

OHIO RIVER VALLEY WATER SANITATION COMMISSION

MINUTES

**195th Commission Meeting
Melrose Hotel
Washington, DC
Thursday, October 22, 2009**

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Chairman Jeffery Eger, Presiding

Call to Order

Chairman Eger called the 195th meeting of the Ohio River Valley Water Sanitation Commission to order at 9:00 A.M. on Thursday, October 22, 2009.

Commissioner Tomes led the Commission in the Pledge of Allegiance.

Quorum Call

Commissioner Duritsa declared that a quorum was present (see Roster of Attendance, page 16).

Action on Minutes

ACTION: Motion by Commissioner Easterly, second by Commissioner Servatius and carried, that the minutes of the 194th meeting of the Commission and of the June 2009 Executive Session (mailed September 9, 2009) be adopted as presented.

Report of the Treasurer

Commissioner Duritsa noted that a Treasurer's report as of August 31, 2009 has been provided in the meeting folder.

The report indicates a balance of \$2,212,819 in accounts receivable due the Commission as of August 31, 2009. The balance represents \$1,220,001 due from Signatory States, \$879,073 due from Federal sources and \$113,745 from other sources.

Additionally, the report indicates resources of \$3,631,646 through the end of August 2009. Of that amount, \$479,691 was expended on programs, leaving \$3,151,955 available for the continuation of ORSANCO's programs.

ACTION: Motion by Commissioner Duritsa, second by George Elmaraghy and carried, to accept the Treasurer's Report as presented.

Report of the Chairman

Chairman Eger began by welcoming everyone to the 195th meeting of the Commission and thanked Commissioners and staff for their roles in making the meetings in Washington, DC successful. Mr. Eger brought attention to the Commissioners' strong commitment to protecting the Ohio River. He commented that, during the meetings in Washington, DC, the Commission has recognized a goal and a dream with the formation of the Ohio River Caucus. Mr. Eger noted that Commissioners were welcomed and warmly received at the Congressional offices during visits the previous day, and there appears to be strong support for protecting the Ohio River as an

important natural resource. Mr. Eger feels that the periodic meetings in Washington, DC are very valuable because these meetings allow Commissioners to interact with Congressional Representatives and Congressional staff.

Mr. Eger acknowledged the fact that the West Virginia Commissioners helped initiate Caucus activities, through Governor Manchin, to increase the awareness of the Ohio River's importance by reaching out to other Governors to support the Ohio River Caucus.

Mr. Eger commented on the rapidly developing dynamic of multi-agency recognition of the need to step up collaboration to address the Ohio River Valley's water management needs. ORSANCO recognizes the need to continue building political support and is positioned to take on additional duties and services. Water organizations collectively recognize that it is now time to come together to achieve effective integrated water management goals.

Mr. Eger concluded by stating that these are interesting times that present wonderful opportunities for those who value the Ohio River. Commissioner Flannery was then recognized for his service as Chairman of the Commission for the past year.

Report of the Executive Director

Mr. Vicory reported on a number of items. He began by mentioning that the mobile aquarium continues to be an ambassador for the Commission and directed attention to a news article from Owensboro, KY regarding the aquarium's recent trip. He mentioned that the aquarium is in need of some general maintenance which will be completed this winter.

Mr. Vicory reported that past Commissioner Mel Hook had been invited to the Washington, DC meeting so he could be recognized for his long-time past service to the Commission. Mr. Hook was unable to attend. Mr. Vicory circulated a letter from Mr. Hook expressing his personal connection to Commissioners and staff.

Mr. Vicory then brought attention to a past Resolution that prevails upon the states and U.S. EPA to consider ORSANCO when funds become available from enforcement action financial penalties or supplemental environmental projects. The Commission does not have the authority to issue penalties but plays an instrumental role in enforcement issues and tracking the origination of spills. The Commission puts resources into these activities, but the states take the enforcement action and often set penalties and supplemental environmental projects. It seems appropriate, when there is a discharge to the Ohio River, that ORSANCO should be considered as a recipient of penalty funds. Most recently, there was a settlement with DuPont in West Virginia, which provided ORSANCO and the Foundation for Ohio River Education (FORE) with a substantial amount of funds. Mr. Vicory thanked West Virginia for directing these funds to ORSANCO and encouraged other states to consider doing so in the future.

Mr. Vicory reported that ORSANCO staff has been active in providing local, on the ground assistance, to groups that are conducting activities on the Ohio River, such as triathlons or biathlons, by conducting bacterial sampling surveys in advance of the event to determine if the River is suitable for body contact. This past July, the Kentucky Water Watch requested ORSANCO's assistance in performing a snapshot state-wide sampling survey. Staff provided the mobile lab and technical assistance which was greatly appreciated.

Mr. Vicory mentioned that he recently made a presentation to the Annual Ohio Board of Trustees meeting of the Nature Conservancy at the Cincinnati Zoo. The theme of the meeting was "Ohio River – Charting a New Course." This is a clear example of the growing number of

organizations interested in the Ohio River. New opportunities are continuing to arise to collaborate with organizations interested in Ohio River issues.

Mr. Vicory reported that there was an Ohio River Basin Summit held in Cincinnati on October 8-9. Mr. Vicory was invited to participate in planning the Summit along with the U.S. Army Corp of Engineers, U.S. EPA, and others. The Summit had over 100 attendees representing 35 agencies and organizations which was impressive due to the short notice in publicizing the event. The rationale for the Summit was to bring attention to the success seen in the Great Lakes Region, which is currently not being seen in the Ohio Valley due to a lack of collaboration. It is clear that the Ohio River Valley needs to set priorities and speak collectively with one voice. A mechanism must also be in place for the convening of organizations. A steering committee is being established to follow-up on discussion outcomes. ORSANCO was recognized as an appropriate organization to play an active role. Commissioner Duritsa and Randy Sovic have indicated their availability to serve on the steering committee.

Mr. Vicory concluded by directing Commissioners' attention to a press release about the Summit and indicated that he would e-mail Commissioners a summary of the Summit outcomes.

Report on Enhanced Federal Support for the Ohio River Valley Water Management Needs

Mr. Vicory and Steve Dye, of McCallister & Quinn, reported on activities to enhance federal support. Commissioners were asked to provide brief reports on their respective Congressional office visits held on Wednesday, October 21st. Most reports indicated positive support for the Ohio River Caucus and the ongoing need to meet with Congressional staff to bring attention to the importance of the Ohio River and ORSANCO's role in protecting this natural resource.

Commissioner Tomes stated the importance of a plan to follow-up with Congressmen and Congressional staff after these meetings to keep them informed and involved. Steve Dye indicated that he would work with Commissioners on a follow-up strategy. Commissioner Potesta also recommended the creation of an Ohio River Caucus Newsletter to provide updates and relevant information to Congress and Congressional Staff. Commissioner Servatius also voiced support for a Caucus Newsletter.

Steve Dye provided additional updates on recent funding activities. He noted that in fiscal year 2009, Senator Byrd was instrumental in ORSANCO being awarded \$1million to support renovation of the Organics Detection System (ODS). These funds are being processed through U.S. EPA. An additional \$1.2 million is being requested for fiscal year 2010. The newly formed Caucus should provide broader based support for this funding request. Legislation should be completed within a month or so, bringing the total support for the ODS to \$2.5 million.

Mr. Dye concluded by reporting that the Watershed Pollutant Reduction Program has been awarded \$10 million over the past ten years. This funding expires at the end of 2010. Work will continue to find a source or account for continued funding for this program in the amount of \$10 million. He mentioned that he will follow-up with Commissioners to seek letters of support from Governors, agency heads, and other stakeholders.

Commissioner Flannery asked if Mr. Dye could explain the next steps for the Caucus. Mr. Dye indicated that, for example, when submitting funding requests, letters must be requested from Caucus members to Appropriations Committee members voicing their support for the funding request. In addition, when a sufficient number of Congress members join the Caucus, briefings will be conducted to keep them informed and engaged. These briefings are typically attended by Congressional staff members.

Commissioner Bruny reinforced the idea of having ongoing dialog with Caucus members and creating a newsletter to improve the visibility and name recognition of ORSANCO.

Briefing from the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA)

Linda Eichmiller, Executive Director, provided a briefing on ASIWPCA's mission and priorities. The membership helps implement the Clean Water Act within the states. Ms. Eichmiller values ORSANCO staff's active leadership role in the Association.

Ms. Eichmiller reported that the Association's main goal over the past several years has been to improve its relationship with the Federal Government to improve collaboration and co-partnerships. She continued by elaborating on current priorities which include: improving the relationship with U.S. EPA's Office of Enforcement and Compliance; modernizing and updating monitoring and assessment techniques; implementing a management strategy for nutrients; addressing climate change issues; monitoring environmental progress on restored waters; permitting and controlling problems from confined animal feeding operations; developing an interstate, rational approach to protecting watersheds and controlling non-point sources; and procuring funding.

Ellen Gilinsky commented on the importance of ORSANCO's active role in the Association and mentioned Peter Tennant's leadership in monitoring activities. Ms. Willhite mentioned the establishment of a monitoring and assessment partnership with U.S. EPA and states to leverage state and federal monitoring activities.

Report of the Water Quality Review Committee

Commissioner Bruny, Committee Chairman, reported that the Committee met by conference call on October 14, 2009. Three topics were discussed:

- Total Dissolved Solids in the Monongahela River
- Study Plan for PCB Monitoring in the Beaver River Watershed
- Review of ORSANCO Watershed White Paper – "Implementation of the Ohio River Valley Water Sanitation Compact Throughout the Compact District."

Monongahela River TDS

Technical Committee members Ron Schwartz of Pennsylvania and Randy Sovic of West Virginia provided a briefing on the situation and their states' efforts to address it. In the fall of 2008, TDS levels on the Monongahela exceeded criteria for drinking water supply protection. Increases were also seen on the Ohio River, although criteria were not exceeded. Increased levels were seen again in the spring and most recently, in early October 2009. It appears that the elevated TDS results from a variety of sources, as high levels have occurred under both high and low stream flow conditions. The monitoring of TDS has increased, and both states are working to identify sources within their boundaries and take appropriate action.

The states would like ORSANCO to support their efforts in three ways:

- Provide a repository for all data being collected in response to this problem.
- Correlate the data collected with stream flow.
- Facilitate collaborative research on the situation.

The Water Quality Review Committee supports these activities. The states also feel that adoption of TDS criteria for the main stem Ohio River will be helpful in tributary abatement efforts.

Beaver River PCB Monitoring

Staff presented a study plan for this effort, which is intended to further define the impacts of specific sources of PCBs in the Beaver River watershed. The Water Quality Review Committee endorses the study approach as a sound use of available resources to advance the knowledge needed to successfully reduce pollution by PCBs.

ORSANCO Watershed White Paper

The Committee will review the current white paper and provide comments to staff over the next two weeks. Staff will develop a proposed revised paper based on those comments. It is intended that the Committee will present a revised draft of the paper at the February Commission meeting.

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

Report of the Technical Committee

Commissioner Duritsa, Technical Committee Chairman, reported that the 191st meeting of the ORSANCO Technical Committee was held on October 20-21 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:

Staffing – Environmental Scientist Beth McGuire left the staff to resume her education. Due to budget constraints, she will not be replaced.

Emerging Contaminants – On the recommendation of U.S. EPA Region 3, Erich Emery was invited to address a West Virginia Legislative Committee on emerging contaminants.

Source Water Protection – A second Source Water Protection meeting was held in St. Clairsville, Ohio. Eight water utilities and 11 industries participated.

Credible Data Laws – Ohio's Credible Data Law requires that ORSANCO personnel receive training from Ohio EPA in order for the state to be able to use ORSANCO data. If all states were to adopt similar requirements, a significant amount of Commission resources might be required to keep up with the training requirements. The Monitoring Strategy Subcommittee was tasked to keep track of this issue.

National Aquatic Resource Surveys – Staff is participating in the national surveys. The monitoring can be done for less than U.S. EPA has allocated for the work; this has allowed additional monitoring tasks to be supported.

Wabash River Proposal – ORSANCO will receive stimulus funds from Indiana DEM to enhance monitoring of the Wabash River.

NRC Reports – The National Response Center still will not provide complete spill reports to ORSANCO. The basis for this is that the contractor who operates the NRC does not believe that the Commission is a government agency. Commission Legal Counsel continues to address this question. Legal counsel has sent a third letter to NRC.

Water Quality Observations – Ohio River 2009

The summer of 2009 was unusually cool in the Ohio River Basin, and stream flows were higher than in the recent past. Staff presented some observations from field monitoring activities. Water clarity and aquatic vegetation were better than in past years. A new species, the Atlantic Needlefish, was found in the Paducah area. It is not known whether this species has increased its range or if it has been inadvertently introduced to the Ohio.

Temperature and dissolved oxygen conditions have improved over recent years, although criteria violations still occurred. Algae-related taste and odor conditions occurred on the upper river in June, while a microcystis outbreak occurred near Cincinnati in September.

Staff Reports on Wastewater Discharges

Staff reported on the status of Combined Sewer Overflow abatement. As abatement efforts enter the final stages, year to year progress is less apparent in terms of numbers of CSOs eliminated. The information provided to staff appears to have understated the number of Long Term Control Plans that have been approved; the correct numbers will be reflected in the meeting minutes.

A review of Quarterly Noncompliance Reports indicated five Ohio River dischargers with repeated violations of permit limits. No impacts of those violations have been observed in Commission monitoring activities.

State Reports

State members of the Committee presented reports on pollution problems within their states and efforts to abate them. Federal agency representatives also reported on their activities that affect the Ohio River Basin. Of particular note was a joint presentation by the Technical Committee members from Pennsylvania and West Virginia on their efforts to address total dissolved solids in the Monongahela River watershed, in particular in Dunkard Creek. Summaries of the reports will be included in the minutes of the meeting.

Nutrient Issues

Staff presented a progress report on development of numerical nutrient criteria for the Ohio River. Contractor assistance is to be provided by U.S. EPA; however, the contractor's analysis of the data has not yet been completed due to administrative issues. It is hoped that the issues will be resolved and the analysis will be completed by the next Technical Committee meeting.

Staff next presented information on a proposed Ohio River Basin nutrient trading program. The Electric Power Research Institute (EPRI) is leading a team, which includes ORSANCO, in the development of this program. Funding has been received from U.S. EPA and USDA. The project team will meet at ORSANCO Headquarters on October 26-27, 2009.

Staff then reported on Gulf of Mexico Hypoxia activities. The Hypoxia Task Force met in Des Moines last month; it appears that there is a new commitment by the federal agencies involved to move forward on this issue. The Ohio River Sub Basin team will sponsor a second workshop on reduction of nutrient levels and energy use at POTWs; the workshop will take place in Evansville on January 12-14, 2010.

Marcia Willhite and Ellen Gilinsky presented a summary of the Nutrient Innovations Task Group, a joint effort by states and U.S. EPA to develop a new approach to nutrient management. The report on the effort is available on both the EPA and ASIWPCA web sites. The next step in the process is to bring the findings to the stakeholders.

Proposed Methodology – 2010 Assessment of Ohio River Water Quality Conditions

Staff presented the assessment methodology for the 2010 Ohio River assessment as agreed to by the 305(b) Coordinators Work Group. The methodology is essentially the same as was used in the 2008 assessment.

Ohio River Recreational Use Survey

The contractor's report from the recreational use survey has been received. Staff has attempted to utilize the survey results to answer basic questions about the amount of contact recreation that takes place on the river and the amount of Ohio River fish that is consumed. Discrepancies were noted between surveys conducted by telephone and on-site observations and surveys. Technical Committee members will provide comments on the survey findings, and staff will review it with the study advisory committee before revising the current draft report.

Report of the NPDES Subcommittee

The NPDES Subcommittee has met twice by conference call since the last Commission meeting. The Subcommittee considered alternative approaches to provide temporary relief from mixing zone limitations for power plants that install scrubbers to reduce air emissions of mercury and other pollutants. The subcommittee made the following recommendations:

- Revise the current variance language (Section VIII of the Standards) to allow consideration of variances to Section VI-Mixing Zones.
- Consider adoption of a maximum temperature limit to protect human health.
- Determine a critical river flow for constituents in Section IV.C.1, 2, and 3.

These recommendations have been forwarded to the Pollution Control Standards Committee for consideration in future reviews of the Commission Standards.

Status of TMDL Development

Staff presented a work plan for a study of PCBs in the Beaver River watershed. The study is designed to better define the impacts of PCB sources in the watershed; it is hoped that the results will inform the assessments of PCBs in other tributary watersheds.

ORSANCO Pollution Control Standards

The Technical Committee considered proposed revisions to the Commission's Pollution Control Standards. The Committee considered a recommendation to defer action on the proposed ammonia criterion, but could not reach consensus on such a course. Other than the lack of consensus on the ammonia criteria, the Technical Committee supports the revisions proposed in the Report of the Pollution Control Standards Committee.

The Committee heard a presentation by Holly Green of U.S. EPA on the agency's progress toward adoption of new selenium criteria. The new criteria are expected to be adopted in 2010. Since the selenium criteria in the current Commission Standards are believed to be flawed, the Technical Committee recommends that the Commission add selenium to the issues to be addressed in an accelerated rulemaking.

Comparison Study of Sampling Methods

Staff has completed a draft report on the comparison of results of monitoring at common sites by ORSANCO and USGS. The report was sent to the Monitoring Strategy Subcommittee for review. A number of comments have been received and incorporated. The Committee recommends publication of the report, and remands it to the Monitoring Strategy Subcommittee for guidance in future design of ORSANCO monitoring programs.

Emerging Contaminants Research

Staff provided an overview of several efforts to determine the incidence and effects of emerging contaminants in the Ohio River. Monitoring to date does not show any indication of a threat to human health. A draft report on the monitoring results is expected to be issued in the spring.

Reports by Advisory Committees

POTW- The Committee has requested an opportunity to review the Quality Assurance Project Plans for the Commission's monitoring of emerging contaminants. The Committee's response to U.S. EPA's response on the Ohio River pathogen TMDL has been distributed to the Commission and Technical Committee.

PIAC- The Committee has been involved in discussions with the NPDES work group, the nutrient trading project, and the ORSANCO/River Users program. Committee members have attended Source Water meetings.

PIACO- The Public Interest Advisory Committee has provided input to the Commission on improving the public comment process for proposed revisions to the Commission Standards.

WUAC- The Committee met recently at the U.S. EPA Briedenbach Laboratories in Cincinnati. Members will provide data for use in the 305(b) assessment. The Committee is asking for U.S. EPA to conduct research on treatment to remove C8 from water.

ACTION: Motion by Commissioner Duritsa, second by Randy Sovic and carried, to accept the Technical Committee report as presented.

Report of the Pollution Control Standards Committee

Commissioner Komoroski, Committee Chairman, reported that since the June 2009 Commission meeting, proposed revisions to the Commission Standards have been subject to public review and comment. Five workshops were held in the first half of June at various locations along the river. The Commission held a public hearing on proposed revisions on June 24, 2009 at the Greater Cincinnati Airport Holiday Inn. The record of the hearing remained open until July 24th to allow submittal of additional written comments. A total of 11 sets of comments were received.

The Pollution Control Standards Committee met on August 28, 2009 to consider the comments received. Seven states and the federal government were represented. Those comments, and the Committee's responses, are described in the report that is attached to the agenda for today's meeting. The Pollution Control Standards Committee is now prepared to recommend adoption of the following revisions to the Commission Standards:

Section II: Definitions

Add a definition of Public Water Supply System.

Add a definition of Reasonable Treatment.

Section IV: Water Quality Criteria

Adjust the values for Cadmium and Silver in Table IV.B.6.b and c to reflect current U.S. EPA criteria.

Change the term "design flow" to "critical flow" in Section IV.B.6.e.

Add a 1.0 mg/L criterion for ammonia nitrogen to apply at points of withdrawal for public water supply use.

Adopt translators for metals criteria.

Note: After the meeting, a careful review of the language for the proposed revisions found several mistakes in the language regarding the translators. Those mistakes have been corrected in the attached copy. Since those changes to the proposed revisions serve to carry out the adoption of the translators, which is supported by all who commented on the issue, the Committee reaffirms its recommendation to go forward with this revision.

Revise Section IV.D – Site Specific Criteria – to allow the use of all U.S. EPA approved methods.

Note: This revision was suggested in the initial comment period but was not accepted by the Committee, which then believed that US EPA would add any newly approved methods to the *Water Quality Standards Handbook*. The Committee subsequently learned that this is no longer the case; in order to save printing costs, US EPA will now post newly approved methods on its web site. On the basis of this new information, the Committee recommends the proposed revision.

Section V: Waste Water Discharge Requirements

Add a requirement that industrial dischargers notify ORSANCO of any treatment upset or bypass.

Commissioner Komoroski presented the following resolution for adoption:

RESOLUTION 3-09

ADOPTION OF POLLUTION CONTROL STANDARDS - 2009 REVISION

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

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

WHEREAS: On October 5, 2006, through exercise of the power thus granted to it, the Commission adopted and promulgated Pollution Control Standards (2006 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 12, 2009 adopted a resolution approving proposed alterations of its Pollution Control Standards (2006 Revision) and designating 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 (2006 Revision) at the Holiday Inn, Greater Cincinnati Airport, Erlanger, Kentucky, on June 24, 2009. 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 (2006 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 (2006 Revision) for Discharges to the Ohio River, amended and restated as set forth in "Annex 2", 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 – 2009 Revision.

THE COMMISSION HEREBY FURTHER RESOLVES THAT:

Public notification of this action in the readoption and repromulgation of Pollution Control Standards - 2009 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 Komoroski, second by Commissioner Duritsa and carried (Edward Ambrogio, U.S. EPA abstaining), to adopt Resolution 3-09 as presented.

Issues for Continuing Review and Investigation

As part of its review process, the Commission identifies issues to be addressed at the beginning of each review, and at the end of each review, identifies issues for which additional consideration is needed.

A number of issues were identified at the beginning of the current review. The following issues from that list were considered, but need further study before revisions to the Standards can be proposed. These include:

-Temperature

-Selenium (Note: The Technical Committee is recommending that this be included in the accelerated rulemaking.)

-Mercury

-Pathogens.

-Wet Weather Standards

It is recommended that all of the above issues continue to be considered in the next review.

In considering the comments received in the current review, the Pollution Control Standards Committee identified three issues that need to be addressed immediately. Those issues include:

Design Flow for Human Health Criteria – In an apparent oversight, the Standards do not currently specify a design flow for criteria in Sections IV.C.1, IV.C.2, and IV.C.3. This would present difficulties for NPDES permit writers.

Total Dissolved Solids- Criteria for total dissolved solids were omitted from the Standards in a previous review when the criteria were rearranged to differentiate between those adopted to protect aquatic life and those adopted to protect human health. Elevated levels of total dissolved solids (TDS) on the upper Ohio River the past two years have suggested a need to restore the criteria.

Use of Variance Procedure- Currently, the Variance Procedure established in Section VIII of the Standards applies only to requirements in Section V. Meanwhile, the prohibition of mixing zones for Bioaccumulative Chemicals of Concern in Section VI sets a requirement that may not be consistently attainable with current control technology. The NPDES Subcommittee has suggested that temporary variances to this requirement be considered; this would require a revision of the Standards to allow variances to Section VI.

The Committee believes that these issues need to be considered on a more immediate basis than the usual triennial review. The Committee recommends that the Commission undertake an accelerated rulemaking to address these issues. A proposed schedule for this process would be as follows:

January 2010	Publish Notice of Proposed Rulemaking
February 2010	Public workshops
March 2010	Comment period closes
May 2010	PCS Committee meets to consider comments, identify alternative actions
June 2010	Commission action to authorize public hearing (and associated workshops)
August 2010	Hearing
October 2010	Commission action

ACTION: Motion by Commissioner Komoroski, second by Commissioner Easterly and carried (Commissioner Flannery abstaining), that the Commission undertakes an accelerated review process to address the four immediate issues outlined above.

Randy Sovic proposed that caution be taken regarding Selenium, suggesting that the Commission should only move forward if and when U.S. EPA finalizes criteria, which might not be completed within the Commission’s proposed schedule. Commissioner Komoroski confirmed that this could be a timing issue.

Report of the ORSANCO/Ohio River Users Program Advisory Committee

Commissioner Potesta reported that, per the Bylaws of the Commission, the ORSANCO/Ohio River Users Advisory Committee is to comprise eleven members. Six members come from river interests, two are Commissioners, and three additional positions are filled by the Chairmen of three ORSANCO Advisory Committees: the Water Users Advisory Committee, the Publicly Owned Treatment Works (POTW) Advisory Committee, and the Power Industry Advisory Committee. Members representing river interests are appointed by the Commission for three-year terms with the availability for one-year term reappointment.

Currently, among the members representing river interests, there are three vacancies and three members with terms that expire in December 2009. The Committee proposes to fill two of the current vacancies with members who have served on the Advisory Committee previously, but are not currently serving terms as members. This action is being proposed in an attempt retain some members with historical knowledge of the program and its intended direction.

Specifically, the Committee proposes that Greg Wilkins, with Marathon Petroleum Company, and Tom Herman, with Zeon Chemicals, be appointed to the ORSANCO/Ohio River Users Advisory Committee, with terms expiring in October of 2012.

With respect to the remaining vacancy and three members with expiring second-year terms, the Advisory Committee will be seeking members to fill any and all vacancies in the coming months, with the goal of presenting recommendations for a full roster to the Commission for approval in February of 2010.

ACTION: Motion by Commissioner Potesta, second by Commissioner Servatius and carried, to accept the appointments of Greg Wilkins, Marathon Petroleum Company, and Tom Herman, Zeon Chemicals, to the ORSANCO/Ohio River Users Advisory Committee, with terms expiring in October of 2012.

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

Mr. Mike Apgar, Chairman of the POTW Advisory Committee, reported that, in the Committee’s report at the June Commission meeting, there was mention of the Committee’s

intent to prepare a written response to the 24 responses Region 5 prepared to questions that surfaced in the January 2009 Bacteria TMDL Kick-Off Public Meetings. At that time, the Commission requested that the Committee provide its response to Commissioners prior to the October Commission meeting for review. The POTW Committee met on October 8-9 to deliberate over an appropriate response. The Committee's response was forwarded to ORSANCO staff on October 14th and emailed to Commissioners. In addition, a hard copy was provided in the meeting packet this morning.

Mr. Apgar proceeded to cover the points made in the response document and began by stating that all of the concerns voiced in the White Paper dated October 28, 2008 are still very relevant concerns the Committee has with the development of the bacteria TMDL. However, Committee members are encouraged that Region 5 has committed to provide for Stakeholder input and involvement as stated in response number 21. Also, the Commission will involve these committees in first draft reviews rather than later stages of development. In the response letter, the Committee is articulating what type of involvement it would like to have and asking for clarification on the specifics of stakeholder involvement.

In addition, the Committee is suggesting Region 5 and the Commission consider a revision in the schedule to accommodate the inclusion of recent data and science being conducted nationally with respect to bacteria. The conclusion of the Bacteria TMDL is scheduled to occur sometime in 2011, and the EPA is scheduled to conclude their national effort by 2012. This short postponement would also be a much better fit for the bacteria research and data being collected by POTW's with respect to their LTCP's. When asked to provide this data in October 2008, the Committee complied but stated that the data set provided is in no way to be considered complete.

In summary, the Committee is looking forward to offering professional advice and input, but requests clarification on the specifics of how this will occur. The Committee is respectfully asking Region 5 and the Commission to consider a short postponement to take advantage of additional data and fresh science that the Committee believes will allow a TMDL of higher quality.

In closing, the Committee will be sending an immediate response to Region 5. The POTW Committee will meet in early February 2010 via conference call to prepare for the February Commission meeting in Northern Kentucky.

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

Report of the Water Users Advisory Committee (WUAC)

Ms. Mary Armacost, Committee Chairman, reported that the Water Users Advisory Committee met in October in Cincinnati and discussed a number of issues. Ms. Armacost also reported that the Committee has two new representatives and also mentioned the addition of a new utility member, Speedway, Indiana, which is located on a tributary of Eagle Creek in Indiana.

The October meeting of the committee was held at USEPA's Breidenbach Research Center to draw on the expertise resident at this facility and to engage them on issues of concern to Ohio River utilities. US EPA personnel gave presentations on: infrastructure condition assessment; innovative treatment techniques, emerging contaminants (C-8) and climate change.

Ms. Armacost then reported on the status of the Organics Detection System (ODS) renovation. Ms. Armacost reported a new Gas Chromatography/Mass Spectrometry (GCMS) unit had been

added to the system at Westview Water in Pittsburgh, PA, and that work is proceeding to connect all sites to ORSANCO via high speed internet access. Ms. Armacost further reported that a second GC/mass spec would soon be installed at the DuPont ODS site in Parkersburg, WV. The cost of the equipment installed at DuPont would be underwritten by the Supplemental Environmental Project negotiated between DuPont and WVDEP. The Committee discussed emerging contaminants and requested that EPA conduct more research on the presence of C-8 in the Ohio River and the development of treatment technologies for the removal of C-8.

Ms. Armacost concluded by reporting that this would be her last meeting as Committee Chairman and that she was greatly appreciative of having the opportunity to serve the Commission, and her industry, in this capacity.

ACTION: Motion by Commissioner Conroe, second by Randy Sovic and carried, to accept the report of the Water Users Advisory Committee (WUAC).

Report of the Public Interest Advisory Committee (PIACO)

Ron Riecken, Committee Chairman, reported that the Committee (PIACO) met September 9-10 in Northern Kentucky. Status reports were provided on public information activities and on ORSANCO's new website.

The Committee discussed the development of a new Communications Plan which was one of the recommendations resulting from last February's visioning sessions. The Committee believes it can play a key role in reviewing the Communications plan and helping ORSANCO with its core message to the public. PIACO would like to review the plan as it is developed. Committee members also believe that education is a key element in this plan. The new ORSANCO website is a great start to the Communication strategies that are being considered.

The Committee had originally sought approval at the February Commission to proceed with discussion of a town hall type meeting prior to the next Standards review process. After much consideration, the Committee decided this would not be necessary since the Commission conducts workshops prior to the beginning of the Standards process.

The Committee offered the following recommendations regarding improvements to the Pollution Control Standards review process:

1. Provide specific descriptions on possible changes to the Pollution Control Standards prior to workshops so citizens and/or industry officials can understand proposed changes earlier.
2. Develop a webcast on proposed Pollution Control Standards changes prior to the workshop to be available on the web so interested parties can educate themselves regarding Pollution Control Standards issues.
3. In order to increase an active interface between the public and the Commission, PIACO requests to look at the proposed specific Pollution Control Standards changes and to get a first hand opinion prior to the workshop and prior to the general public viewing.
4. Target local officials. Knowing in advance and knowing specifics about the Standards make a big difference in understanding what is going on in the review process.

The Committee would also be willing to forward possible proposed Standards changes to their own network of contacts. Finally, the Committee would like to invite members of the Pollution Control Standards Committee to its next meeting to discuss the review process and would also like authorization to attend other Committees' meetings for information purposes.

ACTION: Motion by Commissioner Bruny, second by Commissioner Potesta and carried, that the Pollution Control Standards Committee and staff take the Committee's recommendations under advisement and to accept the report of the Public Interest Advisory Committee (PIACO) as presented.

Mr. Riecken concluded by providing a brief update on the Foundation for Ohio River Education's activities, noting its public relations efforts on ORSANCO's behalf.

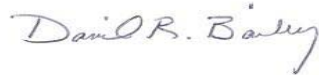
Upcoming Meetings

Chairman Flannery noted the following schedule for upcoming Commission meetings:

- February 9-11, 2010 Florence, KY
- June 8-10, 2010 Tides Inn, Irvington, Virginia

ACTION: Motion by Commissioner Flannery, second by Commissioner Duritsa and carried, to adjourn the 195th Commission meeting at 11:10 A.M.

Prepared by:



Date:

December 23, 2009

David Bailey
Director of Administration
& Human Resources

Approved by:



Date:

December 23, 2009

Charles Duritsa
Secretary/Treasurer

ROSTER OF ATTENDANCE
195th Commission Meeting
October 22, 2009

Commissioners

Illinois	Phillip Morgan Marcia Willhite (PROXY for Douglas Scott)
Indiana	Thomas Easterly
Kentucky	Valerie Hudson (PROXY for Leonard Peters) Jeffrey Eger
New York	Douglas Conroe T. Lee Servatius
Ohio	Paul Tomes George Elmaraghy (PROXY for Christopher Korleski)
Pennsylvania	Charles Duritsa Greg Phillips Ron Schwartz (PROXY for John Hanger)
Virginia	Robert Wayland Jack Frye (PROXY for Joseph Maroon) Ellen Gilinsky (PROXY for David Paylor)
West Virginia	David Flannery Ronald Potesta Randy Sovic (PROXY for Randy Huffman)
Federal	Stuart Bruny Kenneth Komoroski

U.S. EPA

Edward Ambrogio

Executive Director

Alan Vicory

Guests

Mary Armacost – Chairman, Water Users Advisory Committee;
Mike Apgar – Chairman, POTW Advisory Committee; Ron
Riecken – Chairman, Public Interest Advisory Committee;
Deborah Lee – US Army Corps of Engineers; Linda Eichmiller,
ASIWPCA; Matt Gibson, WV Rivers Coalition; Steve Dye,
McCallister & Quinn

Staff

David Bailey, Jason Heath, Jerry Schulte, Peter Tennant, Joseph
Gilligan, Erich Emery, Jeanne Ison, Greg Youngstrom, Sam
Dinkins, Tracey Edmonds