF POLLUTION CONTROL STANDARDS - 2013 REVISION**

**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) which established levels of treatment and modification then considered to be required for both sewage and industrial wastes discharged into the Ohio River, but subsequently determined that clarifying amendments to or restatements of specific segments thereof were necessary and, by action on June 13, 2013, approved consideration of alterations of its Pollution Control Standards (2012 Revision) and designated a Hearing Board, empowered and directed to conduct a public hearing with respect to them, at a location to be specified and after due notice; and

**WHEREAS:** For the purpose of implementing that resolution, the Hearing Board, after appropriate notice, held a public hearing with respect to the proposed alterations of its Pollution Control Standards (2012 Revision) at the Holiday Inn, Greater Cincinnati Airport, Erlanger, Kentucky on August 13, 2013. A transcript of the hearing has been prepared and placed on file in the offices of the Commission, in Cincinnati, Ohio and, thereafter, submitted to the Commission with recommendations for adoption, a final set of amended and restated Pollution Control Standards covering discharges into the Ohio River.

**NOW, THEREFORE, UPON DUE CONSIDERATION** of the procedures previously established by the Commission and followed by the Hearing Board in conducting the above-described hearings, the testimony and other evidence introduced at these hearings, together with various views and opinions there expressed, and the recommendations submitted by the Hearing Board; in exercise of the authority granted to it by Article VI of the Ohio River Valley Water Sanitation Compact.

**THE COMMISSION HEREBY RESOLVES THAT:**

1. Notice of the time and place at which the above-mentioned hearing was to be held was sufficient, in form and extent of publication, to inform all interested parties and all parties likely to be affected thereby;
2. The procedure followed by the Hearing Board in the conduct of the hearing adequately provided to all interested parties and to all parties likely to be affected thereby full opportunity to be heard and to present any pertinent testimony, evidence, opinions, or views which anyone might wish to submit for the consideration of the Commission; and
3. Pollution Control Standards (2012 Revision) which, as heretofore adopted and promulgated by the Commission, require clarifying amendments or restatements of specific segments.

**THE COMMISSION HEREBY FURTHER RESOLVES THAT:**

Subject to any subsequent revisions which the Commission may, from time to time, determine to be required by changing conditions, its POLLUTION CONTROL STANDARDS (2012 Revision) for Discharges to the Ohio River, shall be and they hereby are in that form readopted and repromulgated by this Commission to be hereafter designated as POLLUTION CONTROL STANDARDS – 2013 Revision.

**THE COMMISSION HEREBY FURTHER RESOLVES THAT:**

Public notification of this action in the readoption and repromulgation of Pollution Control Standards - 2013 Revision, as thus amended and restated, be given by publication in newspapers having general circulation in the major population centers within the Ohio River Basin and by direct mail to all persons, entities and governmental agencies within that area known to have an interest in that action or to be affected by it.

**ACTION:** Motion by Commissioner Nally, second by Commissioner Duritsa and carried, to adopt Resolution 5-13 as presented and to accept the report of the Pollution Control Standards Committee as presented.

Chairman Frevert noted that there were no advisory committee reports to present. Commissioner Conroe indicated that a Public Interest Advisory Committee (PIACO) report was included in the agenda packet.

**Upcoming Meetings**

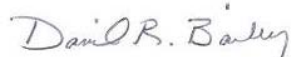
Chairman Frevert noted the following schedule for upcoming Commission meetings:

- February 12-14, 2014                      Cincinnati, Ohio
- June 2014                                      Evansville, Indiana

**Adjournment**

The 207<sup>th</sup> Commission meeting was adjourned at 9:40 A.M.

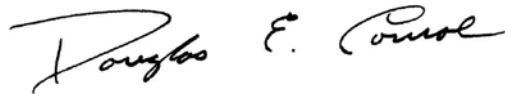
Prepared by:



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

Date: October 15, 2013

Approved by:



\_\_\_\_\_  
Doug Conroe  
Secretary/Treasurer

Date: December 4, 2013



**ROSTER OF ATTENDANCE**  
**207<sup>th</sup> Commission Meeting**  
**October 10, 2013**

**Commissioners**

|               |   |
|---------------|---|
| Illinois      | Toby Frevert<br>Phillip Morgan                            |
| Indiana       | Thomas Easterly   |
| Kentucky      | Ron Lovan<br>Bruce Scott (PROXY for Leonard Peters)       |
| New York      | Douglas Conroe  |
| Ohio          | Paul Tomes<br>Scott Nally<br>Stuart Bruny                 |
| Pennsylvania  | Charles Duritsa<br>Andy Zemba (PROXY for Michael Krancer) |
| Virginia      | David Paylor<br>Robert Dunn                               |
| West Virginia | David Flannery<br>Ron Potesta<br>Randy Huffman            |
| Federal       | Ken Komoroski   |
| Legal Counsel | Ross Wales  |

**Executive Director**

Peter Tennant

**Guests**

Tom Horan – Axiall Corporation; Lori Leffler – Axiall Corporation;  
John Hirshfield – Axiall Corporation; Angie Rosser – WV Rivers  
Coalition; Ken Ward, Jr. – Charleston Gazette; Scott Mandirola – WV  
DEP; Dave Yaussy – Robinson & McElwee; Jeanne Ison

**Staff**

David Bailey, Jason Heath, Tracey Edmonds, Sam Dinkins, Joe Gilligan,  
Lisa Cochran

**Responsiveness Summary to Comments Received on the Proposed Revision to Pollution Control Standards for Discharges to the Ohio River 2012 Revision**

**Comments Opposed to Proposal**

One comment received points out that because mercury accumulates in the meaty portion of fish, the part that people more often consume, this places individuals at greater risk than other pollutants which accumulate in the fatty portion of fish. While the Commission understands in concept the point of this comment, there are many other factors to consider in determining risk of one pollutant versus another. The Commission is in the process of determining the extent of impairment (risk) through the 2014 305b assessment.

Multiple comments pointed out that mercury trends in fish tissue are increasing. ORSANCO is in the early stages of conducting a trends assessment of mercury in fish tissue and recognizes that there are studies that exist which have identified an increasing mercury trend in Ohio River fish tissue.

One comment asked ORSANCO to respond to the question of how much mercury is contributed from point sources versus other sources. This is a highly complex question to answer requiring data, much of which is not currently available. A study to quantify the point source component alone would be a multi-million dollar study, let alone trying to quantify atmospheric deposition, point source contributions from tributaries, nonpoint source contributions from tributaries, etc. A 2013 GAO report concluded that the data did not exist to allow for such a study on a national basis.

One comment points out that the proposed extension would nullify the need for the Commission's recently adopted "Variance Application and Review Process." The Commission agrees that the proposed two-year extension would eliminate the need for the "Variance Application and Review Process" for a two-year period only.

One comment points out that the US EPA advises caution in the use of mixing zones for mercury. While the Commission suspects that this advice was given, it also implies that mixing zones for mercury might also be utilized. In another document, the US EPA indicated that further study was needed to determine whether the GLI's mixing zone prohibition should be extended to all waters of the U.S., but to the best of our knowledge, there has not been a conclusion by the US EPA that the prohibition should be extended to all waters outside the Great Lakes Basin.

Multiple comments point out that the proposed extension would result in the discharge of greater quantities of BCCs/mercury. The commission strongly disagrees with this observation. The two-year extension would not allow any additional discharge of mercury over the current levels. The two-year extension would not result in a decrease in mercury, but it would not result in any increase whatsoever.

One comment points out that over 800 miles of the river are impaired for mercury. This observation is incorrect. Certain segments of the Ohio River in Indiana and Kentucky have been designated as impaired for mercury, but not nearly 800 miles.

One comment indicated that the proposed extension will foster uncertainty in the existing regulatory date-for-certain prohibition. The Commission strongly disagrees with this observation and believes that the two-year extension will provide greater certainty to the regulated community regarding their compliance status.

One comment indicates that the extension is contrary to sections of the standards regarding protection of the designated uses and the minimum conditions to be achieved outside the mixing zone. The Commission is in the process of evaluating this through its 2014 305b assessment of the status of Ohio River designated uses and recognizes that Indiana and Kentucky have listed certain segments as impaired for mercury.

Multiple comments indicate that the current total mercury criterion of 0.012 ug/L is the maximum appropriate criterion, and its review by ORSANCO does not justify a two-year extension. The Commission believes that the criterion does need to be reviewed and that scientific evidence is lacking that the current criterion is correct. Some ORSANCO states have a much higher water quality criterion than ORSANCO's criterion, and the US EPA dropped their mercury water quality criterion some time ago. The Commission believes that these differences do obligate the Commission to review its criterion, and at the same time, does not want to impose a potentially overly restrictive regulation on discharges until it can be determined whether the criterion is correct or not. The two-year extension will allow for this review.

Multiple comments indicated that the mixing zone prohibition for BCCs is equally as important for the Ohio River as the Great Lakes. The Commission recognizes that the US EPA adopted this regulation only for the Great Lakes and not the remainder of the nation's waters. Further, long retention times in the Great Lakes, which are much longer than for the Ohio River, is cited as a reason for the need for the mixing zone prohibition. While the US EPA indicated in 2000 that they would be working to develop a mixing zone rule for the nation's waters outside the Great Lakes, they have not as of yet proposed a mixing zone prohibition for waters outside the Great Lakes.

One comment indicated that the Ohio River has more fish consumption advisories for BCCs than any other water body in Pennsylvania. The Commission recognizes that Ohio River fish consumption advisories exist for some BCCs including mercury which provides a recommendation regarding how much fish should be consumed. Whether or not a prohibition on mixing zones for BCCs would reduce or eliminate these advisories remains an open question which would be addressed should a two-year extension be adopted.

Multiple comments indicated that citizens deserve an accurate and complete assessment of Ohio River health and observed that the Ohio River was not assessed for mercury in the most recent 305b assessment. The Commission recognizes that the Ohio River was not assessed for mercury in the 2012 305b report due to a lack of available data which was agreed to by the states. The Commission agrees that an assessment for mercury should be completed and additional mercury fish tissue data has been collected to support such an assessment in 2014.

Multiple comments stated that the proposed extension promotes an uneven playing field for discharges across the region which could promote relocation of businesses to areas having lesser pollution abatement requirements. The Commission does not under any circumstances develop its pollution control standards for the purposes of involving itself in private business development.

Multiple comments indicated that the mixing zone prohibition is appropriate in rivers because the GLI prohibition applies to rivers in the Great Lakes Basin. The Commission is unclear if the prohibition to rivers in the Great Lakes was intended to address the impacts of those rivers on the Great Lakes, or if it was to address the impacts on the rivers themselves, or both, and if it were to

address the impacts to the rivers, why the rule was not applied to rivers nationally. While the Commission is unclear about these questions, a two-year extension would allow time to address them.

Multiple comments request that the Commission complete a new Ohio River use assessment for mercury utilizing US EPA's recommended methodology, complete a TMDL for mercury-impaired segments, allow no additional variances or new discharges of mercury until such time as mercury load/waste load allocations have been determined. The Commission will be commencing a use assessment for mercury for the 2014 305b report. The Commission will determine what actions may be required following results of the new assessment.

Multiple comments indicated that cost-effective technology to remove mercury from waste streams is available, but that facilities will not consider testing or utilization of such technologies if the prohibition is extended. The Commission recognizes that this could be a possible outcome for a two-year period, but believes that a two-year extension would allow the time necessary to determine if such treatment is necessary to protect the uses of the Ohio River.

One comment indicated that stringent plans with meaningful milestones must be part of all permits if an extension is granted, but that the extension should not apply to new discharges. The Commission acknowledges the comment but points out that the states are responsible for permitting and the comment has been provided to each of the states.

One comment indicated that mixing zones are intended to dilute pollutants, but that in the case of BCCs, such dilution will not reduce bioaccumulation since the mass loading is the important factor. The Commission recognizes that bioaccumulation in the Ohio River is a highly complex process with multiple important factors including, in the case of mercury, conversion of total mercury to methyl mercury. The Commission believes that additional study is needed to better understand these processes.

### **Comments in Favor of the Proposal**

Multiple comments indicated that the extension will allow for additional time for entities to identify viable treatment technologies and for ORSANCO to consider whether the mixing zone ban and mercury criterion are appropriate. The Commission agrees with this comment.

Multiple comments indicated that the US EPA justified the Great Lakes mixing zone ban based on the unique hydrological characteristics (long retention times) of the lakes which are not present for the Ohio River. The Commission believes that this is one topic that warrants further investigation as to the appropriateness of a mixing zone prohibition for the Ohio River.

One comment suggested that ORSANCO should revise its standards to allow for expanded methods for developing site-specific criteria, including use of USEPA's guidance on implementation of a human health methyl mercury criterion. Specific language for revision of the pollution control standards is proposed in their letter but not reiterated here. The Commission recognizes the comment, feels that the current language provides significant flexibility, but suggests that the comment be resubmitted for consideration at the beginning of the next triennial review of the Pollution Control Standards which begins Spring, 2014.

Multiple comments indicated that there currently is no proven technology to remove mercury from FGD waste streams to levels in the low parts per trillion which would be required with a mixing zone prohibition. The Commission has received conflicting comments on this topic and anticipates that a US EPA Region 5 study being conducted by Battelle to evaluate mercury treatment technologies will provide additional insight on the topic.

One comment indicated that there is no reason to believe that an extension of the prohibition will result in increases of mercury in water or fish and that Ohio River conditions are not conducive to conversion of mercury to methyl mercury. The Commission recognizes that this is a highly complex issue requiring further study.

One comment indicated that nonpoint sources of mercury are by far the greatest contribution to the Ohio River as evidenced by higher concentrations occurring during higher flows. The Commission acknowledges that mercury concentrations tend to increase with flow which does point towards nonpoint sources, but believes that additional study on the issue is needed.

One comment indicated that there is little or no evidence of increasing or decreasing mercury trends in several fish species and that very few fish have exceeded the methyl mercury criterion. The Commission acknowledges the comment and will be conducting a trends assessment of mercury in fish and water, as well as a 305b use assessment following US EPA's recommendation to determine if impairment from mercury in fish exists.

One comment recommended that regulation of BCCs occur on a case-by-case basis to determine whether a mixing zone is appropriate. The Commission's Pollution Control Standards do provide for development of site-specific criteria. The Commission suggests that this comment be submitted as part of the upcoming triennial review of the Pollution Control Standards.

## **Appendix F**

### **Approved Variances from Pollution Control Standards**

**I. PPG IndustriesAxiall Corporation, Eagle Natrium LLC, WV Variance (Permit WV0004359)**

- 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 2011 Revision, Section VI.G Mixing Zone Prohibition for Bioaccumulative Chemicals of Concern is granted to PPG IndustriesAxiall Corporation, Eagle Natrium LLC, WV facility (NPDES Permit WV0004359) for a period not to exceed five years, beginning October 16, 20132015.
- 2) PPG-Axiall Corp. will be allowed a mixing zone as specified above; however, at WV0004359 Outfall 009, the monthly average limit for Total Hg shall not exceed 0.055 ug/L, and a maximum daily limit shall be determined by the West Virginia Department of Environmental Protection (WVDEP) in accordance with WVDEP's mixing zone and NPDES rules, regulations, and policies.
- 3) PPG's Axiall Corp.'s mercury reduction plan submitted to the Commission as Appendix B in its March 30, 2012 application submittal shall be fully implemented.
- 4) PPG-Axiall Corp. shall submit to the Commission and WVDEP annual progress reports beginning October 16, 2013 including the status of implementing its mercury reduction plan and all mercury monitoring data collected as a requirement of this variance and NPDES Permit WV0004359.
- 5) Beginning October 16, 2013, Mm monthly Ohio River in-stream sampling for Total Hg shall be conducted by PPG-Axiall Corp. upstream of WV0004359 Outfall 009 and downstream of Outfall 009 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, 2013, Aa annual fish tissue monitoring for total and methyl mercury shall be conducted by PPG-Axiall Corp. downstream, in the vicinity of the outfall. A minimum of two samples each from trophic level two, three, and four fish shall be collected annually. PPG-Axiall Corp. 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. WV0004359 for Outlet 009.