

**OHIO RIVER VALLEY WATER SANITATION COMMISSION**

**MINUTES**

**204<sup>th</sup> Commission Meeting  
The Brown Hotel  
Louisville, Kentucky  
Thursday, October 11, 2012**

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## MINUTES

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**Chairman Kenneth Komoroski, Presiding**

### Call to Order

Chairman Komoroski called the 204<sup>th</sup> meeting of the Ohio River Valley Water Sanitation Commission to order at 9:40A.M., Thursday, October 11, 2012.

Commissioner Komoroski led the Commission in the Pledge of Allegiance.

### Quorum Call

Commissioner Easterly declared that a quorum was present (see Roster of Attendance, page 13).

### Action on Minutes

**ACTION:** Motion by Commissioner Duritsa, second by Commissioner Morgan and carried, that the minutes of the 203<sup>rd</sup> meeting of the Commission and of the June 2012 Executive Session, electronically distributed on September 20, 2012, be adopted as presented.

### Report of the Treasurer

Commissioner Easterly noted that a Treasurer's report as of September 30, 2012 was provided in the meeting packet.

The report indicates a balance of \$1,036,488 in accounts receivable due the Commission as of September 30, 2012. The balance represents \$521,025 due from Signatory States, \$449,467 due from Federal sources, and \$65,996 from other sources.

Additionally, the report indicates receipts of \$1,897,111 plus carryover of \$2,145,346 totaling \$4,042,457 through the end of September 2012. Of that amount, \$652,396 was expended on programs, leaving \$3,390,062 available for the continuation of ORSANCO's programs.

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

### Report of the Chairman

Chairman Komoroski began by stating that he was honored to serve as Chairman of this science-based organization and would try to continue to advance the excellent foundation that past Chairmen have provided. Mr. Komoroski mentioned discussions at the Roundtable of Commissioners regarding the value of ORSANCO. ORSANCO is truly a science-based organization, which made it easy to identify a number of areas where ORSANCO brings value to the states and the Basin. ORSANCO provides both cost and efficiency value in performing specific services to the states and provides information and resources to the residents of the Basin.

Mr. Komoroski mentioned the current economic climate as presenting challenges to continuing with the good work provided by ORSANCO and noted a couple of focus areas for his term as Chairman. He would like to build upon ORSANCO's great work and success and continue to spread the word about these accomplishments and its science-based work. He also emphasized that water is our most valuable resource and that ORSANCO is well-positioned to help protect both water quality and resources.

Commissioner Komoroski concluded by mentioning that in June 2013, the Commission will meet jointly with the Upper Mississippi River Basin Association to share information and learn about each river's issues. This meeting might serve as a model for future meetings with other Basin associations to share and learn.

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

Mr. Tennant began by reporting on a workshop he attended in Washington, DC on the value of water. A draft report of this workshop should be available soon from US EPA for public comment. He also mentioned that he had participated in a panel discussion in Philadelphia with representatives of the Delaware River Basin Commission (DRBC) and the Susquehanna River Basin Commission (SRBC) regarding roles in shale gas development. He noted Chairman Komoroski's attendance, representing ORSANCO.

Mr. Tennant reported that the issue of ORSANCO not receiving complete Ohio River spills information from the US Coast Guard may soon be resolved. Language has been included in the proposed appropriations bill; if passed, it will resolve the issue.

Mr. Tennant continued by reporting that a ceremony took place in Cincinnati to sign a Nutrient Trading Plan among the states of Indiana, Kentucky, and Ohio. This pilot plan facilitates nutrient trading, and there are buyers and sellers ready to participate. There appears to be much national media attention recently regarding trading programs. Mr. Tennant also noted that legal action has been initiated regarding the Chesapeake Bay Trading Program. However, Mr. Tennant does not believe that the complaints in this suit apply to our local program. A conference call will be held to discuss this issue.

Mr. Tennant concluded by recognizing Donna Beatsch, a current ORSANCO employee, for her 40 years of dedicated service.

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

Commissioner Frevert, Technical Committee Chairman, reported that the Technical Committee met on October 9-10 and provided the following report and recommendations:

#### **Summer 2012 Water Quality Observations**

Staff provided a report on the extensive physical, chemical, biological, and habitat monitoring that took place over the 2012 field season. While flow conditions were lower than normal over the 2012 season in general, unusual water quality conditions were not observed. However, Louisville Water experienced taste and odor issues related to algae during the week of July 19, which extended downstream to Evansville, Indiana two weeks later. It is believed that these two occurrences were related in that water quality conditions in Louisville flowed downstream to Evansville, which is the next downstream public water supply intake. Dissolved oxygen conditions were generally good despite what would have been expected during lower flow and higher temperature conditions. In addition, significant violations of temperature criteria were observed in the Smithland pool. Contributions by point sources, if any, will be investigated by staff.

### TDS Study

ORSANCO has been conducting a special one-year study of TDS conditions in response to its recent adoption of TDS criteria. In general, TDS levels have been significantly below the new criterion, although tributary concentrations tend to be higher than on the mainstem. Individual constituents that make up TDS are also being monitored, and the survey will be completed at the end of the year with a full assessment and report to follow.

### National Rivers & Streams Assessment

The US EPA has been conducting a monitoring effort called the National Rivers and Streams Assessment to provide a national perspective on the nation's water quality conditions. Staff provided a summary of EPA's analysis of a first round of sampling that was conducted during 2008 and 2009. EPA's analysis seems to indicate a higher level of water quality impairments in the Ohio Basin than in other parts of the nation, and the TEC Committee has asked staff to develop a better understanding of EPA's analysis and report back to TEC in February. A second round of sampling is slated for 2013-2014, and ORSANCO has the opportunity to conduct sampling for US EPA at 31 non-wadable monitoring sites. EPA offers \$6,000 per sampling site, and it only costs ORSANCO \$1000 to \$1500 per site to conduct the monitoring. The remaining monies would be available to ORSANCO to support additional activities without interfering with routine Commission programs. As a result, TEC endorsed ORSANCO participation in the US EPA monitoring program.

### USGS Midwest Stream Quality Assessment

Mr. Van Metre with the USGS provided an overview of the USGS's Midwest Stream Quality Assessment which is a collaboration between the USGS and US EPA's National Rivers & Streams Assessment. Monitoring and assessment under this program will occur over the next several years, and ORSANCO will stay abreast of the project as it unfolds.

### Pollution Control Standards

The Technical Committee endorsed the recommendations of the Pollution Control Standards Committee as follows:

- 1) Adoption of the proposed 2012 revisions to the Pollution Control Standards and approval of the public responsiveness summary.
- 2) Approval of the PPG variance request and the associated public responsiveness summary.

**ACTION:** Motion by Commissioner Frevert, second by Commissioner Bruny and carried, to receive the Report of the Technical Committee.

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

Sam Dinkins, ORSANCO staff, reported on behalf of Commissioner Potesta. Mr. Dinkins reported that the Water Resources Committee had not met since the June Commission meeting but wanted to provide a status update on the following items:

### Water Resources Initiative

The Water Resources Initiative is an effort by which the Commission will: 1) complete a series of studies to evaluate current and potential future water management issues; 2) review the existing laws and regulations which currently govern water resources in the Basin; and 3) define the desired role for ORSANCO in addressing water quantity issues. The initiative is a three-year effort funded through private foundation grants.

Now that ORSANCO's field season has slowed, progress has picked up on the water resource characterization studies due to more staff availability. Staff is currently compiling information from the states and federal partners on various issues including basic hydrology, water use, and a review of various state laws pertaining to water management. The next areas to be addressed will focus on interbasin transfers and potential impacts of climate change. The target completion for the characterization studies is June 2013.

#### Governor's Memorandum of Understanding (MOU)

The Committee has finalized the language of the MOU document, and it is ready to be advanced to the Governors for signatures. Support for the agreement has been expressed by members from Indiana, Kentucky, Ohio, and West Virginia. Discussions are still ongoing to secure support from Pennsylvania. It is unlikely the remaining states will elect to join the agreement at this time.

As signatures from all Compact states are not anticipated, this has raised a question regarding the potential to add states to the agreement at a later date. An option is to include language akin to that used in the Compact for this same purpose. This matter has been brought to legal counsel for review. Upon resolution of this issue, the document will be forwarded to the respective Governor of each state for signature.

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

#### Report of the Pollution Control Standards Committee

Commissioner Easterly, Committee Chairman, reported that the Pollution Control Standards Committee is requesting Commission decisions on two issues, including: 1) Adoption of the proposed 2012 revisions of the Pollution Control Standards; and 2) Final disposition of the PPG Industries, Natrium, WV variance request. In addition, the Committee continues to work on the development of a formal process for consideration of variance requests which may be presented for adoption at a future Commission meeting.

#### Triennial Review of Pollution Control Standards: Proposed 2012 Revisions

A summary of public comments received with responses is attached (Attachment 1). The following is a summary of proposed 2012 revisions to the standards:

- 1) Formatting changes:
  - a. Sections renamed "Chapters".
  - b. Sections II. Definitions, VII. Limitation, VIII. Variances, and X. Severability Clause all rolled into Chapter 1: General Provisions.
  - c. Section III. Designated Uses renamed Chapter 2: Designated Uses.
  - d. Section VI. Mixing Zone Designation renamed Chapter 4: Mixing Zone Designation.
  - e. Section IX. Analytical Methods rolled into Chapter 5: Wastewater Discharge Requirements.
  - f. New Chapter 2.2 Definition/Clarification of Uses created.
  - g. Section IV.E Site Specific Criteria moved to Chapter 1.7 Site Specific Criteria.
  - h. Section IV.B.6.c Wastewater Discharge Requirements for Dissolved Metals moved to Chapter 5.4 Wastewater Discharges for Chemical Constituents.
  - i. Section IV.C.6 Critical Flow moved to Chapter 5.2 Critical Flow.
- 2) Summary table of all water quality criteria contained in the standards including Appendix E added to Chapter 3.1 Water Quality Criteria Summary Table, and Appendix E Clean Water Act Section 304(a) Human Health Criteria for Priority Pollutants deleted.

- 3) Section IV.B.3 Non-summer temperature criteria for aquatic life protection revised based on the ORSANCO Temperature Criteria Workgroup recommendations and included in Chapter 3.2.C. Summertime criteria (July and August) remain unchanged.
- 4) A maximum temperature criterion of 110 degrees F added to Chapter 3.3.F for the protection of human health from exposure to water contact.
- 5) Section IV.C.1 Bacteria criteria revised and included in Chapter 3.3.A as follows:
  - a. Section IV.C.1.b Fecal coliform bacteria criteria for contact recreation removed.
  - b. The contact recreation season, in which bacteria criteria for contact recreation apply, was revised from May through October to April through October.
  - c. Section IV.C.1.c. *E. coli* criterion of 130/100 mL as a monthly geometric mean revised to 130/100 mL as a 90-day geometric mean.
  - d. Section IV.C.1.c *E. coli* criterion of 240/100 mL not to be exceeded in any sample revised to 240/100 mL not to be exceeded in more than 25 percent of samples.
- 6) Section IV.B.6.a Acute aquatic life criterion for selenium of 20 ug/L removed in Chapter 3.2.F.
- 7) Section VIII.A.5 Variance provision requiring “Concurrence from the state where the applicant’s discharge is located, and those states whose waters may be affected, that a variance is warranted and would be considered.” is removed from Chapter 1.6 Variances.
- 8) Section VIII.B. Variance provision that “The Commission may require additional information that it deems relevant to its decision-making process” revised in Chapter 1.6.B Variances to read “The Commission may require additional information that it deems relevant to its decision-making process including, but not limited to, the NPDES permitting state regulation that would allow the requested variance absent the ORSANCO standard.”
- 9) Add to Chapter 1.6 Variances, 1.6.A.5 Variances granted pursuant to this section shall be included in Appendix F of these standards.
- 10) Section VIII.D. “A variance may be granted for a period not to exceed the life of the applicable discharge permit;...” revised in Chapter 1.6.D to read “A variance may be granted for a period not to exceed five years;...”

Public notification was made on May 11, 2012 that the Commission was accepting comments on proposed revisions to the Pollution Control Standards. This was done through several hundred postcards, several thousand emails, a press release, and notification on the Commission’s website. Webinars, replacing public workshops, were held from 2:00-4:00 PM on May 24, and from 6:00-8:00 PM on May 30. A formal hearing was held from 4:00-7:00 PM on June 19 at the Airport Holiday Inn, Erlanger, Kentucky. Comments were accepted until July 20 by mail, e-mail, or at the hearing (no comments were made at the hearing). A number of comments were received and are summarized along with responses developed by the Pollution Control Standards Committee, which is attached as Annex II to this agenda attachment.

## **RESOLUTION 5-12**

### **ADOPTION OF POLLUTION CONTROL STANDARDS - 2012 REVISION**

**WHEREAS:** The Ohio River Valley Water Sanitation Commission, which was created by the Ohio River Valley Water Sanitation Compact, effective June 30, 1948, as an agency representing eight sovereign states embracing territory from which waters flow directly or indirectly into the Ohio River or its tributaries, is charged by the provisions of the Compact with responsibility for achieving, through control of pollution discharged into those waters, stated objectives deemed to be necessary in order to place and maintain those waters in condition suitable for uses contemplated by the Compact; and

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

**WHEREAS:** On June 9, 2011, through exercise of the power thus granted to it, the Commission adopted and promulgated Pollution Control Standards (2011 Revision) which established levels of treatment and modification then considered to be required for both sewage and industrial wastes discharged into the Ohio River, but subsequently determined that clarifying amendments to or restatements of specific segments thereof were necessary and, by action on February 9, 2012, approved alterations of its Pollution Control Standards (2011 Revision) and designated a Hearing Board, empowered and directed to conduct a public hearing with respect to them, at a location to be specified and after due notice; and

**WHEREAS:** For the purpose of implementing that resolution, the Hearing Board, after appropriate notice, held public hearings with respect to the proposed alterations of its Pollution Control Standards (2011 Revision) at the Holiday Inn, Greater Cincinnati Airport, Erlanger, Kentucky on June 19, 2012. A transcript of the hearing has been prepared and placed on file in the offices of the Commission, in Cincinnati, Ohio and, thereafter, submitted to the Commission with recommendations for adoption, a final set of amended and restated Pollution Control Standards covering discharges into the Ohio River.

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

**THE COMMISSION HEREBY RESOLVES THAT:**

1. Notice of the time and place at which the above-mentioned hearings were to be held was sufficient, in form and extent of publication, to inform all interested parties and all parties likely to be affected thereby;
2. The procedure followed by the Hearing Board in the conduct of the hearings adequately provided to all interested parties and to all parties likely to be affected thereby full opportunity to be heard and to present any pertinent testimony, evidence, opinions, or views which anyone might wish to submit for the consideration of the Commission; and
3. Pollution Control Standards (2011 Revision) which, as heretofore adopted and promulgated by the Commission, require clarifying amendments or restatements of specific segments.

**THE COMMISSION HEREBY FURTHER RESOLVES THAT:**

Subject to any subsequent revisions which the Commission may, from time to time, determine to be required by changing conditions, its POLLUTION CONTROL STANDARDS (2011 Revision) for Discharges to the Ohio River, amended and restated as set forth in "Annex I", attached hereto and incorporated herein, shall be and they hereby are in that form readopted and repromulgated by this Commission to be hereafter designated as POLLUTION CONTROL STANDARDS – 2012 Revision.

**THE COMMISSION HEREBY FURTHER RESOLVES THAT:**

Public notification of this action in the readoption and repromulgation of Pollution Control Standards - 2012 Revision, as thus amended and restated, be given by publication in newspapers having general circulation in the major population centers within the Ohio River Basin and by direct mail to all persons, entities and governmental agencies within that area known to have an interest in that action or to be affected by it.

**ACTION:** Motion by Commissioner Easterly, second by Commissioner Duritsa and carried, to approve the Responsiveness Summary (Attachment 1) and to adopt Resolution 5-12, adopting the proposed revisions to the 2012 Pollution Control Standards.

Proposed Disposition of PPG Industries, Natrium, WV Variance Request

The Pollution Control Standards Committee is making the following recommendation to the Commission regarding final disposition of the variance application by PPG Industries, Natrium, WV facility:

- 1) A variance from the requirements as set forth in the Ohio River Valley Water Sanitation Commission Pollution Control Standards for Discharges to the Ohio River 2011 Revision, Section VI.G Mixing Zone Prohibition for Bioaccumulative Chemicals of Concern is granted to PPG Industries, Natrium, WV facility (NPDES Permit WV0004359) for a period not to exceed 5 years, beginning October 16, 2013.
- 2) PPG will be allowed a mixing zone as specified above; however, at WV0004359 Outfall 009, the monthly average limit for Total Hg shall not exceed 0.055 ug/L, and a maximum daily limit shall be determined by WVDEP in accordance with WVDEP's mixing zone and NPDES rules, regulations, and policies.
- 3) PPG's mercury reduction plan submitted to the Commission as Appendix B in its March 30, 2012 application submittal shall be fully implemented.
- 4) PPG shall submit to the Commission and WVDEP annual progress reports beginning October 16, 2013 including the status of implementing its mercury reduction plan and all mercury monitoring data collected as a requirement of this variance and NPDES Permit WV0004359.
- 5) Monthly Ohio River in-stream sampling for Total Hg shall be conducted by PPG upstream of WV0004359 Outfall 009 and downstream of Outfall 009 at the downstream and lateral edge of the regulatory mixing zone as specified by WVDEP in the NPDES permit. Samples shall be representative of the entire water column at each location.
- 6) Annual fish tissue monitoring for total and methyl mercury shall be conducted by PPG downstream, in the vicinity of the outfall. A minimum of two samples each from trophic level 2, 3, and 4 fish shall be collected annually. PPG shall develop a monitoring and analytical work plan to be approved by ORSANCO prior to sampling.



- 7) The Commission shall have the sole authority and discretion to modify, renew, or revoke the variance being granted herein. Further, if the Commission modifies or revokes this variance, the Commission shall formally notify the WVDEP in writing of any such modification or revocation once finalized by the Commission. Nothing in this variance shall be construed to limit the WVDEP's authority to impose any additional requirements or more stringent requirements in WV/NPDES Permit No. WV0004359 for Outlet 009.

Public notification was made on June 20, 2012, that the Commission was accepting comments on its preliminary decision to grant PPG's request for a variance. This was done through several hundred postcards, several thousand emails, a press release, and notification on the Commission's website. A public comment period was open from June 20 through July 31, 2012. One hundred sixteen comments were received in favor of granting the variance and eighty-seven comments were received that opposed granting a variance. A summary of specific comments along with responses is attached (Attachment 2).

**ACTION:** Motion by Commissioner Easterly, second by Commissioner Flannery and carried, to grant the variance to PPG and to approve the Responsiveness Summary (Attachment 2) as presented.

#### Process for Consideration of Variance Requests

The Pollution Control Standards Committee continues to work on development of a process for consideration of future variance requests. The process is intended to be generic in nature such that it would apply to any kind of request for a variance from the Commission's standards. The current intention is to propose a formal process for consideration of variance requests at the next Commission meeting following final disposition of the PPG variance request. This will allow the Committee to evaluate the draft process in light of having been through a complete evaluation process once.

#### Report of the Water Quality Review Committee

Commissioner Bruny, Committee Chairman, reported that the Water Quality Review Committee met by conference call on September 14, 2012. Commissioner Scott Nally was welcomed to the Committee as a new member by virtue of his appointment to serve as Pollution Control Standards Committee chair when Commissioner Easterly steps down later this year.

The call began with a brief review of the role of the Committee and the issues on its docket. The Committee began as an oversight group to assure that issues did not "fall between the cracks." More recently, the Committee has identified issues not currently being addressed by the Commission or any of its other committees and made an assessment of whether they should be addressed. There was some discussion as to the frequency of meetings or calls of the Committee, which have recently been three per year.

The Committee was provided with a status summary of current issues. One issue that requires further attention is the differences among the states in establishing discharge limits for criteria that apply at downstream drinking water intakes. The NPDES Subcommittee will be discussing this matter on its next call.

Most of the call was devoted to discussion of the Commission's potential role in a water quality trading program. This was a continuation of the discussion by the full Commission at the June 2012 Roundtable meeting. In that discussion, four questions were raised regarding the Commission's participation:

- Does the Commission have the legal authority to take on a lead role?
- What will be the cost of a potential role?
- What sort of liability would be assumed in taking a lead role?
- Would the Commission face a conflict of interest between developing nutrient criteria and administering a trading program to meet those criteria?

The Committee's primary concern is that any involvement in an ongoing trading program must not come at the expense of other programs. The program must be designed such that it does not require Commission resources that are currently devoted to ongoing programs.

Each of the questions was discussed at some length. In each case, it was agreed that the final answer would depend on the final program design. It is important that these questions be kept in mind as the pilot phase of the project progresses. The discussion then turned to the question of who would take the lead for the program if the Commission chooses not to be involved. Staff was directed to identify alternatives for discussion on the Committee's next call.

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

#### **Report of the ORSANCO/Ohio River Users Program Advisory Committee**

Sam Dinkins, ORSANCO staff, reported on behalf of Commissioner Potesta, Committee Chairman,

Mr. Dinkins reported on two items:

#### TDS/Bromide Study

Weekly samples have been collected at 11 mainstem and five tributary locations since December 2011. TDS concentrations from the mainstem locations have not approached the commission's 500 mg/L standard, with the highest level observed to date at 368 mg/L, despite the unusually low-flow conditions experienced during the late summer months. Sampling will conclude in December 2012, and a complete report on the survey results will be provided to the Commission at the February 2013 meeting.

#### Committee Membership

Mr. Tom Herman's term on the committee is set to expire at the end of October 2012. Per the Commission's By-Laws, Mr. Herman is eligible for reappointment to a second three-year term. The Committee recommends reappointing Mr. Herman to a second term.

**ACTION:** Motion by Commissioner Phillips, second by Scott Mandirola and carried, to reappoint Tom Herman to a second three-year term on the Committee and to receive the Committee report as presented.

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

Mr. Bruce Whitteberry reported on behalf of Committee Chairman Ron Bargiel. Mr. Whitteberry began by commenting that the Committee remains focused on and interested in the bromide issue on the Ohio River and continues to work with ORSANCO to provide samples and data associated with the Total Dissolved Solids (TDS) study. The Committee looks forward to the study results.

Mr. Whitteberry also noted that the Committee is thankful for the continued support provided to the Organics Detection System (ODS), acknowledging that over the years there have been multiple examples of where the ODS data has allowed the drinking water utilities to take preventative measures to ensure contaminants from spills did not reach utility customers. The Committee is pleased with the system upgrades and asks the Commission to continue funding system operation and upgrades after current grant funds are exhausted.

Mr. Whitteberry concluded by thanking the Commission and staff for their extreme perseverance in resolving the Coast Guard spill report information issue.

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

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

Committee Chairman MaryLynn Loder reported that the Committee met by conference call on October 5, 2012 to discuss the pathogen TMDL timeline and the proposed revisions to the Pollution Control Standards. Committee membership was also discussed.

The Committee wishes to remain engaged in the TMDL process and remain clear with the original intention of how the TMDL relates specifically to long-term control plans that many POTWs are advancing. The Committee wants to ensure that the long-term control plans are recognized within the TMDL. There is some concern over the one-dimensional model being used. POTWs evaluate water quality impacts utilizing a much more rigorous model required by regulatory agencies.

The Committee also wished to reiterate the request that ORSANCO needs to develop a streamlined scientific-based process for variance requests. There could be a future need for POTWs to seek variances. The Committee would support an effort to survey POTWs to identify potential future POTW issues relating to the need for variances.

The Committee requested ORSANCO staff assistance in reaching out to other Ohio River POTWs to increase Committee membership.

Ms. Loder concluded by mentioning that Sanitation District No. 1 of Northern Kentucky has created a memorial fund for Mike Apgar, a former POTW Committee Chairman, who recently passed away.

**ACTION:** Motion by George Elmaraghy, second by Commissioner Frevert and carried, to receive the report of the Wastewater Treatment Works (POTW) Advisory Committee.

### **Comments**

Jim Rock of PPG Industries expressed appreciation to the Commission for the exhaustive variance process and its subsequent approval. He reaffirmed PPG's commitment to meeting all requirements of the variance.

Commissioner Flannery wished to confirm that results of the current TDS study would be reviewed by the Pollution Control Standards Committee and would report its recommendations at the February 2013 Commission meeting, regarding the implications to the current TDS Standard adopted last year. Chairman Komoroski replied that this was also his recollection of the process. Commissioner Easterly stated that the PCS Committee needs the study results to review for any recommendations and that this review might not be concluded by February 2013. Commissioner Frevert indicated that the Technical Committee would be willing to include a discussion of the TDS study outcomes at the appropriate time and provide recommendations or guidance to the Pollution Control Standards Committee.

**Upcoming Meetings**

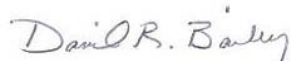
Chairman Komoroski noted the following schedule for upcoming Commission meetings:

- February 12-14, 2013 Covington, Kentucky
- June 4-6, 2013 St. Louis, Missouri

**Adjournment**

The 204<sup>th</sup> Commission meeting was adjourned at 10:40 A.M.

Prepared by:



Date: October 22, 2012

David Bailey  
Director of Administration

Approved by:



Date: October 31, 2012

Thomas Easterly  
Secretary/Treasurer

**ROSTER OF ATTENDANCE**  
**204<sup>th</sup> Commission Meeting**  
**October 11, 2012**

**Commissioners**

Illinois	Toby Frevert Phillip Morgan Marcia Willhite (PROXY for John Kim)
Indiana	Thomas Easterly
Kentucky	Ron Lovan Sandy Gruzesky (PROXY for Jerry Abramson) Bruce Scott (PROXY for Leonard Peters)
New York	Douglas Conroe Mike Wilson
Ohio	Paul Tomes George Elmaraghy (PROXY for Scott Nally) Stuart Bruny
Pennsylvania	Charles Duritsa Greg Phillips Ron Schwartz (PROXY for Michael Krancer)
Virginia	David Paylor Robert Dunn
West Virginia	David Flannery Scott Mandirola (PROXY for Randy Huffman)
Federal	Kenneth Komoroski
Legal Counsel	Ross Wales

**Executive Director**

Peter Tennant

**Guests**

MaryLynn Loder – Chairman, POTW Advisory Committee; Erich Emery – US Army Corps of Engineers; Henry Conner – PIACO; Bruce Whitteberry –Water Users Advisory Committee; Tom Horan – PPG Industries; Lori Leffler – PPG Industries; Jim Rock – PPG Industries; Joan Lindop – Sierra Club; Jim Bruggers – Louisville Courier Journal; Erica Peterson – WFPL; Shannon Tivitt – Kentucky Lt. Governor’s Office

**Staff**

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

**RESPONSIVENESS SUMMARY FOR PUBLIC COMMENTS RECEIVED ON THE  
PROPOSED POLLUTION CONTROL STANDARDS - 2012 REVISIONS**

*(Note: ORSANCO responses to comments are provided immediately below each comment in bold italics.)*

**Comments by 18 Individuals, Kentucky Waterways Alliance, Ohio River Foundation**

- Support:
  - Temperature criteria for aquatic life & human health protection.
  - Contact recreation season extended to include April.
- Do Not Support:
  - E. coli revision to 90-day geometric mean and 25% exceedance rate for maximum criterion. This could allow for much higher levels on individual days in permits.
    - ***The proposed revision follows USEPA's draft recommendations. The USEPA suggests that the 90 period will produce the most accurate assessment of water quality.***
  - Elimination of acute selenium criterion leaves no protections for this pollutant.
    - ***The chronic aquatic life criterion for selenium has been retained in order to maintain protection for selenium.***
  - Revisions to the variance section which eliminates veto authority by any one affected state.
    - ***It is in keeping with the Commission's regular operations that decisions are made on a majority vote basis as are all decisions on the Commission's Pollution Control Standards.***
- Recommendations/questions:
  - Some selenium criterion should be kept in place.
    - ***PCS Committee agrees and has done so by retaining the chronic criterion for selenium.***
  - What are the implications if the waterbody is determined to exceed the 90-day geometric mean (after 40% of the recreation season has passed)?
    - ***The Commission may issue public swimming advisories by comparing the maximum E. coli criterion (240 CFU/100mL) against any individual sample result.***

**Ohio Utility Group Comments**

- Support:
  - Temperature criteria for aquatic life protection reflects updated science.
  - Elimination of acute selenium criterion is technically justified.
- Do Not Support:
  - Temperature criterion for human health.
    - Lack of exposure assumptions – duration of exposure not defined.
      - ***116 deg F criterion proposed by Temp workgroup was for an 8 minute exposure.***



- *It is not believed that such a study is necessary to promulgate a temperature criterion. However, the Commission would be willing to participate in any study that the utilities wish to conduct.*
  - What is the estimated number of irreversible burn cases that would be reduced by adoption of a 110 deg F criterion instead of 116 deg F.
    - *This has not been determined and the information is not necessary to promulgate the appropriate standard.*
  - Utilities request that ORSANCO specify where the criterion is intended to apply. Utilities believe that the criterion should apply at a location representative of a 1:2 ratio of discharge to receiving stream since it is unlikely that humans would come in contact with a lower ratio.
    - *The standard would apply at all locations where public access is possible. This may or may not be at a location representative of a 1:2 mixing ratio.*
  - Utilities recommend that states be responsible for approving variances, not ORSANCO.
    - *The Commission has the legal authority under the Compact which created it to promulgate standards for the Ohio River and therefore has the legal authority to grant variances from those standards. Furthermore, the Commission approves variances by majority vote of its members.*

#### **POTW Committee Comments**

- Support:
  - Elimination of fecal coliform criteria.
  - Revision of E. coli criteria to 90-day geo mean and 25% exceedance rate for maximum criterion.
- Do Not Support:
  - Remove 200 CFU/100mL Fecal coliform criterion from Table 3.1.
    - *Agreed-this is necessary for consistency.*
  - Need to footnote E. coli criteria in Table 3.1 to indicate application to 90-day period and max criterion is applied at exceedance rate of 25%.
    - *Agreed-this is necessary for consistency.*
- Recommendations/questions:
  - Refine the contact recreation designated use to include acknowledgement of physical safety risks during high flows.
    - *The Commission does not feel that it is appropriate for the standards to address physical safety or quantity issues. The standards are intended to address water quality issues.*

#### **Kentucky Chamber of Commerce Comments**

Supports elimination of the acute selenium criterion.



**RESPONSIVENESS SUMMARY FOR PUBLIC COMMENTS RECEIVED ON PPG VARIANCE PRELIMINARY DECISION**

One hundred sixteen comments were received in favor of granting the PPG variance and eighty seven comments were opposed. In addition to individuals of the general public, the following organizations indicated support: West Virginia Chamber, West Virginia Manufactures Association, Wetzel County Commission (WV), Michael T. Ferro (West Virginia Legislature member), Regional Economic Development partnership (WV), Ohio Chemistry Technology Council, Marshall County Commission (WV), Marshall County Chamber of Commerce (WV), Wellsville Terminals Company, Dave Pethtel (WV Legislature member), and American Chemistry Council. Of the one hundred sixteen comments that were in favor of granting the variance, none provided additional supporting information to justify granting the variance. The following summarizes comments opposing the variance:

*(Note: ORSANCO responses to comments are provided immediately below each comment in bold italics.)*

**Form Letter Comments Submitted by 15 Individuals**

- Establish a set of criteria that would trigger a modification or revocation of the variance including but not limited to implementation of the mercury reduction plan.
  - *Disagree. This could reduce the Commission's flexibility to make appropriate decisions regarding modification or revocation of the variance.*
- Include a requirement for PPG to conduct annual or biannual fish tissue monitoring.
  - *Agreed. A requirement will be added to require PPG to conduct annual fish tissue monitoring per ORSANCO's approval of a sampling plan.*
- Include language that would disallow transfer of this variance to new owners.
  - *Disagree. The requirements associated with the variance will not change regardless of facility ownership, and the Commission retains the right to modify or revoke the variance regardless of facility ownership.*

**OCEANA Comments**

- PPG's second highest ever net earnings of \$362 million are an example of its vast resources available to upgrade to mercury-free technology.
  - *The preliminary decision to grant the variance was made independent of financial issues. The facility would not be able to meet the Commission's standards without a mixing zone regardless of whether or not the mercury process is in place.*
- PPG has released no information to support the claim that eliminating the mercury process would not help achieve the new mercury standards.
  - *PPG has not made such a claim. What has been claimed is that conversion to a non-mercury process would provide only a relatively small incremental improvement that would not enable them to meet the standards in the absence of a mixing zone.*
- PPG has not substantiated the claim that the mercury process is required to meet customers' needs for high quality caustic since 98 percent of the industry has converted to mercury-free technology.
  - *Elimination of the mercury process will not allow PPG to meet the Commission's standards in the absence of a mixing zone.*

- PPG is receiving \$900 million in its merger with Georgia Gulf which could fund conversion to mercury-free technology. Georgia Gulf also has vast resources.
  - *The Commission's preliminary decision to grant a variance was made independent of financial considerations.*
- Comment questions PPG's claim that the diaphragm unit produces 40 tons per day less chlorine than the mercury unit.
  - *This issue is not germane to the Commission's decision. PPG would still need a variance regardless of whether they substituted the diaphragm process in place of the mercury process.*
- PPG has failed to demonstrate that it has taken reasonable steps to meet the new mercury standards.
  - *PPG has taken steps to meet the Commission's standards which are documented and available to the public on the Commission's web site.*
- PPG has failed to demonstrate that the designated uses will be maintained.
  - *Monthly water quality monitoring will be required to demonstrate this. Fish tissue sampling will be an additional requirement to assist in this demonstration.*

#### **USFWS – KY Ecological Services Field office Comments**

- Ask that ORSANCO consider that all discharged mercury will eventually become methylated and biomagnified in the Ohio River food chain, and further to terrestrial animals. The Service asks that ORSANCO conduct a comprehensive ecological risk assessment to evaluate the impacts of mercury loading resulting from granting this variance.
  - *ORSANCO's ongoing annual, river-wide fish tissue monitoring program will provide risk information regarding human health from fish consumption for which the criterion is designed to protect.*

#### **Kentucky Waterways Alliance Comments**

- Believes that a monthly average limit of less than 0.055 ug/L is achievable with their existing technology based on a review of their 2011 discharge data for outfall 009.
  - *Recent discharge monitoring data does not support the claim that PPG could meet lower limits on a regular basis.*
- Request additional language be added to the variance approval which outlines the enforceable penalties for not fully implementing their mercury reduction plan.
  - *This is already included in the preliminary approval language - ORSANCO reserves the right to modify or revoke the variance (at its discretion).*
- Request that fish tissue monitoring/testing be required and conducted by an independently-contracted company with ORSANCO's approval.
  - *Agreed – fish tissue monitoring will be added as a requirement of having the variance. ORSANCO will review and approve the sampling plan for this requirement.*
- Criteria for modification/revocation of the variance should be specified in the approval language.
  - *Disagree – less specificity allows the Commission more flexibility in using its discretion to modify or revoke a variance.*
- The variance should not be transferrable to the new entity taking over the PPG facility.
  - *Disagree. The requirements associated with the variance will not change regardless of facility ownership, and the Commission retains the right to modify or revoke the variance regardless of facility ownership.*

- A mercury TMDL is needed to determine whether further mercury discharges would cause violation of the pollution control standards.
  - *A TMDL will be required if impairment is determined in the future.*

### **Ohio River Foundation Comments**

- Through use of a membrane process to replace the mercury process, PPG could recoup the conversion costs realized due to increased energy efficiency, increased production, and avoided costs of mercury control.
  - *No information was provided to demonstrate this, however PPG may be interested in reviewing the information that supports this claim.*
- Request that ORSANCO require PPG to provide actual cost compliance and upgrade information to rebut the presumption that it can afford to comply.
  - *The preliminary decision to grant a variance was made independent of financial issues.*
- By allowing PPG to continue to avoid expenses to upgrade their process to non-mercury technology due to the variance, ORSANCO gives PPG a competitive advantage over other companies due to regulatory interference rather than market forces.
  - *PPG will still need a variance regardless of whether the mercury process is in place or not.*
- Requests that PPG be required to invest more heavily in locating and remediating fugitive and historical mercury releases before approving the variance.
  - *This is addressed as a requirement of the mercury reduction plan.*
- ORF agrees with KWA that it is not within ORSANCO's authority to renew the variance for the permit that would take effect when the current permit expires without PPG already having been granted a variance.
  - *The variance is being issued for a 5-year period.*
- Request that there be a maximum term for which a variance can be granted (i.e. 5 years).
  - *Agreed. The variance is being issued for a 5-year period.*
- Request PPG be required to develop a 5 year plan to reduce their mercury discharge to background levels.
  - *A five year plan is required but does not currently specify an endpoint in terms of discharge quality. The need to reissue the variance after 5 years will be evaluated at that time.*
- PPG has released no information that allows verification that eliminating the mercury process will not help achieve compliance with mercury standards.
  - *PPG has shown that elimination of the mercury process would reduce its mercury discharge by 4 ng/L which is approximately ten percent of the total reduction necessary to meet standards without a mixing zone.*
- PPG claims that mercury-grade caustic is required by customers, which ignores the fact that 98% of the industry has found a way to concentrate the product to meet customer demand.
  - *PPG will need a variance regardless of the process used to manufacture its products.*
- With the sale/merger, PPG has vast resources to upgrade to a non-mercury process.
  - *The preliminary decision to grant a variance was made independent of financial issues.*
- Requests ORSANCO hold another public comment period after all of the current concerns submitted by the public are addressed.
  - *Two public comment periods have been held to date. The Commission does not believe a third public review would generate new, relevant information.*