

OHIO RIVER VALLEY WATER SANITATION COMMISSION

MINUTES

199th Commission Meeting
Hyatt Regency Cincinnati
Cincinnati, Ohio
Thursday, February 10, 2011

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**199th Commission Meeting
Hyatt Regency Cincinnati
Cincinnati, Ohio
Thursday, February 10, 2011**

Chairman Paul E. Tomes, Presiding

Call to Order

Chairman Tomes called the 199th meeting of the Ohio River Valley Water Sanitation Commission to order at 9:45 A.M. on Thursday, February 10, 2011.

Commissioner Duritsa led the Commission in the Pledge of Allegiance.

Quorum Call

Commissioner Komoroski declared that a quorum was present (see Roster of Attendance, page 14).

Action on Minutes

ACTION: Motion by Commissioner Komoroski, second by Commissioner Easterly and carried, that the minutes of the 198th meeting of the Commission and of the October 2010 Executive Session be adopted as presented.

Report of the Treasurer

Commissioner Komoroski noted that a Treasurer's report as of January 31, 2011 was provided in the meeting packet.

The report indicates a balance of \$378,649 in accounts receivable due the Commission as of January 31, 2011. The balance represents \$233,950 due from Signatory States, \$89,219 due from federal sources, and \$55,480 from other sources.

Additionally, the report indicates receipts of \$2,266,923, plus carryover of \$1,612,086, totaling \$3,879,009 through the end of January 2011. Of that amount, \$1,807,883 was expended on programs, leaving \$2,071,126 available for the continuation of ORSANCO's programs.

ACTION: Motion by Commissioner Komoroski, second by Commissioner Easterly and carried, to accept the Treasurer's Report as presented.

Report of the Audit Committee

Commissioner Conroe, Committee Chairman, noted that a 2010 Independent Auditors' Report was provided in the meeting packet.

Commissioner Conroe reported that Clark, Schaefer, Hackett & Company, Certified Public Accountants, performed a general-purpose financial audit for fiscal year ending June 30, 2010.

In the auditor's opinion, the general-purpose financial statements present fairly, in all material respects, the financial position of ORSANCO as of June 30, 2010. There were no reported material weaknesses in internal controls. The audit report is an "unqualified" report.

Commissioner Conroe concluded by reporting that Clark, Schafer, Hackett & Company had conducted ORSANCO's audit since 2003 and had provided excellent service. However, as a good business practice, the Committee believes that it is time to consider changing audit firms. Staff will solicit proposals from audit firms to perform the 2011 audit and provide a recommendation to the Committee.

ACTION: Motion by Commissioner Conroe, second by Commissioner Frevert and carried, to accept the Audit Committee Report as presented.

Report of the Chairman

Commissioner Tomes began by noting that his Chairman's report at the October 2010 Commission meeting centered on four primary points:

- Capitalizing on the skills/gifts of the individuals/committees comprising the ORSANCO family
- Highlighting upcoming important decisions and directions
- Focusing on one of ORSANCO's core missions – maintaining the Ohio River as a safe/reliable drinking water supply
- Making available resources that work efficiently and effectively and continuing to find and deploy new innovative techniques.

Commissioner Tomes reported that progress has been made by committees and staff on all these fronts. As for the first and second points, the Water Resources Committee conducted its inaugural meeting in a half day session, one day prior to the Commission meeting. The Ad Hoc Task Force on Water Resources reported on a "three tiered framework" possibly moving forward under a broad interpretation of abatement of interstate water pollution; buttressed by a joint governor's endorsement; or necessitating changes to the Compact (i.e. regulatory authorities).

The Congressional Liaison Committee will report on the Commission's efforts to keep abreast of the changing landscape in Washington, D.C. and prepare for the Commissioners' visit in October, while continuing to work with our Washington representation to provide support to the Ohio River Basin Congressional Caucus as its membership suffered some key losses in the recent November elections.

Some interesting and positive developments have and are occurring with the Electric Power Research Institute (EPRI) Nutrients Trading Project, including an October 26th meeting at the White House with the Council on Environmental Quality.

Commissioner Tomes continued by mentioning that the Water Users Committee provided a platform during the February 9th Roundtable meeting for an exploration of the salient challenges drinking water utilities along the Ohio River (and elsewhere) are addressing. The speakers were some of the most respected leaders in the water industry providing Commissioners with insights that touch on decisions that the Commission faces on a regular basis.

Regarding innovation, it was recently announced that the Cincinnati region will be identified as a Water Technology Innovation Cluster, establishing the region as the "silicon valley" for development and deployment of innovative water technologies. ORSANCO's Executive Director has been serving on this innovation cluster steering committee for about a year as the concept

began to take root, and with approval from the Chairman and endorsement from incoming Chairman Duritsa, Alan Vicory is currently serving as the Cluster's Board of Director's first Chairman. His choice to be the first Chairman of the Board was due in part to his known leadership skills and also because those in this region believe that ORSANCO is highly credible and unbiased.

ORSANCO is positioning itself to be "in the game" in technology awareness and development. This aligns with the Visioning Workshop outcome on appropriate use of technology. ORSANCO can bring to the technology development table such assets as its POTW and Water Users Advisory Committees. It is also believed that, in ORSANCO's parochial interest, the charge of the Research Committee might be expanded to include assessment of the feasibility of technology use.

ORSANCO is moving forward on several fronts with a cadre of volunteers serving on various Commission committees and staff garnering the attention of local and national leaders who are looking for strong science-based organizations that can help advance knowledge and innovation. All of this is made possible because of the continued support of the States and as well as the federal partner's investment to the Commission, yielding results of data gathering and studies.

Commissioner Tomes concluded by noting that the February meeting was the 199th Commission meeting; in June 2011, the Commission will be meeting for the 200th time since its inception. He also noted that there is no plan for a large event to commemorate this milestone, but that he plans to take some time during the 200th meeting to share some of the highlights of the past meetings that have positioned the Commission here today.

Report of the Executive Director

Mr. Vicory began by acknowledging and congratulating Commissioner Eger on his new position as Director of the Water Environment Foundation (WEF) and noted the importance to the Commission for Commissioner Eger to retain his Commission appointment through his current term.

Mr. Vicory then mentioned that the River Sweep Program has acquired eight new corporate sponsors for 2011 and that the program continues to receive good press coverage and serves as an important and effective educational outreach activity.

Mr. Vicory reported on an October 2010 press release issued by an outside organization which tried to make the point that, from information included in the EPA's Toxic Release Inventory (TRI), the Ohio River received more toxic chemicals than any other stream in the country. On its face, this statistic is disturbing. This prompted staff to investigate the basis of this statistic. Further analysis provided a dramatically different story. The 31 million pounds of toxic chemicals reported in 2008 has been reduced by 50%. Thus, the information was outdated. More importantly, this information involves only one toxic compound, and for the most part, only one or two facilities were involved. Also, approximately 94% of the 31 million pounds was nitrates, and one facility was responsible for 90% of the compound. In addition, the values for nitrate being detected at an ORSANCO monitoring station 20-30 miles downstream of this site is not at a level for concern. The importance of this outcome is that when published information conveys an unfair negative public perception, a quick response is required. ORSANCO is in a better position to respond quickly in the future, due in part to working through this issue with the professional support of Strategic Advisors.

Mr. Vicory then reported that, relating to communications, ORSANCO's public website received around 250,000 hits in 2010. The most frequent topics of interest included River Sweep, River Facts, Bi-monthly Data, Pollution Control Standards, and information on "Is it Safe to Swim in

the River?” He mentioned the importance ORSANCO’s website in providing an information link to the public. He also added that a new fish advisory page is currently under construction by ORSANCO’s biological staff.

Mr. Vicory concluded by reporting on his role as Chairman of the Board for the newly formed Water Technology Innovation Cluster (mentioned above in the Chairman’s report). He noted that he believes Cincinnati to be the home, globally, for environmental engineering. In essence, the Cluster is about jobs and economic growth. He also reported on a recent meeting with Ontario based XPV Capital which expressed some interest in providing investment capital for water technology development. XPV expressed the opinion that to be an effective cluster, the area needs innovative utilities and that high-tech companies need to acquire reference sites to serve as real-world product test sites.

Mr. Vicory also congratulated Jason Heath for recently attaining his professional engineer’s license. This is certainly a professional milestone; currently, all staff engineers now have their professional license.

Report of the Water Resources Committee

Commissioner Potesta, Committee Chairman, reported that this newly formed Committee held its inaugural meeting on February 9, 2011. Representatives from seven states, the US Army Corps of Engineers, and the US Geological Survey were in attendance. The meeting began with an overview of the Commission and the events leading to the Committee’s formation. Commissioner Flannery provided a briefing on the activities of the Ad Hoc Committee on Water Resources, including a discussion on the documents developed outlining three pathways the Commission might pursue to take an active role in the effective management of water resources in the Ohio River Basin.

Commissioner Duritsa reported that an organization representing the philanthropic community of Southwestern Pennsylvania has expressed interest in providing financial support for the Committee’s activities. A meeting with representatives from several foundations, hosted by Sustainable Pittsburgh, is scheduled in March to discuss possible collaboration.

Committee members reported on each of their respective agency’s water resources program needs and priorities. Common themes emerged including drought and flood management, water supply planning, ecological stream flows, sustainability of existing infrastructure, and inter-basin withdrawals. Members also expressed appreciation for the opportunity this Committee provides as a forum for discussion across agencies. In addition, the Committee identified three agencies that should be considered for inclusion. These include: the Tennessee Valley Authority, the National Resource Conservation Service, and the National Weather Service.

The Committee proposed quarterly meetings, with at least one meeting to be held face-to-face, preferably in conjunction with Commission meetings. It was suggested that a Committee meeting in concert with the June Commission meeting in Pittsburgh may be desirable in light of the developments regarding Sustainable Pittsburgh’s interest in the Committee.

ACTION: Motion by Commissioner Potesta, second by Commissioner Servatius and carried, to accept the Water Resources Committee Report as presented.

Report of the Ad Hoc Committee on Water Resources

Commissioner Flannery reported since the last meeting, the Ad Hoc Committee has focused on three issues:

1. The Committee will identify what it feels ORSANCO can do within current authority. For the past 60 years, the Compact has focused on water quality; however, there are a

number of activities related to water resources management which could be undertaken under the existing Compact. The Committee prepared a document which identifies those tasks which ORSANCO is empowered to do and possibly mandated to do under the Compact.

2. The Committee also prepared a draft memorandum of understanding that might be presented to the Governors of ORSANCO's member states that would seek from them a further mandate that ORSANCO is on the right track and they wish to proceed in this direction. Commissioners' consensus is that this document should be considered and vetted within the Standing Committee to bring a recommendation to the Commission regarding both the contents of the document and timing as to when such a document might be presented to the Governors.
3. At the October Commission meeting, there was discussion about the possibility of an amendment to the Compact. No consensus was reached. There was interest in seeing a draft showing what possible amendments to the Compact might look like. The Committee prepared a pro-forma set of changes that might be made to the Compact with no recommendation that those changes proceed forward at this time. Commissioners' consensus was to put this document aside to allow the Standing Committee process to work and receive periodic reports from the Committee.

Commissioner Flannery reported that the agenda for the Ad Hoc Committee is largely complete; therefore, the Committee will stand down and await further assignments from the Commission. The Committee will continue to monitor the situation and be prepared to take on any assignments directed by the Commission.

Report of the Technical Committee

Commissioner Frevert, Technical Committee Chairman, reported that the Technical Committee met on February 8, 2011. A complete report of the meeting (Attachment 1) was provided in the meeting packet.

Commissioner Frevert began by reporting on a program prioritization survey recently concluded. The objective was to get broad input to help prioritize the relative importance of individual programs and to determine where more or less resources should be applied. The survey results will be considered in developing programs and budgets for FY12.

The Technical Committee also advised staff to use a weight of evidence approach in assessing support of aquatic life use as they prepare the next round of 305(b) Reports. This is a significant recommendation which may prompt additional discussion, particularly with US EPA.

Commissioner Frevert then reported on Pollution Control Standards issues. In October, Commissioners agreed to defer a decision on the proposed criterion for total dissolved solids (TDS) until the February Commission meeting. After additional consideration, the Technical Committee recommends that the Commission should proceed with the adoption of the proposed criterion for TDS as proposed at the October Commission meeting.

ACTION: Motion by Commissioner Flannery, second by Commissioner Nally and carried, (Commissioners Conroe, Phillips, Duritsa, and Frevert voting no, Commissioners Morgan and Wayland, and Marcia Willhite, Ellen Gilinsky, Randy Sovic abstaining) to refer the issue of the TDS Standard back to the Pollution Control Standards Committee for further review.

Commissioner Flannery further commented that the recommendations on TDS Standards were brought to the Commission in October by the Pollution Control Standards Committee. At that point, questions were raised about that Standard, and Commissioners asked that additional information be provided to them. He then noted that the next agenda item was a report of the Pollution Control Standards Committee which indicates that the Committee is continuing the process of evaluating TDS issues, with the intent of bringing back to the Commission some decision on the merit of the TDS Standard. Not having heard the evaluation of the Pollution Control Standards Committee, it is appropriate that the recommendations of the Technical Committee be referred to the Pollution Control Standards Committee and that any decision about adopting a TDS Standard comes through the recommendation of that Committee.

Commissioner Duritsa asked for clarification if an affirmative vote on this motion would disallow another motion which would request an “up or down” vote on the TDS Standard. Commissioner Flannery commented that it was his intent to achieve that result. His intent is that the Commission does not vote on the merit of a TDS Standard at this time, pending consideration of the Pollution Control Standards Committee. A clarification was made that it appeared this motion is asking for the TDS issue to be referred, which is counter to the Technical Committee’s recommendation. Commissioner Tomes clarified that if there is a positive vote on this motion, the TDS issue will be referred. However, if there is a negative vote on the motion, action reverts back to the original motion to accept the Technical Committee’s report.

Ron Schwartz suggested that, to capture this decision all at one time, it might be reasonable to postpone action until Commissioners hear the report of the Pollution Control Standards Committee. A motion could then be acted on to address the TDS issue and associated time frame.

Commissioner Komoroski agreed that it was important to hear from the Pollution Control Standards Committee prior to taking action on this issue. LaJuana Wilcher suggested that it would be helpful to understand the risks associated with TDS and the cost of compliance, which is typical in any federal regulatory action.

Commissioner Wayland stated that some of the difficulty in this decision is that it is difficult to vote to defer without some sense of a defined time frame.

ACTION: Motion by Commissioner Morgan, second by Ellen Gilinsky and carried, (Commissioner Duritsa voting no) to accept the Report of the Technical Committee, amended to defer the TDS action to the Pollution Control Standards Committee.

Report of the Pollution Control Standards Committee

Commissioner Easterly, Committee Chairman, reported at the October meeting, the Commission adopted revisions to its Pollution Control Standards following an expedited review that was limited to consideration of four issues. Under the Commission’s schedule for triennial review, it is now time to initiate another full review; the Pollution Control Standards Committee has recommended that the triennial schedule be maintained, and that the next review be initiated this year.

Completion of 2010 Review

Copies of the Standards, incorporating the revisions adopted in October, have been printed and affected parties have been notified. Two items of business remain:

1. In its recommendations concerning the Variance Process, the Committee recommended that the Commission develop a separate document providing specific details of the

process by which a variance request is to be made by a discharger and how it is to be considered by the Commission and the member states. The Committee has directed staff to work with the NPDES Subcommittee to develop the implementation document.

2. The Commission deferred action on adoption of a criterion for Total Dissolved Solids in order to consider concerns that were raised at the meeting. Staff has initiated efforts to address the concerns raised and is presenting the information developed thus far to the Technical Committee. It is believed that this issue will need to be considered further in the upcoming review.

Upcoming Review

The next review would be conducted on the following schedule:

Initial Notice	March 2011
Public Workshops	April 2011
Comments Close	June 2011
Consideration of Comments	July-December 2011
Adopt Proposed Revisions for Public Review	February 2012
Public Hearing on Proposed Revisions	June 2012
Commission action on Proposed Revisions	October 2012

Continuing Issues

Several issues were identified in the course of the Expedited Review that should be addressed in the upcoming review of the Commission Standards. They include:

Selenium Criteria - It was hoped that selenium would be addressed in the Expedited Review; however, the new US EPA criteria have yet to be released. It is still anticipated that the new criteria will be issued by US EPA in the near future.

Bromides - Drinking water utilities report that bromides are an increasing problem in treating water for potable use.

Temperature - The NPDES Subcommittee has recommended that the Commission adopt a criterion to protect human health from heated discharges.

Design Stream Flows - Comments suggesting design flows other than 7Q10 and Harmonic Mean Flow for human health protection need to be considered further. In addition, aquatic life criteria in Sections IV.B.2, 3, 4, and 5 are not associated with any design flow.

It is also possible that the Commission might be in a position to consider adoption of numerical nutrient criteria and new pathogen criteria in this review. As noted above, adoption of a criterion for Total Dissolved Solids should also be reconsidered.

Randy Sovic suggested that, since the issue of a time frame remains regarding the TDS issue, the language in the Report stating that it is believed that this issue will need to be considered further in the upcoming review, be stricken from the report until a decision is made on a time frame.

ACTION: Motion by Ellen Gilinsky, second by Commissioner Conroe and carried, to strike the language “in the upcoming review” as it relates to TDS from the report and add that the Committee will report back to the Commission in June with a TDS progress report or specific recommendations.

ACTION: Motion by Commissioner Easterly, second by Commissioner Nally and carried, to accept the amended report of the Pollution Control Standards Committee.

Report of the Water Quality Review Committee

Commissioner Bruny reported that The Water Quality Review Committee met by conference call on Thursday, January 20. The call was held to bring members up-to-date on topics tracked by the Committee and to continue discussions of possible additional topics.

Last June, the Committee presented a revision of the Watershed White Paper for Commission adoption. As part of its report, the Committee provided recommendations for ORSANCO activities that would carry out the objectives of the White Paper. The Committee revisited those recommendations and has further thoughts on how they should be incorporated in planning for ORSANCO programs for FY12. The recommendations, and the Committee's current thoughts, are as follows:

1. Consider monitoring waters as they cross state boundaries to identify any instances where wastes from one state impair the waters of another.
This concept should be included in the review of the Commission's Monitoring Strategy in order that it can be considered within the context of overall monitoring needs.
2. Identify tributaries where ORSANCO's large river monitoring capabilities might be utilized.
This concept should also be considered in the review of the Monitoring Strategy.
3. Complete a basin-wide assessment using data from the National Aquatic Resource surveys.
Staff is directed to present an assessment of the viability of this effort.
4. Identify drinking water utilities on the tributaries whose supply sources might be affected by discharges in other states.
Staff should carry this out in collaboration with the Source Water Assessment work group.
5. Identify possible interstate TMDLs on tributaries.
This activity appears to have a low priority.

Upon consideration, the Water Quality Review Committee does not support the concept suggested in its June 2010 report that a certain portion of the Commission budget be set aside for tributary activities. The Committee continues to support the idea of asking states to report to the Technical Committee on conditions and activities on interstate tributaries.

The Committee heard a brief overview of the status of topics it is tracking. Staff was directed to develop a written status report for the Committee's next call. Two topics were discussed at greater length: Marcellus Shale and the development of an Interstate Water Quality Trading Program. The Committee recommends that staff update its information on developments in the states concerning Marcellus Shale, including regulations or guidance on disposal of frac water.

In its last report, the Water Quality Review Committee recommended that the states sign the Memorandum of Understanding (MOU) regarding discussions of an interstate water quality trading program for the Ohio River Basin. The Committee recommended that the directors of the state environmental agencies should sign the MOU, and that it would become effective as soon as the states which are expected to be involved in initial trades had signed on. Due to several factors, no states have currently signed the MOU. Current plans are for the partners involved with development of the program to hold briefing sessions for the agency personnel in each state who would be parties to the program. There is also talk of an MOU among the three US EPA Regions (3, 4, and 5) as a sign of their support for the program. The Water Quality Review Committee believes that the Commission should consider adopting a resolution that would

demonstrate the commitment of the member states to discuss the possibility of a trading program.

Also in its last report, the Committee identified the following topics as possible additions to the ongoing agenda:

1. Energy development
2. Habitat alteration
3. State nutrient reduction strategies
4. Determination of levels of a wide variety of chemicals in the Ohio River
5. Development of a Basin Plan, similar to that adopted by the Delaware River Basin Commission

The Committee agreed that it would be necessary to focus its concerns in any of these areas. Toward that end, it was agreed that future calls would include discussions of one of these topics, starting with Habitat Alteration. The purpose of the discussion will be to identify any specific actions the Commission might consider in these areas.

ACTION: Motion by Commissioner Bruny, second by Commissioner Easterly and carried, to accept the report of the Water Quality Review Committee.

Report of the Congressional Liaison Committee

Mr. Alan Vicory, Executive Director, noted that a detailed Committee report (Attachment 2) was provided in the agenda packet.

Mr. Vicory began by reporting on efforts to seek appropriations in the federal budget. There was support for such funding going into the budget process; however, November election outcomes have resulted in a moratorium on Congressional targeted funding, which have made recent funding efforts unsuccessful. These communications remain important, however, to continue advising Congress of the Ohio River Basin's needs. Mr. Vicory also indicated the importance of possibly finding a better method for securing funding for the Basin's needs. The point needs to be made that funds for the Basin should not be viewed as an earmark. The Congressional Caucus may provide the collective voice to achieve this.

Mr. Vicory also reported that efforts are underway to rebuild the Congressional Caucus, which is necessary due to the changes as a result of the November election. A number of prior members were not re-elected, including Caucus Co-Chairman Steve Driehaus. Mr. Vicory noted that a recent Caucus briefing on combined sewer overflows was held to highlight this important issue to the Ohio River Basin. A number of topics are being considered for the next briefing.

Mr. Vicory commented on the uncertainty of Clean Water Act, Section 106 funding. Although there was a proposed 20% increase in the President's budget, some indications are that US EPA's budget might be targeted for future reductions. ORSANCO's budget relies heavily on these funds. Mr. Vicory stated the importance of Commissioners' participation in visiting their respective representatives during Commission meeting activities in Washington, DC in October.

ACTION: Motion by Commissioner Eger, second by Commissioner Servatius and carried, to accept the report of the Congressional Liaison Committee as presented.

Report of the Pension Committee

Commissioner Morgan, Committee Chairman, reported that the Actuarial Report, compiled by Buck Consultants, indicated that the Pension Plan had assets with a market value of \$2,326,030 and a funded ratio of 70.4% as of July 1, 2010.

As of December 31, 2010, the Plan's funded ratio improved to 77% on improved market returns.

Fund assets are currently invested with a 50% stock and 50% bond allocation. This allocation maintained the assets within expected ranges and performed marginally better than the overall market. Based on risk management, the current allocation provides the best opportunity for long-term correction. The Pension Committee recommends continuing with this investment strategy.

The Pension Committee requests that the Program & Finance Committee consider a recommendation to fund a pension contribution of \$200,000, based on available funds, for FY12.

ACTION: Motion by Commissioner Morgan, second by Commissioner Frevert and carried, to accept the report of the Pension Committee as presented.

Report of the ORSANCO/River Users Program Advisory Committee

Commissioner Potesta, Committee Chairman, reported that the Committee met on December 7, 2010 and again by teleconference on January 25, 2011. It was clear from the discussions that the Committee is energized and is ready to move the program forward with renewed emphasis on engaging the River users community at large to generate interest and support for the program, as well as developing new project proposals to improve the scientific basis for regulatory decision making.

Three areas of interest were identified for potential new projects. These areas include nutrients, total dissolved solids, and storm water issues. The Committee requested that staff draft preliminary concept proposals for each area. A meeting schedule was established for development and review of the project proposals. This schedule includes:

1. A teleconference in April to review the preliminary concept proposals
2. An in-person meeting in July to select one proposal for further development
3. A presentation of the project proposal to the Commission in October

In addition, the Committee raised a concern regarding continuity of Committee membership as several unexpected vacancies led to five of the seven river interest members being appointed in 2010. Each of these terms is set to expire in 2013 with the option to be reappointed for a second, three-year term. As such, the Committee recommends that the terms of the existing members be realigned such that members will rotate off the Committee in a more evenly distributed manner. This realignment would involve shortening the terms of two existing Committee members.

At the request of the Committee, a random drawing was conducted by staff to select two members which would receive shortened terms. Based on the results of the drawing, the Committee proposes the term of Tara Lanier, currently set to expire in February 2013, be modified to reflect a June 2011 expiration. The Committee also proposes that the term of Mary Ann Henderson, currently set to expire in February 2013, be modified to reflect a June 2010 expiration. Furthermore, in recognition that these two members voluntarily agreed to receive shortened terms, the Committee asks that the Commission, at the appropriate time, strongly consider reappointing these individuals to a second term as permitted by the Commission Bylaws.

ACTION: Motion by Commissioner Potesta, second by Commissioner Wayland and carried, to accept the report and recommendations of the ORSANCO/River Users Program Advisory Committee as presented.

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

Mr. Mike Apgar, Chairman of the POTW Advisory Committee, began his report by mentioning that there is a great amount of potentially useful data, particularly in the large metropolitan areas along the River, as a result of work done pursuant to consent decrees, which could be made available to the Commission. This data could be a valuable tool to help evaluate interstate water pollution.

The bacteria TMDL being developed by US EPA Region 5, along with Tetra Tech, had peer review performed by Limno-Tech, with respect to their tributary plan and their latest model. ORSANCO staff has received this information and the Committee strongly encourages the Commission to convey its recommendations for incorporation in the creation of this TMDL to Region 5 and Tetra Tech.

The Committee, in its support for sound science, strongly supports the Commission's decision to employ the weight of evidence approach.

Nutrients remain an important topic of interest to the Committee. As such, the Committee asks for patience with the ORSANCO/EPRI trading program as it is nearing its implementation stage. The Committee will have a number of questions during this process.

Mr. Apgar advised the Commission of a nutrient summit held where building blocks were created that will lead to a framework and a formal national policy statement on behalf of the waste water treatment industry with respect to how the industry should go about nutrient reduction. This document, when completed, will be provided to the Commission and might be helpful as nutrient reduction plans are created for the Ohio River.

Also, the national Association of Clean Water Agencies (NACWA) is involved with discussions at the national level on the potential of the Farm Bill with respect to non-point reductions from agriculture. These ongoing discussions are seen as a positive step.

An additional area of concern is information conveyed from a US EPA research representative in Chicago who very strongly feels that there should be a minimum technology employed at treatment plants. The Committee believes that flexibility is needed for programs like trading. The Committee developed a formal position with regard to this issue. This EPA requirement could possibly damage the potential that might exist in a trading program.

Mr. Apgar then mentioned some advocacy being employed across the nation. Large municipalities of this country (in dealing with the wet weather policy being implemented by EPA and DOJ) have discovered that, unfortunately, the costs are high, and quite often, in the current policy structure, an appropriate return on investment is not being achieved. As a result, there are several policy changes that need to be considered. The US Conference of Mayors has outlined these policy changes which do not require re-writing the Clean Water Act. The Committee will provide this document to the Commission when the draft is completed. NACWA is organizing a march on Washington on March 1-2 with a "Money Matters" Campaign. These advocacy actions reinforce the need for Wet Weather Standards.

Mr. Apgar concluded by stating that his comments in no way represent a step toward the treatment facilities not meeting their responsibilities. The industry is stepping up to its responsibility in a fiscally responsible manner. They have a fiduciary charge as well as a charge to improve the environment. He mentioned significant rate increases in Northern Kentucky and encouraged individuals to attend rate hearings.

ACTION: Motion by Commissioner Frevert, second by Commissioner Easterly and carried, to accept the report of the Publicly Owned Wastewater Treatment Works (POTW) Advisory Committee as presented.

Report of the Water Users Advisory Committee (WUAC)

Mr. Jack Wang, Committee Chairman, began his report by thanking the Commission for the organizing the previous day's roundtable discussion on safe drinking water. The session provided a focus on a core mission of the Commission which is to provide safe drinking water for the Basin.

Mr. Wang reported that the Committee raised concerns regarding increased levels of bromide in the River in October. Since then, the Committee has been active in collecting and reviewing bromide and related disinfection by-product information. The Committee met on February 8-9, discussed the data collected, and found that:

1. Bromide levels in the River are increasing, with some recent high concentrations four to five times higher than the level found several years ago.
2. Bromide levels have put several utilities close to exceeding EPA's disinfection criteria.

As a result, the Committee requests that the Commission:

1. Conduct a detailed study on the sources of bromide. The Committee suggests that by adding bromide monitoring, the study can be done on discharge permit requirements.
2. Include bromide in the upcoming Pollution Control Standards review and consider development of standards for bromide. The Committee would like to assist in the standards development. By June, the Committee should have additional technical information to present to the Commission.

To assist with bromide monitoring, the Committee also recommends that ORSANCO include an IC instrument in its Organics Detection System upgrade.

The Committee discussed the need to better understand the manganese issue and will draw on some expertise to study the link between manganese and mining activity. He also mentioned the need for research on chromium+6 and the utilities' approach to respond to public concern.

ACTION: Motion by Commissioner Duritsa, second by Commissioner Easterly and carried, to accept the report of the Water Users Advisory Committee as presented.

Recognition of Staff Reaching Five-Year Employment Milestones

Chairman Tomes recognized the following staff members for their years of service:

John Klear	5 years
Melissa Mann	5 years
Eben Hobbins	10 years
Tracey Edmonds	15 years
Sam Dinkins	15 years

Upcoming Meetings

Chairman Tomes noted the following schedule for upcoming Commission meetings:

- June 7-9, 2011 Pittsburgh, PA
- October 2011 Washington, DC
- February 2012 Cincinnati, OH

Adjournment

The 199th Commission meeting was adjourned at 11:55 A.M.

Prepared by:

David R. Bailey

Date: March 18, 2011

David Bailey
Director of Administration
& Human Resources

Approved by:

Kenneth S Komoroski

Date: May 19, 2011

Kenneth Komoroski
Secretary/Treasurer

ROSTER OF ATTENDANCE
199th Commission Meeting
February 10, 2011

Commissioners

Illinois	Phillip Morgan Toby Frevert Marcia Willhite (PROXY for Douglas Scott)
Indiana	Thomas Easterly
Kentucky	Valerie Hudson (PROXY for Leonard Peters) LaJuana Wilcher (PROXY for Lt. Governor Daniel Mongiardo) Jeffery Eger
New York	Douglas Conroe T. Lee Servatius
Ohio	Paul Tomes Scott Nally
Pennsylvania	Charles Duritsa Greg Phillips Ron Schwartz (PROXY for Michael Krancer)
Virginia	Robert Wayland Ellen Gilinsky (PROXY for David Paylor)
West Virginia	David Flannery Ronald Potesta Randy Sovic (PROXY for Randy Huffman)
Federal	Stuart Bruny Kenneth Komoroski
Legal Counsel	Ross Wales

Executive Director

Alan Vicory

Guests

Jack Wang – Chairman, Water Users Advisory Committee; Mike Apgar – Chairman, POTW Advisory Committee; Erich Emery – US Army Corps of Engineers; George Elmaraghy – Ohio EPA; Debbie Lee - US Army Corps of Engineers; Jeff Boyle – Environmental Science Associates; Stanley States - Water Users Advisory Committee

Staff

David Bailey, Jason Heath, Jerry Schulte, Peter Tennant, Joseph Gilligan, Jeff Thomas, Jeanne Ison, Tracey Edmonds, Greg Youngstrom, Sam Dinkins, Eben Hobbins, Ryan Argo, Jamie Wisenall, Rob Tewes, John Spaeth, Lila Ziolkowski, Heather Mayfield, Melissa Mann, Steve Braun

Report of the Technical Committee

195th Meeting

February 8, 2011

The 195th meeting of the ORSANCO Technical Committee was held on February 8 in Cincinnati. Seven states, three federal agencies and four Commission advisory committees were represented.

Chief Engineer's Report

Mr. Vicory reported on a number of items:

TRI Reporting – In comments on proposed revisions to the Commission Standards, environmental groups stated that the Ohio River receives more toxic discharges than any river in the country, with an annual total of over 30 million pounds. Staff looked into the matter and found that the source of that statement was the US EPA Toxic Release Inventory. Review of the information found that over 90 percent of the “toxics” released to the Ohio were nitrate compounds, and that over 90 percent of those compounds were released by one facility. Ohio River samples collected downstream of that facility did not indicate any nitrate concentrations that approached or exceeded the stream criterion.

Pool Reports – Mr. Vicory called attention to recently published reports on biological studies of four Ohio River pools. The reports are also available on the ORSANCO web site.

Fish Consumption Web Site – The main stem states have agreed to a common protocol for issuance of consumption advisories for Ohio River fish. A special web site has been developed to provide information on fish consumption, including both the benefits of eating fish and the cautions to be taken in preparation and limiting consumption of certain species.

Spill Reporting - the US Coast Guard still does not recognize ORSANCO as a government agency and will not share complete information on spills. The Coast Guard, however, is resuming active participation on the Technical Committee.

Water Technology Innovation Cluster – US EPA is working to designate the Cincinnati area as a water technology innovation cluster. Mr. Vicory has been asked to chair a steering committee made up of public and private sector participants.

Professional Development – Mr. Vicory informed the Committee that staff member Jason Heath had recently earned his professional engineer registration.

ORSANCO Pollution Control Standards – 2010 Review

Staff briefed the Committee on the revisions to the ORSANCO Pollution Control Standards that were adopted by the Commission in October as well as the remaining issues from that review. Those issues are consideration of a 500 mg/L criterion for total dissolved solids, and the need for a separate document on the process for considering variances.

Report of the NPDES Subcommittee

The NPDES Subcommittee met by conference call on December 8. The Subcommittee first addressed the remaining issues from the Standards review. The Subcommittee agreed that the

issues regarding total dissolved solids should be addressed before the proposed criterion is adopted. The Subcommittee also agreed to work with staff on the process document for variance requests. Current variance processes used by the states will be compiled to determine how the Commission's process can best be coordinated with the states. It was agreed that active participation by the EPA Regions is needed in this effort.

The Subcommittee reviewed a questionnaire to be used to obtain information on states' permit development procedures as part of an effort to identify differences among the states. Permits for FGD scrubber wastes are being used as the test case for this evaluation.

The Subcommittee had previously considered several options for the implementation of the ammonia criterion which applies at drinking water intakes. Additional information had been requested, including assessment of in stream ammonia data and the amount of monitoring for ammonia at drinking water intakes. That information was presented on this call, and the Subcommittee agreed that no additional permit requirements would be necessary at this time, but that the situation should be periodically revisited.

The Subcommittee heard a presentation by Ohio EPA on the agency's experience with water quality trading. The information presented will provide valuable background for permit writers in other states as they consider participation in the developing Ohio River Basin trading program.

Total Dissolved Solids

Staff presented a summary of available data on dissolved solids (specific conductance) on the Ohio River. The data indicate that current levels are well below the proposed criterion and that concentrations vary inversely with river flow. There are no indications that levels are increasing, nor that road salts are causing elevated levels in the winter months.

The Technical Committee agreed that the concerns raised in the consideration of the proposed criterion for total dissolved solids have been adequately addressed; the Committee therefore recommends that the Commission adopt the proposed criterion as was proposed in October.

ORSANCO Pollution Control Standards – Upcoming Review

The Committee reviewed a list of issues to be addressed in the next review of the Commission Standards. The Committee endorses the list of issues, but also believes that criteria for iron should be considered. In addition, the Standards document should be reviewed as a whole to see if it could be better organized.

Mercury Studies

Rob Reash presented results of the latest Ohio River fish tissue sampling sponsored by the power industry. The number of species sampled was increased to four. Mercury levels in the largest drum collected exceeded the 0.3 mg/kg criterion. Sampling by ORSANCO, however, indicated more frequent exceedances of the criterion. Staff efforts to resolve the discrepancies in results will continue. Results of a cooperative effort with USGS to monitor selected sites for total recoverable and methyl mercury were presented. Those results indicate that mercury concentrations are highest when river flow and suspended solids are high.

Ohio River Water Quality Assessment

The 305(b) work group was unable to reach agreement on all aspects of the 2010 Ohio River water quality assessment. The issues involved support of aquatic life (primarily due to iron concentrations) and fish consumption (due to mercury results). In looking ahead to the 2012 assessment, staff indicated that the same issues would arise again. Staff also raised concerns over the decrease in available data on bacteria due to the cessation of funding for the longitudinal surveys. The Committee agreed that a weight of evidence approach should be used to assess

aquatic life use support. Staff was directed to present approaches to resolve the other two issues at the June Technical Committee meeting.

Nutrient Issues

Staff presented a progress report on development of numerical nutrient criteria by the states. An update on the development of an Ohio River Basin Water Quality Trading Program was also presented. A letter written to US EPA by the New England states which advocated a weight of evidence approach to nutrient criteria development was distributed.

ORSANCO Program Prioritization for FY2012

At its October meeting, the Committee adopted an approach to be used in a prioritization of ORSANCO's programs. Technical Committee members completed the prioritization exercise and staff compiled the results. The program ratings fell into three groups: programs to continue at current levels of effort, programs to receive lower levels of effort, and programs to receive increased effort. The Committee offers the following input on programs that should receive increased effort:

Develop biological and numerical nutrient criteria for the Ohio River

- Complete development of macroinvertebrate criteria.
- Proceed with development of mussel and periphyton criteria.
- Work with the Nutrient Criteria Work Group to develop an alternative approach to nutrient criteria development.

Data Evaluation and Distribution

- Improve access to metadata for Commission monitoring results.
- Improve presentation of water quality information to the general public.

Algae/ nutrient monitoring

- Improve monitoring when critical conditions occur.

Investigate derivation of current and new water quality criteria

- Complete investigation of criteria that have been in the ORSANCO Standards for a number of years.
- Continue to track developments regarding ammonia, mercury and selenium.

Special studies to identify sources of water quality problems

- Continue current studies of mercury and total dissolved solids.
- Initiate studies of bromides and iron.
- Compile state TMDLs for pathogens on Ohio River tributaries.

Other Program Recommendations

- Proposals to conduct monitoring of waters at state line crossings and to identify instances where ORSANCO's large river monitoring capabilities might be useful should be considered in the review of the ORSANCO Monitoring Strategy.
- Staff should coordinate development of a basinwide assessment (using data from the EPA National Aquatic Resource Surveys) with efforts by US EPA to assess those data. Staff should present an approach to conducting the basinwide assessment, together with an assessment of resource needs to carry this out.

Member Updates and Interstate Water Quality Issues

State members of the Committee presented reports on pollution problems within their states and on efforts to abate them. Federal agency representatives also reported on their activities that affect the Ohio River Basin. Reports from the advisory committee chairs were also presented under this item. Summaries of the reports will be included in the minutes of the meeting.

Agenda Item 13
199th Commission Meeting
February 10, 2011

Congressional Liaison Report

This memo is to update ORSANCO's Government Relations Committee regarding the following important issues: 1) Recent changes in Congressional earmarking policies, 2) Recent changes in the congressional delegation within the Ohio River Basin and the Ohio River Basin Congressional Caucus, and 3) Priorities and strategies for 2011.

FY11 Appropriations

ORSANCO requested funding in FY11 for the Watershed Pollution Reduction Program. Former Senator Robert Byrd (D-WV) submitted a request for \$500,000, Senator Richard Lugar (R-IN) submitted a request for \$750,000, and Senator Sherrod Brown (D-OH) submitted a request for \$2,000,000. With the death of Senator Byrd, Senator Rockefeller (D-WV) sent a letter to the Appropriations Committee requesting that all of Senator Byrd's appropriations requests be honored as Senator Rockefeller's and funded at the amounts originally requested. Also with the death of Senator Byrd, a seat opened on the Appropriations Committee which has been filled by Senator Brown. Additionally, Senator Brown has been assigned to the Interior and Environment Appropriations Subcommittee, which writes the appropriations bill that provides funding for ORSANCO's projects.

As you are already well aware, in the recent national congressional elections Republicans won an overwhelming majority in the House of Representatives and gained seats in the Senate. Due to these changes, the House and Senate delayed action on passage of a final FY11 Omnibus Appropriations bill until March 4th when an agreement can be negotiated about how much spending should be included in the FY11 budget. All expectations are that there will be significant cuts in the FY11 budget over the FY10 budget.

The House of Representatives had already made it clear that they will oppose any earmarks being included in the Omnibus bill, as well as in all FY12 appropriations bills. During President Obama's State of the Union address in January he stated that he would veto any bills that contain earmarks.

On Tuesday, February 1, the Chairman of the Senate Appropriations Committee, Sen. Daniel Inouye (D-HI), reversed his staunch resistance to an earmark ban, and announced that in the FY11 Omnibus and the FY12 Appropriations bills there will be no earmarks (a.k.a. congressionally directed funding) as defined under Senate rules. Those rules state: *"congressionally directed spending item" means a provision or report language included primarily at the request of a Senator providing, authorizing, or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process.*

This is a very unfortunate blow to ORSANCO's funding agenda for FY11 and FY12, and may require the Commission to seek funding for the Watershed Pollution Reduction Program through other sources, such as federal grants or federal agency budget carve-outs. ORSANCO's congressional delegation can be a significant help in such efforts.

Additionally, the House and Senate have both declared that this will be a temporary ban for FY11 and FY12, so in late fall or early winter 2011 the House and Senate will likely announce if they will keep the ban on earmarks in FY13 or return to allowing earmarks.

Ohio River Basin Congressional Delegation

There have been significant changes to the make-up of the Members of Congress within the Ohio River Basin. In the Senate, newly elected are Dan Coats (R-IN), Rand Paul (R-KY), Mark Kirk (R-IL), Rob Portman (R-OH), Pat Toomey (R-PA), and Joe Manchin (D-WV).

In the House, newly elected are Larry Bucshon* (R-IN-8th), Todd Young* (R-IN-9th), Steve Chabot* (R-OH-1st), Bill Johnson* (R-OH-6th), Bob Gibbs* (R-OH-18th), Jim Renacci (R-OH-16th), Steve Stivers (R-OH-15th), Mike Kelly (R-PA-3rd), David McKinley (R-WV-1st), Morgan Griffith* (R-VA-9th), Diane Black (R-TN-6th), and Scott DesJarlais (R-TN-4th). * indicates replacing a member of the Ohio River Basin Congressional Caucus. In all cases the newly elected Member is a Republican replacing a Democrat.

It will be critical for ORSANCO in 2011 to aggressively reach out to all of the new Members of Congress within the Ohio River Basin to educate them about what ORSANCO does for their congressional districts and request their membership in the Congressional Caucus. With the losses in the House, the Caucus membership total is down to 11 members. It will also be critical to continue to grow the Ohio River Basin Congressional Caucus as both a tool to educate Congress about ORSANCO and the importance of the Ohio River, as well as a power block to garner support from for critical policy issues and problems involving federal agencies.

Additionally, the Caucus' Democratic Co-Chair, Rep. Steve Driehaus (D-OH-1st), lost his election, which means we will need to find a new Democratic Member of Congress to serve as Co-Chair with Rep. Shelley Moore Capito (R-WV-2nd). Unfortunately, Rep. John Yarmouth (D-KY-6th) politely declined our request for him to co-chair, but pledged to remain an active member of the Caucus. Rep. Mike Doyle (D-PA-14th) represents downtown Pittsburgh and the three rivers convergence that creates the Ohio River. He is also considered by most in Congress to be a moderate who can work with the other party. Alan Vicory and Steve Dye will be meeting with his congressional office staff in mid-February to discuss the Co-Chair position.

2011 Strategies

With the new make-up of Congress come new challenges, as well as new opportunities. The obvious challenge is going to be securing funding next year when there will be increased demand and competition. ORSANCO has strong support from several powerful Members of Congress and the Caucus. Those relationships can and should be used to help identify, request, persuade and secure funding through federal agency grant programs and partnerships.

Another concern will be efforts by the House Republicans to drastically reduce the federal budget by cutting deeply into programs they determine as non-essential. As is well documented, the House Republicans have no love loss for the EPA and its regulatory practices. When the House Budget Committee and House Appropriations Committee release their FY12 budget proposals this Spring, it is highly likely there be cuts to many EPA programs, including the CWA Sect. 106 account. ORSANCO will probably want to work with the Caucus to prevent those cuts from occurring, in particular because the new Chairman of the House Appropriations Committee, Rep. Hal Rogers (R-KY), is a member of the Caucus. Additionally, ORSANCO's Senate supporters, particularly Sen. Brown, will be able to help resist deep cuts to Sect. 106.

Through support from the Caucus and individual Senators, ORSANCO should continue to push for authorization legislation to develop a separate funding stream outside of EPA authority or

grants. This authorization strategy would also comply with the new House and Senate restrictions on earmarks and requirements that funding go to only programs that have congressional authorization. Most of the pieces of major and minor environmental legislation that were under consideration in Congress will now be reconsidered under the new Republican leadership in the House and tighter margins between sides in the Senate. Several large bills, such as the Chesapeake Bay Program Reauthorization bill, WRDA, and Climate Change legislation, will likely be bogged down in battles over scope of government and cost. There will likely be opportunities to move smaller, less costly bills, such as an ORSANCO programs authorization bill, because they will be less controversial and easier to pass through committees.

Additionally, it will be important for ORSANCO to continue to work with Congress to reverse the Coast Guard's determination that ORSANCO cannot receive complete (unredacted) incident reports. ORSANCO should work with its Senate supporters, as well as mobilize the Caucus to pressure the Coast Guard to change its position. Strategies include a request by Congress for the Coast Guard to do an internal Inspector General investigation, letters from Congress urging the Coast Guard to change its position, or including language in the Coast Guard's appropriations bill that directs them to release unredacted incident reports.