

OHIO RIVER VALLEY WATER SANITATION COMMISSION

MINUTES

**201st Commission Meeting
Melrose Hotel
Washington, DC
Thursday, October 13, 2011**

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Chairman Charles Duritsa, Presiding

Call to Order

Chairman Duritsa called the 201st meeting of the Ohio River Valley Water Sanitation Commission to order at 9:30 A.M. on Thursday, October 13, 2011.

Commissioner Duritsa led the Commission in the Pledge of Allegiance.

Quorum Call

Commissioner Frevert declared that a quorum was present (see Roster of Attendance, page 11).

Action on Minutes

ACTION: Motion by Commissioner Wayland, second by Commissioner Easterly and carried, that the minutes of the 200th meeting of the Commission and of the June 2011 Executive Session be adopted as presented.

Report of the Treasurer

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

The report indicates a balance of \$2,522,549 in accounts receivable due the Commission as of August 31, 2011. The balance represents \$1,151,525 due from Signatory States, \$1,248,656 due from Federal sources, and \$122,468 from other sources.

Additionally, the report indicates receipts of \$1,641,790, plus carryover of \$2,030,382, totaling \$3,672,172 through the end of August 2011. Of that amount, \$439,181 was expended on programs, leaving \$3,232,992 available for the continuation of ORSANCO's programs.

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

Recognition of Service

Commissioner Conroe presented the following resolution for adoption:

RESOLUTION 5-11

Recognition of Service

Thomas Lee Servatius

WHEREAS, Thomas Lee Servatius has served as a Commissioner to the Ohio River Valley Water Sanitation Commission representing the state of New York from 2002 until 2011, and

WHEREAS, Thomas Lee Servatius has given unstintingly of his time, serving as member and chairman of several Commission Committees, most recently the Research Committee, and

WHEREAS, Mr. Servatius served as Chairman of the Commission from July 1, 2006 through June 30, 2007, and

WHEREAS, Mr. Servatius has used his background and expertise as an educator to act as an advocate for environmental education, and

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

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

ACTION: Motion by Commissioner Conroe, second by Commissioner Wilson and carried, to adopt Resolution 5-11 as presented.

Report of the Chairman

Commissioner Duritsa welcomed everyone to the 201st Commission meeting and thanked Commissioners for accepting committee assignments. Commissioner Duritsa noted ORSANCO's role and the importance of continuing the debate on interstate pollution. His report focused on the broad scope of relationships the Commission has developed over the years and the importance of maintaining and building new relationships to promote and achieve positive results for the Ohio River Basin. He noted the continued importance of ORSANCO's role in assisting other entities such as the basin groups, volunteer monitoring groups, and events utilizing the River such as triathlons.

Commissioner Duritsa highlighted several challenges for the Commission, including integration of water resources services, understanding the presence of endocrine disruptors, and taking the lead on basin scale nutrient reductions. Commissioner Duritsa concluded by emphasizing the importance of ORSANCO remaining relevant, healthy, and vibrant.

Report of the Executive Director

Alan Vicory stated that this, the 201st Commission meeting, would be his last meeting as Executive Director. Mr. Vicory will enter retirement status with respect to ORSANCO and end his employment on January 6, 2012 and accept an employment opportunity in the private business sector. Mr. Vicory remains passionate about water quality, and this position will allow him to continue playing a role in water quality improvement.

Mr. Vicory noted that he has been with ORSANCO for 32 years, 24 of which were served in the role of Executive Director. Mr. Vicory recognized the role of the current and past ORSANCO staff in the many accomplishments achieved throughout the years.

Mr. Vicory concluded by thanking Commissioners for the opportunity to serve the Commission for the past 32 years and noted that staff will be working through transitional issues.

ACTION: Motion by Commissioner Tomes, second by Commissioner Easterly and carried, that upon Mr. Vicory's retirement from ORSANCO, Peter Tennant be appointed as acting Executive Director and be given the authority to make appropriate interim operational and staff adjustments.

Special Joint Address

Mr. Harris Sherman, Under Secretary for Natural Resources and Environment, USDA, and Mr. Bob Perciasepe, Assistant Administrator, US EPA, jointly provided very positive remarks concerning the role of nutrient credits trading as one component of an integrated suite of programmatic approaches to achieving needed nutrient reduction in impacted waters. Their comments focused on the importance of an effective interstate nutrient trading program in the Ohio River Valley. They both voiced appreciation for ORSANCO's leadership efforts and role in the success of this program.

Report on Congressional Visits

Commissioners reported on delegation visits to Capitol Hill. These meetings confirmed widespread support for ORSANCO. The number of meetings held with respective members of Congress and/or Senators present was unprecedented.

It was also reported that progress appears to be occurring in resolving the issue of ORSANCO not receiving information and/or complete spill reports from the National Response center. US EPA is advocating on behalf of ORSANCO. Action was taken to develop and have the Executive Committee adopt a suitable resolution expressing its authority and need to buttress US EPA's efforts.

Mr. Steve Dye provided a status report on Congressional Caucus membership, indicating that efforts continue to find a Co-Chair and to add new members. He also continues efforts to explore the appropriate legislation for ORSANCO funding. Mr. Dye mentioned the importance of future consideration by the Commission of an appropriate Bill to change the Compact to include water resources authority. The importance of communicating to Congress that the states not take a disproportional cut to their collective portion of 106 funding due to possible funding reductions was emphasized.

ACTION: Motion by Commissioner Easterly, second by Commissioner Nally and carried, authorizing the Executive Committee to work with staff to create and adopt a resolution expressing its spill response authority and role.

Report of the Water Quality Review Committee

Commissioner Bruny reported that the Water Quality Review Committee met by conference call on September 14 to review the status of the topics on its agenda and to identify needs for additional ORSANCO activities.

The Committee reviewed a status report on the topics it is tracking (Attachment 1). Developments regarding several of the topics led to further discussion:

Oversight of ORSANCO Protocol for Addressing Interstate Inconsistencies

The NPDES Subcommittee has identified possible inconsistencies in states' procedures for developing permit limits for water quality criteria that apply at drinking water intakes. Staff has been directed to compile those procedures. This could potentially lead to use of the Protocol.

Development of Marcellus Shale

The Committee had previously identified the need for a situation report on this topic. As development of the Utica Shale is now beginning, the Committee believes that the topic name should be changed to include all shale gas development. Staff is directed to prepare a situation report to be presented at the February Commission meeting.

Differences in states' consumption advisories for Ohio River fish

The Protocol has been signed by two states so far. The Executive Director should sign the Protocol for ORSANCO and inform the states that this has been done encouraging the remaining states to sign.

ORSANCO's role in implementing the Action Plan for Reducing Hypoxia in the Gulf of Mexico

The Commission's original role was to represent the Ohio River Basin states in the activities of the Hypoxia Task Force. Since 2003, ORSANCO has convened a Sub Basin Steering Committee made up of representatives of state agriculture, conservation, and environmental agencies from states within the Ohio River Basin. Ohio, Kentucky, and Indiana are now members of the Task Force. The state members recently reaffirmed the value of the Sub Basin Team as a forum for the different agencies to communicate and collaborate.

Hydropower development on the Ohio River- assurance of licensee compliance to protect dissolved oxygen levels

Two Hydropower facilities on the Ohio River are not making dissolved oxygen data available to ORSANCO on a timely basis, as is required by their licenses. Staff will formally notify the operators that they are in violation of the licenses prior to informing the Federal Energy Regulatory Commission.

The Committee added a new topic to its agenda – the Water Quality Trading Project. Current status is as follows:

Interstate Water Quality Trading Program

ORSANCO is a partner in the project, led by the Electric Power Research Institute, to develop an interstate water quality trading program for the Ohio River Basin. If the project should result in establishment of a continuing program, the role of the Commission in that program will need to be defined.

The most recent development regarding the trading program is an exchange of correspondence between Alan Vicory and Bob Perciasepe of US EPA which addresses the sort of incentives that might be offered to point source dischargers who participate in trades prior to the adoption of regulatory drivers.

Habitat

The Committee addressed habitat alteration on its last call and recommended that information on this topic be presented to the Technical Committee. Those presentations were given at the June Technical Committee meeting. As a follow-up, the Committee discussed whether there appeared to be a need for specific Commission activities in this area. Staff was directed to prepare a list of types of habitat alteration together with programs in place to control those alterations. This will allow the Committee to develop specific recommendations.

Nutrient Reduction Strategies

Staff presented a fact sheet on state nutrient reduction strategies developed under the Gulf of Mexico Hypoxia Task Force. While such strategies are being developed on a state by state basis, the participants in implementing the strategies include local, state, and federal agencies, as well as private groups such as producer groups and trade associations. Under the Hypoxia Action Plan, state strategies are called for by 2013. All of the affected states in the Ohio River Basin – Illinois, Indiana, Kentucky, Ohio, and Tennessee (West Virginia and Pennsylvania are not

included among the 12 states with the greatest nutrient loadings to the Mississippi River Basin)- are making progress with their strategies.

US EPA has published a Request for Proposals through the Gulf of Mexico Program Office for projects that would support development and implementation of state nutrient reduction strategies. The Ohio River Sub Basin Team members have indicated that they would prefer to have ORSANCO submit a proposal rather than submit individual proposals. ORSANCO staff is currently soliciting ideas from the states which will quickly be developed into a proposal. The submittal deadline is September 30.

The Water Quality Review Committee has been included in correspondence leading to the submittal of this proposal. The proposal was submitted on September 30; it included seven components:

- 1. Prioritization of watersheds*
- 2. Nutrient load assessment*
- 3. Modeling*
- 4. Monitoring*
- 5. Outreach*
- 6. Reporting*
- 7. Contractor assistance to states*

In addition, the Committee directed staff to provide a status report on the states' development of their strategies. A particular area identified for Commission activities in support of state strategies was identification and nutrient monitoring of priority waterbodies.

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

Report of the Technical Committee

Commissioner Frevert, Technical Committee Chairman, reported that the Technical Committee met on October 11-12, 2011. A complete report of the meeting (Attachment 2) was provided in the meeting packet.

Several US EPA Headquarters staff members attended the meeting to participate in discussions of efforts in which they were involved. The Committee is grateful to former member Ellen Gilinsky, now a senior advisor at US EPA, for providing an update on topics of concern to the Committee and for arranging for the participation of other agency staff. The Committee also heard excellent presentations from Alex Dunn, Executive Director of the Association of Clean Water Agencies (formerly ASIWPCA) and from Dale Robertson of USGS.

The Technical Committee offered the following recommendations:

1. The proposed procedure for consideration of variance requests should apply to all such requests, not just to those for Section VI.G of the Commission Standards.
2. A representative of the POTW Advisory Committee should attend the upcoming PIACO meeting to discuss the efforts of the individual POTWs to educate the public on wet weather issues.
3. The Commission should write a letter in support of efforts by the Corps of Engineers to assure adequate monitoring of water quality by hydroelectric plant operators.

The Committee learned that this was the last meeting for two members, Mike Apgar of the POTW Committee and Jack Wang of the Water Users Advisory Committee. Mike and Jack have been very active members of the Committee and have contributed much to our activities.

After the meeting, we learned that Bill Guertal, the USGS representative on the Committee, has been named the 2011 recipient of the Survey's Outstanding Leadership award. This is an extremely high honor for Bill who currently serves as chief of both the Indiana and Kentucky Water Science Centers.

ACTION: Motion by Commissioner Frevert, second by Commissioner Potesta and carried, authorizing staff to draft a letter to hydropower licensees requesting ORSANCO's participation in coordination with the Corps of Engineers in meeting their license's monitoring and reporting requirements.

ACTION: Motion by Commissioner Frevert, second by Commissioner Tomes and carried, to accept the Report of the Technical Committee.

Report of the Pollution Control Standards Committee

Commissioner Easterly, Committee Chairman, reported that the Pollution Control Standards Committee met by conference call on September 20, 2011. The purpose of the call was to discuss the status of consideration of comments received in the review of the Commission Standards and to review a proposed document on procedures for considering requests for variances to the Commission's mixing zone requirements.

Review of Commission Standards

The Committee heard reports from work groups which had been assigned to address comments raised on certain provisions of the Commission standards. Those reports indicated the following:

Bromide: Studies will be undertaken to evaluate the relationship between bromide levels at drinking water intakes and disinfection byproducts in finished drinking water. This will take about a year.

Temperature: Some recommendations regarding temperature criteria for aquatic life use protection could be completed by the end of 2011. Additional work group participants are needed to address the issue of human health protection.

Mercury: The work group has requested that staff develop certain information which will be discussed on a conference call in late October. It will be determined at that time if recommendations will be completed in time for inclusion in this review.

Ammonia: US EPA expects to issue revised criteria for ammonia in the latter half of 2012; this will be too late for consideration by the Commission in the current review.

Pathogens: US EPA is scheduled to issue draft revised criteria for pathogens this winter, with final adoption scheduled for October 2012. This would be too late for inclusion in the current review; however, the Committee may consider certain adjustments to the current Commission pathogen standards in this review. This matter is expected to be discussed at the October 11-12 meeting of the Technical Committee.

Selenium: US EPA intends to issue new draft criteria in 2012; a date for final adoption is uncertain. Selenium criteria in the Commission standards were published by US EPA in the 1980s and are considered out of date. Those criteria have been retained through the past several reviews because it was believed that new national criteria were imminent. The Committee is reconsidering this position, and would invite comments from the all Commissioners on the prospect of removing the current selenium criteria, thereby relying on the narrative criteria as the basis for selenium controls.

The Committee also considered questions raised by Commissioner Frevert regarding the organization of the Standards document. Several comments concerned the authority of the Commission to adopt standards for pollution sources other than sewage or industrial waste. This matter will be referred to Legal Counsel.

Commissioner Frevert identified instances where language on development of permit limits is contained in Section IV – Water Quality Criteria – when it would more logically be included in Section V – Wastewater Discharge Requirements. He also identified possible confusion in the restatement of the “four freedoms” in three places within the Standards document. The Committee concurred with these comments and directed staff to work with Commissioner Frevert to develop improved language.

The Committee noted that, while the current standards provide for site specific water quality criteria, procedures by which such criteria would be approved are lacking. The Pollution Control Standards Committee requests that staff work with the Stream Criteria Subcommittee to develop a document on procedures for review and approval of site specific criteria.

Consideration of Requests for Variances

The Committee reviewed a document that had been prepared by the NPDES Subcommittee entitled *Mixing Zone Requirements and Application Process*. This document is being sent to the Technical Committee for consideration at its October 11-12 meeting. The NPDES Subcommittee expressed concern that the document does not contain criteria for determining the affordability of a particular treatment option.

The Pollution Control Standards Committee believes that this document is of significant concern to the Commission and that it should undergo a thorough review. It is therefore recommended that, when the Technical Committee has completed its review, that the resulting document be distributed to all Commissioners for their review, with comments to be directed to the Pollution Control Standards Committee on or before December 1, 2011.

The Commission received a request for a variance to Section VI.G of the Standards on September 30. We understand that the discharger also intends to request a site specific water quality criterion for mercury. This will mean that procedures for consideration of requests for site specific criteria will need to be developed in the near future.

ACTION: Motion by Commissioner Easterly, second by Commissioner Frevert and carried, to accept the Report of the Pollution Control Standards Committee.

ACTION: Motion by Commissioner Paylor, second by Commissioner Nally and failed to carry (8 yes, 10 no), to suspend the effective date of the adopted TDS Standard pending a review of the results of the ORSANCO/River Users Advisory Committee’s study to characterize dissolved solids concentrations in the Ohio River.

Commissioner Paylor inquired as to what mechanism might be in place to review the TDS Standard upon the completion of the study. Commissioner Duritsa indicated that the Pollution Control Standards Committee would be the proper mechanism to review the Standard based on outcomes of the study.

ACTION: Motion by Commissioner Flannery, second by Commissioner Paylor and carried, that the Pollution Control Standards Committee reports back to the Commission on both the occasion of the next triennial review, with respect to the TDS Standard, and if outcomes from the study provide information causing the Commission to review the Standard, or on the occasion of the completion of the study, that any outcomes provide cause for review of the merit of the Standard.

Report of the Water Resources Committee

Commissioner Potesta, Committee Chairman, reported that The Water Resources Committee met via conference call on September 26, 2011. Representatives from six states and the US Army Corps of Engineers participated on the call. The agenda focused on two main topics: 1) Review of comments on a draft Governors' Memorandum of Understanding that would serve as the states' recognition of the Commission's role in water resources management, and 2) Future funding of ORSANCO's Water Resources Committee and its associated activities.

The draft MOU was sent to the Committee several weeks prior to the call with the request that members review and provide comments on the agreement. The Committee recommended only minor adjustments to the language of the document and agreed that it was now an appropriate time to begin the process that would lead to the eventual execution of the agreement. Staff was directed to make the final edits and work with the states individually to identify the best strategy to move the MOU forward.

With regards to funding, staff provided an update on efforts to secure philanthropic support for the Commission's water resources initiative. The Committee was formed with the understanding that it would be financially self-supporting as the Compact limits the scope of the Commission's activities to matters pertaining to water quality and does not directly extend to water quantity issues. Staff is in the process of submitting grant applications to four foundations in the Pittsburgh area. These include the Heinz Endowments and the Benedum, Colcom, and R.K. Mellon Foundations. Applications are also being submitted to the Nippert Foundation in Cincinnati and the Nina Mason Pulliam Charitable Trust in Indianapolis. Additional potential funding partners continue to be pursued. The initial grant request seeks \$400,000 for a three-year effort which would provide operational support of the Water Resources Committee, as well as support for the completion of studies to characterize the water resources management needs in the Ohio River Basin.

The prospect for the states to provide additional funding in support of the Commission's water resources efforts was also discussed. Comments reflected the challenges posed by the current economic climate; however, the general sentiment indicated a willingness to consider state contribution levels comparable to those previously provided to the Ohio River Basin Water Resources Association. This dialogue will continue to evolve as the process to advance the Governors' MOU in support of the Commission's role in water resources management unfolds.

ACTION: Motion by Commissioner Potesta, second by Ron Schwartz and carried, to accept the Water Resources Committee report as presented.

Report of the ORSANCO/River Users Program Advisory Committee

Commissioner Potesta, Committee Chairman, reported that during the June Commission meeting, the Commission approved the release of \$55,000 from the ORSANCO/Ohio River Users Fund for the completion of a study to characterize total dissolved solids and many of its major constituent parameters in the Ohio River. Since that time, several important improvements have been made to the study plan. Of particular note was the recognition that the Rivers Users Program TDS study shared common objectives with a bromide study proposed by the Water Users Advisory Committee. Recognizing the similarities in sampling design, the two committees agreed to join efforts to facilitate a more robust data collection effort.

The new sampling plan now calls for weekly monitoring at 15 water intake locations (up from the originally planned 5 sites) for a period of one year. This includes 10 locations spread out longitudinally along the Ohio River and five sites on tributaries of interest (Allegheny, Monongahela, Beaver, Muskingum, and Big Sandy Rivers). Sampling participants were identified through assistance from the Water Users and Power Industry Advisory Committees.

As a further enhancement to the study plan, the joint effort allows for additional parameters to be analyzed. With the purchase of an ion chromatograph, which will allow staff to run many of the associated analyses in-house, the analyte list was able to be expanded to 10 individual dissolved solids constituents plus analysis of TDS. In addition, the raw water sampling will be coordinated with the utilities' trihalomethane (THM) sampling to evaluate the relationship between bromide levels in ambient water and the presence of brominated disinfection byproducts in finished water. This comparison may prove very beneficial as the Commission contemplates the potential need for an ambient water quality criterion for bromide.

The ion chromatograph is scheduled to be delivered this week to the ORSANCO offices. Staff will take the next couple of weeks to set up the equipment and finalize the sampling and analytical procedures. Sampling is anticipated to begin by early November.

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

Report of the Water Users Advisory Committee (WUAC)

Committee Chairman Jack Wang reported that the Committee met on September 27-28 to discuss several issues. The Committee endorses a comprehensive bromide study be completed and accepts the delay in including bromide in the upcoming Pollution Control Standards triennial review due to the importance of this study. Committee members are actively involved in the design and implementation of sampling for the study.

The Committee also discussed the need for a formal data release policy. The Committee has been a major data source to ORSANCO and would like to continue this practice. However, due to concerns of more media exposure, utilities are more cautious of providing data. A formal data release policy will help alleviate some of these concerns. The Committee recommends that ORSANCO staff draft such a policy with the Committee's input.

Mr. Wang indicated that this would be his last Commission meeting as Committee Chairman and thanked the Commission for the opportunity. Mr. Ron Bargiel, of Pennsylvania American Water, will become Committee Chairman.#

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

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

Mr. Mike Apgar, Chairman of the POTW Advisory Committee, directed Commissioners' attention to the POTW Recreation Use Standards Position Statement (Attachment 3) document in the meeting folder. The Committee requested consideration of its four specific proposed changes to the recreation Standards outlined in the paper.

The Committee also discussed the development of a "white paper" documenting additional data and validation for the requested recreation Standards changes. This paper will be presented to the Pollution Control Standards Committee prior to the February 2012 Commission meeting for consideration.

Mr. Apgar closed by announcing that this would be his last meeting and thanked the Commission for the opportunity to serve. He also reported that MaryLynn Loder of Cincinnati Metropolitan Sewer District will succeed him as Committee Chairman.

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

Report of the Public Interest Advisory Committee (PIACO)

Eriks Janelsins, Committee Chairman, reported that the Committee will meet on November 14-15. The major discussion point will be to identify meaningful methods to better engage the public in the Pollution Control Standards review process.

The POTW Chairman will attend the PIACO meeting to discuss how PIACO and ORSANCO staff can supplement POTW educational efforts to better inform the public of wet weather related issues and the cost of potential remedies.

The Committee has begun conducting more frequent conference calls and has improved internal communications through email. The Committee supported ORSANCO's public information staff's efforts of compiling contact information for constituents throughout the Basin which will be used for future communications.

The Committee hopes to take a more proactive role in working with Commissioners, staff, and advisory committees to improve the scope and effectiveness of communications.

ACTION: Motion by Commissioner Frevert, second by Commissioner Wayland and carried, to accept the Committee's report as presented.

Upcoming Meetings

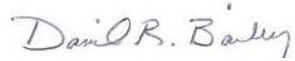
Chairman Duritsa noted the following schedule for upcoming Commission meetings:

- February 2012 Cincinnati, OH
- June 2012 TBD

Adjournment

The 201st Commission meeting was adjourned at 11:40 A.M.

Prepared by:



Date: December 1, 2011

David Bailey
Director of Administration

Approved by:



Date: December 9, 2011

Toby Frevert
Secretary/Treasurer

ROSTER OF ATTENDANCE
201st Commission Meeting
October 13, 2011

Commissioners

Illinois	Toby Frevert Phillip Morgan Marcia Willhite (PROXY for Lisa Bonnet)
Indiana	Thomas Easterly
Kentucky	Sandy Gruzesky (PROXY for Leonard Peters) LaJuana Wilcher (PROXY for Lt. Governor Daniel Mongiardo)
New York	Douglas Conroe Mike Wilson
Ohio	Paul Tomes Scott Nally
Pennsylvania	Charles Duritsa Greg Phillips Ron Schwartz (PROXY for Michael Krancer)
Virginia	Robert Wayland David Paylor
West Virginia	David Flannery Ronald Potesta Scott Mandirola (PROXY for Randy Huffman)
Federal	Kenneth Komoroski Stuart Bruny
Legal Counsel	Ross Wales
US EPA	Ed Ambrogio

Executive Director

Alan Vicory

Guests

Mike Apgar – Chairman, POTW Advisory Committee; Erich Emery – US Army Corps of Engineers; Eriks Janelsins – PIACO; Steve Dye – McCallister & Quinn; Melanie Davenport – Virginia DEQ; Jack Wang – Chairman, Water Users Advisory Committee; George Elmaraghy – Ohio EPA; Ellen Gilinsky – US EPA; Bob Perciasepe – US EPA; Harris Sherman - USDA

Staff

David Bailey, Jason Heath, Peter Tennant, Jeff Thomas, Jeanne Ison, Tracey Edmonds, Sam Dinkins

ORSANCO Water Quality Review Committee
Status of Issues
October, 2011 Update

Active Issues

(Status reported routinely)

1. Oversight of ORSANCO Protocol for Addressing Interstate Inconsistencies
 There are no active applications of the Protocol. An area of possible application remains state procedures for determining permit limits for Ohio River discharges. ***The NPDES Subcommittee has requested that staff compile states' policies regarding stream criteria that apply at drinking water intakes. It is believed that there are inconsistencies in those policies.***

2. Oversight of ORSANCO Watershed Initiative/ Role on Tributaries
 The White Paper on the Commission's role in the entire watershed was updated in 2009; it should be reviewed again as the Commission's role in water resources management evolves.

3. Relationship with the Big Sandy River Coalition
 The Commission is administering grants from Kentucky, Virginia and West Virginia to support the Coalition. The Coalition has hired a new watershed coordinator but is still lagging in utilizing the grant funds. ORSANCO recently hosted a call among the three states and the Coalition to encourage the Coalition to move expeditiously to utilize the funding support.

4. Development of Marcellus Shale
 A situation report on this matter is needed.
The Committee agreed that this topic should be expanded to include all oil and gas drilling, and that a situation report should be presented to the Commission at its February meeting.

5. Differences in states' consumption advisories for Ohio River fish
 A written protocol is being circulated among the main stem states for signature; two have signed so far

6. ORSANCO role in implementing the Action Plan for Reducing Hypoxia in the Gulf of Mexico
 The Commission's original role was to represent the Ohio River Basin states in the activities of the Hypoxia Task Force. Ohio, Kentucky and Indiana are now members of the Task Force. ***The state members recently reaffirmed the value of the Sub Basin Team which ORSANCO has convened for the past seven years.***

Inactive Issues

(Status reported when there are new developments)

1. Oversight of the Watershed Pollutant Reduction Program
 Activities in this program are on hold as federal funding has run out.

2. Hydropower development on the Ohio River- assurance of licensee compliance to protect dissolved oxygen levels.
The only current activity involves relicensing of the facility at Markland Dam. *Two of the hydropower operators have not maintained dissolved oxygen monitoring this year; staff has contacted the Federal Energy Regulatory Commission about this seeming violation of license conditions.*
3. Total Maximum Daily Loads- ORSANCO role
ORSANCO's role in providing data, assessment, and interstate coordination is well understood. Current activity involves TMDLs for pathogens and PCBs.
4. Interstate Water Quality Trading Program
ORSANCO is a partner in the project, led by the Electric Power Research Institute, to develop an interstate water quality trading program for the Ohio River Basin. If the project should result in establishment of a continuing program, the role of the Commission in that program will need to be defined.

**Report of the Technical Committee
197th Meeting
October 11-12, 2011**

The 197th meeting of the ORSANCO Technical Committee was held on October 11-12 in Washington, DC. Seven states, three federal agencies and four Commission advisory committees were represented.

Chief Engineer's Report

Mr. Vicory reported on a number of items:

Mississippi River Watershed Initiative- ORSANCO was invited to participate in a multi-stakeholder initiative for the Mississippi River Basin, similar to the Ohio River Basin Alliance. The idea of a joint meeting of ORSANCO and the Upper Mississippi River Basin Association was discussed by the representatives of the two organizations.

Total Dissolved Solids – Issues surrounding the process by which the Commission adopted a 500 mg/L criterion for dissolved solids have been resolved and the criterion is now in effect.

Emerson Electric Settlement – the Kentucky Division of Water has directed that \$20,000 of an enforcement settlement with Emerson Electric be directed to ORSANCO to improve water quality monitoring in the Maysville area.

Ashland ODS site – a new Organics Detection site has been established at Ashland, Kentucky. The site has already played a role in monitoring the effects of a spill to the Big Sandy River.

Water Resources Committee – the Committee met by conference call in late September and approved a draft Memorandum of Understanding for signature by the state Governors.

Bacteria TMDL – the Commission is carrying out bacteria monitoring of Ohio River tributaries in support of the development of a TMDL for the Ohio River.

Variance Request – a request has been received from PPG for a variance to Section VI.G of the Commission Standards.

US EPA Update

Ellen Gilinsky, former Technical Committee member from Virginia who is now a senior advisor to the US EPA Assistant Administrator for Water, briefed the Committee on a number of items:

- **Nutrients**
- **Biocriteria/ Nutrients Workshop**
- **Water Quality Standards Regulation Revision**
- **Post- Construction Stormwater Rule**
- **Waters of the US**
- **Wet Weather**
- **Drinking Water**

ACWA Update

Alexandra Dunn, Executive Director and General Counsel of the Association of Clean Water Agencies (formerly ASIWPCA), provided updates on several issues on which the Association is working with US EPA:

- **Review of CWA Section 319**
- **MOAs/ MOUs**
- **TMDL Strategic Plan**
- **Expansion of the Scope of the NPDES Program**
- **General Permit for Pesticides**
- **Stormwater**
- **Nutrients**
- **Budget**

Nutrient Issues

Staff presented a status report on the Wabash River project. One year of data has been collected; nutrient concentrations vary widely and appear to vary with stream flow. Impacts of the Wabash River on dissolved oxygen levels in the lower Ohio River have not been evident.

Dale Robertson of USGS provided a report on the latest applications of the SPARROW model to the upper Midwest. The model results indicate which watersheds contribute the highest loadings of nutrients to downstream waters.

Staff presented a progress report on development of numerical nutrient criteria for the Ohio River. A panel of experts is being assembled to assist staff in this effort.

Staff presented a summary of a proposal that was recently submitted to US EPA. The project would provide assistance to states in the preparation of nutrient reduction strategies.

An update on the development of an Ohio River Basin Water Quality Trading Program was also presented.

ORSANCO Pollution Control Standards – 2011-12 Review

Staff briefed the Committee on the consideration of comments received in the current review of the ORSANCO Pollution Control Standards. Special work groups were formed to address issues involving bromide, mercury and temperature. The work groups on bromide and mercury have recommended additional studies and will not propose revisions for this review. The temperature work group will propose revisions in time for this review.

Report of the Stream Criteria Subcommittee

The Stream Criteria Subcommittee met by conference call on September 6. The Subcommittee heard updates on revisions to EPA criteria. Draft revised criteria for chlorides and selenium will be issued in 2012. Final criteria for ammonia and pathogens are expected to be adopted in 2012. It is anticipated that none of these criteria revisions will be available for adoption in this review of the Commission Standards.

Report of the NPDES Subcommittee

The NPDES Subcommittee met by conference call on August 25. The Subcommittee discussed the implementation of ORSANCO's recently adopted criterion for total dissolved solids which applies at drinking water intakes. The states believe that there are differences among them in how such criteria are applied. Staff was requested to compile the states' policies and/or procedures on this.

The Subcommittee reviewed a proposed procedure for consideration of requests for variances. Concern was expressed that the proposed procedure did not identify criteria for making affordability decisions.

The Subcommittee provided input to a proposed staff study to determine impacts of FGD scrubber waste.

The Technical Committee considered the proposed protocol for consideration of variances. Several members suggested that there should be a single procedure for consideration of all variance requests, not just those to Section VI.G.

Pathogens

Sharon Napier of US EPA provided an update on the development of new pathogen criteria for protection of recreational use. It is EPA's current thinking that the 1986 geometric mean criteria for e coli (fresh waters) and enterococcus (marine waters) will be retained, but that clarification will be provided on the application of the criteria, including the period for the geometric mean and the use of the single sample maximum.

Mike Apgar presented recommendations from the POTW Committee that the Commission revise its Standards to use a six month geometric mean rather than a 30 day mean, eliminate the single sample maximum, and allow for suspension of recreational use under certain high flow conditions.

It was suggested that a member of the POTW Committee attend the upcoming PIACO meeting to discuss the efforts by individual POTWs to educate the public on wet weather issues.

Ohio River Water Quality Assessment

Staff presented the schedule and approach for the 2012 Ohio River assessment. The initial assessment will be completed by the end of 2011 in order to allow all of the states to incorporate it in their 305(b) reports. The final written report will be presented to the Technical Committee in time for approval at the June, 2012 meeting.

Staff presented plans for using Ohio River Basin data from the National Assessment of Rivers and Streams to carry out a basin wide assessment. US EPA will be conducting a national assessment of the data and will also do some regional assessments but will not be assessing the results on a river basin basis.

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.

The Committee learned that this was the last meeting for two members, Mike Apgar of the POTW Committee and Jack Wang of the Water Users Advisory Committee.

Area Contingency Planning

Staff reported on activities that will be carried out in support of contingency planning for spills and other environmental emergencies in the Ohio River Basin. These activities will be supported by US EPA.

POTW Recreation Use Standards Position Statement

Prepared for:

ORSANCO Technical Committee Meeting (October 11-12, 2011)

ORSANCO Commissioners Meeting (October 13, 2011)

The POTW Advisory Committee is unanimously requesting that the recreation standards to protect the Ohio River be included in the October 2012 triennial review. Our recommendations on what changes are needed are presented in this statement. This statement also reiterates the technical basis for why these revisions are appropriate and more fully articulates the POTW position that was presented to the Technical Committee.

With the creation of EPA in 1972 and the work of the ORSANCO Commissioners since 1948, improvements in the nation's waters and the Ohio River have been phenomenal. The POTWs are true environmentalists in this regard. No one has done more to protect the environment after the passage of the Clean Water Act in 1972 than POTWs. Our Utility directors and staff care about the environment and have made a big difference in the quality of our nation's waterways. POTWs will continue to make a difference through our on-going efforts to reduce pollutants from sources within our jurisdiction.

SUMMARY OF RECOMMENDED CHANGES

The members of the POTW Committee are unanimous in their opinions that the need for revised recreation standards is a top priority to continue their environmental leadership. Specifically, the POTW members are recommending the following revisions to ORSANCO's recreational use standards with respect to *E. coli* criteria:

- Adopt *E. coli* as the preferred indicator bacteria for the river;
- Apply the geometric mean criterion over the recreation season rather than monthly (consistent with EPA clarifications to the 1986 criteria and current thinking on new criteria);
- Modify the Single-Sample Maximum criterion to a "statistical threshold value" that allows 25% of the season's measurements to exceed 235 colony forming units per 100 milliliters (consistent with current EPA thinking on new criteria); and,
- Addition of a temporary use suspension based on stage or flow for when conditions in the river are not safe for recreation.

REVISIONS ADDRESS COMMISSIONERS' PREVIOUS CONCERNS

These revisions are in concert with the Commission's efforts to protect the Ohio River and are consistent with EPA's science and policy. Revisions to ORSANCO's recreation use standards were first proposed in 2005. At that time, the Commission identified three needs that prevented implementing the revisions: 1) more information on recreational uses of the Ohio River; 2) defensible criteria; and 3) better public understanding of the need for changes to the standards. In the intervening six years, EPA, ORSANCO and the Utilities have been active in collecting more information, conducting more sampling and engaging in more public outreach. We believe that these needs have been addressed and that moving forward with standard revisions is both appropriate and defensible.

ORSANCO conducted a recreational use study in 2008-2009. This study resulted in a better understanding of the types of recreation favored by users in the Ohio River, how frequently users recreated, and what factors influenced decisions about recreation. The Allegheny County Sanitary Authority (ALCOSAN) and the Metropolitan Sewerage District of Greater Cincinnati (MSDGC) conducted their own recreational use surveys and found similar results to the ORSANCO study.

EPA has completed new epidemiological studies as part of the BEACH Act (Beach Environmental Assessment and Coastal Health Act of 2000) that confirm and update previous studies relating *E. coli* levels to illness risk. These studies, along with recent information on other recreation-related topics (e.g. temporary suspension of recreation use when it is not safe), address the defensibility of the standard revisions we are proposing.

The POTWs will be developing the technical foundation for the standard revisions in a white paper for the Commissioners in January 2012. We believe the majority of the public should support our recommendations. This is because we have collected additional data, built controls (partnering with non-governmental organizations on occasion) and engaged the public to inform them of our activities and our efforts to comply with federal and state consent decrees on sewer overflows. What we've learned from these efforts are: we have better information on actual recreation; the impact of background pollution on water quality can be so large that it masks reductions in pollution discharged by POTWs; our ratepayers are concerned about our escalating costs; and we are receiving significant political pushback as we implement these long-term, highly intensive capital projects.

IMPACT OF NOT ACTING WILL HAVE SUBSTANTIAL ECONOMIC IMPACT

POTWs have a fiduciary responsibility to spend money wisely. Many communities along the Ohio River have been addressing their combined and sanitary sewer overflows through Federal Consent Decrees or Administrative Orders. POTWs are facing enormous costs to implement these wet weather controls. However, we are also facing future unfunded mandates related to nutrient control, more stringent municipal separate storm sewer system (MS4) permits, and potential action with respect to emerging contaminants (such as personal care products) that will require more investment.

Revising the recreational use standards will provide a more attainable target for these capital programs and may help make these costly programs easier to bear. However, this is not the only reason we think the changes we are suggesting are needed. The science and studies from across the country support these changes. The proposed revisions are consistent with EPA's current thinking on what their new recreational criteria will be. Most importantly, we believe the revisions will capture the unique factors affecting safe recreation in flowing rivers like the Ohio River.

Our customers have felt the financial burden of the Clean Water Act requirements being demanded of POTWs through a seemingly never-ending series of alarmingly high rate increases.

We've worked hard to educate the public as to why the rate increases are needed and to garner their support for the programs and control plans we've developed. We have a rapport with our customers that we will continue to leverage so that we can educate them on why the changes to the standards are appropriate - the need for consistency with the science and with EPA's recent information on their recreational use criteria and how the revisions will align our investment in wet weather controls with periods that are truly safe for recreating. We think the overwhelming majority of our customers will be pleased that we are spending their money thoughtfully and efficiently for maximum benefit rather than being forced to spend money on controls that offer

little benefit and are futile efforts at complying with a recreational standard that is not grounded in well-established science or current policy.

The white paper we are developing provides a comprehensive background on the technical reasons for each of the revisions we're requesting and will serve as a common point of reference for each POTW community to talk with their customers about the revisions to the standards. We will provide this paper to you prior to the February 2012 meeting for your use as well. We believe that October 2012 is the right time to make the revisions we're recommending and will be pleased to discuss any aspect of our recommendation and associated materials at any time between now and the next meeting in February 2012.