

OHIO RIVER VALLEY WATER SANITATION COMMISSION

MINUTES

**211th Commission Meeting
Embassy Suites Cincinnati-RiverCenter
Covington, Kentucky
Friday, February 13, 2015**

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Friday, February 13, 2015

Chairman Thomas Easterly, Presiding

Call to Order

Chairman Easterly called the 211th meeting of the Ohio River Valley Water Sanitation Commission to order at 9:00 A.M., Friday, February 13, 2015.

Commissioner Easterly led the Commission in the Pledge of Allegiance.

Quorum Call

Commissioner Lovan certified that a quorum was present (see Roster of Attendance, page 9).

Action on Minutes

ACTION: Motion by Commissioner Tomes, second by Commissioner Flannery and carried, that the minutes of the 210th meeting of the Commission and of the October 2014 Executive Session, electronically distributed on January 21, 2015, be adopted as presented.

Report of the Audit Committee

Commissioner Duritsa introduced Patrick Frambes from the audit firm Barnes Dennig to provide an overview of the audit findings. Mr. Frambes reported that ORSANCO's audit was an "unmodified" audit with no deficiencies or material weaknesses found in internal controls. He noted the excellent condition of the accounting records, resulting in no required adjustments, and the open cooperation of staff. Mr. Frambes also noted that new accounting standards will require reporting future net pension liabilities in the financial statements resulting in a possible negative net position.

Commissioner Duritsa continued by indicating that a 2014 Independent Auditors' Report was provided in the meeting packet. He reported that Barnes Dennig, Certified Public Accountants performed a general-purpose financial audit for fiscal year ending June 30, 2014. In the auditor's opinion, the general-purpose financial statements present fairly, in all material respects, the financial position of ORSANCO as of June 30, 2014. There were no internal control related findings or issues.

This is the fourth audit performed by Barnes Dennig, and staff finds them to be very professional and thorough, with a high level of expertise. The Committee recommends retaining Barnes Dennig to perform the 2015 audit.

ACTION: Motion by Commissioner Duritsa, second by Commissioner Frevert and carried, to accept the Independent Auditor's Report and the Audit Committee's

recommendation to retain Barnes Dennig to perform the June 30, 2015 financial audit.

Report of the Treasurer

Commissioner Lovan noted that a Treasurer's report as of December 31, 2014 was provided in the agenda packet.

The report indicates a balance of \$322,842 in accounts receivable due the Commission as of December 31, 2014. The balance represents \$223,650 due from Signatory States, \$55,882 due from Federal sources, and \$43,310 due from other sources.

Additionally, the report indicates receipts of \$2,328,143 plus carryover of \$2,357,889, totaling \$4,686,002 through the end of December 2014. Of that amount, \$1,913,488 was expended on programs, leaving \$2,772,544 available for the continuation of ORSANCO's programs.

Commissioner Lovan also noted the current cash balance is approximately \$2M, cash flow remains appropriate, and ORSANCO remains in a strong financial position.

ACTION: Motion by Commissioner Flannery, second by Commissioner Duritsa and carried, to receive the Treasurer's Report as presented.

Report of the Chairman

Chairman Easterly began by highlighting some activities carried out over the previous six months including an award for water quality trading, a report on the 2014 Pool Assessments, and continuing with strong financial controls. Chairman Easterly also commented that work to assess the River and participation in committee activities remains at a high level. Outputs from these activities should soon be realized.

Chairman Easterly reported that a committee has been formed to consider the issue of how states meet the terms of the Compact and is it being done in an efficient way. He also commented on the Commission's numerous partnerships, including US EPA (which is currently supporting an update of the spill model), EPRI (for the nutrient trading program), and several foundations which have supported water resources activities. He also noted the Program & Finance Committee's activities in meeting more frequently to better understand ORSANCO's financial challenges and opportunities.

Chairman Easterly concluded by stating that the state of the Ohio River is getting better due in large part to the efforts of Commissioners and staff.

Report of the Executive Director

Mr. Tennant started by noting the collaboration with US EPA to update the spill model and the resources provided to accomplish this needed update. He also reported that the transfer of the Federal 106 grant from US EPA Region 3 to Region 5 is complete. This transition proceeded very smoothly. Further discussions have taken place regarding quality assurance requirements.

Mr. Tennant reported that both new Indiana Commissioners, Joseph Harrison, Jr. and John Kupke, visited the Commission headquarters.

He also reported that Rob Reasch, of the Power Industry Committee, mentioned ongoing discussion to reactivating a Chemical Industry Committee. Input on Standards issues from such a committee would be welcomed due to industrial use of river water and understanding their concerns.

Mr. Tennant reported that the EPRI led trading program received one of the US water prizes for 2014. This prize will be awarded in Washington, DC in April 2015. This is also a tribute to the states for getting ahead of the curve in looking at trading as a viable option for nutrient reduction.

Mr. Tennant concluded by commenting that this would be his last Commission meeting serving as Executive Director. Mr. Tennant received a rousing round of applause for his 39 years of dedicated service to the Commission.

Recognition of Service

Commissioner Potesta offered the following resolution for adoption:

**RESOLUTION 1-15
Recognition of Service
Joseph H. Harrison**

WHEREAS, Joseph H. Harrison has served as a Commissioner to the Ohio River Valley Water Sanitation Commission representing the state of Indiana from 1982 until 2014, and

WHEREAS, Mr. Harrison has become the longest serving Commissioner in the Commission's history, and

WHEREAS, Mr. Harrison has given unstintingly of his time, serving as member and chairman of several Commission Committees, and

WHEREAS, Mr. Harrison served as Chairman of the Commission from July 1, 1986 through June 30, 1987, and

WHEREAS, Mr. Harrison provided particular leadership in developing the Commission's relationships with the United States Congress, and

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

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

ACTION: Motion by Commissioner Potesta, second by Commissioner Flannery and carried, to adopt Resolution 1-15 as presented.

Report of the Executive Director Search Committee

Commissioner Tomes reported that a Committee was formed in June 2014 to initiate an Executive Director search process. Eleven Commissioners, representing all states, were appointed to serve on this Committee. An extensive recruiting, screening and interview process was undertaken. Commissioner Tomes was pleased to announce that Richard Harrison has been selected as the recommended candidate to become the Commission's next Executive Director.

ACTION: Motion by Commissioner Tomes, second by Commissioner FitzGerald and carried (Commissioner Lovan abstaining), to authorize Chairman Easterly, working with the personnel Committee, to make an offer of employment to Mr. Richard Harrison, as Executive Director of the Ohio River Valley Water Sanitation Commission.

Report of the Pension Committee

Commissioner Morgan, Committee Chairman, reported that the Actuarial Report, compiled by Buck Consultants, indicated that the Pension Plan had assets with a market value of \$3,479,075 and a funded ratio of 79.1% as of July 1, 2014. This reflects a 9% funded ratio increase over the previous year.

Fund assets are currently invested through PNC Institutional Investments, with a 50% stock and 50% bond allocation. Based on risk management, the current allocation provides the best opportunity for positive long-term returns. The Pension Committee recommends continuing with this investment strategy.

The Pension Committee requests that the Program & Finance Committee considers a recommendation to fund a pension contribution of \$300,000, based on available funds, for FY16. This amount reflects no increase over this year.

ACTION: Motion by Commissioner Morgan, second by Commissioner Tomes and carried, to elect Commissioner Lovan to serve as a member of the Pension Committee.

ACTION: Motion by Commissioner Morgan, second by Commissioner Potesta and carried, to receive the Pension Committee report as presented.

Report of the Technical Committee

Commissioner Frevert, Committee Chairman, reported that the 207th Technical Committee meeting took place on February 11-12, 2015. Six states, four federal agencies, and four advisory committees were represented. He then provided this brief overview of the meeting outcomes.

The first day was spent reviewing staff's technical programs and discussing input for FY16 technical activities, in particular, biological programs. Current program activities appear to be going well and on track.

The second day was devoted to discussing pollution control standards activities. The Technical Committee does endorse the work of the Pollution Control Standards Committee and its plan to move forward with a public comment period for proposed changes.

Staff has been working for a year on defining a protocol and policy ensuring the quality of outside data use. Guidance is now available which outlines the quality standards and requirements for industry partners, federal agencies, and others wishing to participate with ORSANCO in technical studies and reports.

Report of the Pollution Control Standards Committee

Commissioner Bruny, Committee Chairman, reported that the Pollution Control Standards Committee met at the offices of ORSANCO on November 6, 2014, and by conference call on December 16, 2014 and January 13, 2015. The two-fold purpose of these meetings was to develop preliminary draft proposals for revisions to the Commission's Pollution Control Standards for the Ohio River, and to consider a variance request by FirstEnergy Corp., Pleasants Power Station, located in Willow Island, West Virginia, regarding their continued need for a mixing zone for their discharge of mercury.

The Pollution Control Standards Committee is asking the Commission to authorize a public comment period and hearing regarding **Attachment I** – Preliminary Proposals for 2015 Revisions to the Commission's Pollution Control Standards. Please see the attachment for specific proposals. It includes a proposal to revise the section on prohibition of mixing zones for bioaccumulative chemicals of concern (BCCs). The proposed revision would require states to

eliminate mixing zones for BCCs for existing sources “as soon as practicable”, as opposed to the current date of October 16, 2015. It also outlines criteria which the permitting authorities are to consider when applying this section of the standards. Regarding the water quality criterion for total mercury, the committee is proposing to solicit public comment on its application, which is currently defined as “not to exceed”, prior to proposing any specific revision. Regarding criteria for temperature (for human health protection) and total dissolved solids (TDS), no substantive changes are being proposed for the 2015 revision. However, clarifying language that the human health temperature criterion applies both inside and outside the mixing zone is proposed.

The Committee proposes the adoption of new US EPA ammonia criteria for the protection of aquatic life and to add the requirement for industrial dischargers to report spills in addition to the existing requirement to report upsets and bypasses.

Commissioner Bruny also reported on the following items:

Should the Commission authorize the public notice of these proposed changes to the Standards, the Committee would also like to seek additional public comment on the prohibition of mixing zones for Bioaccumulative Chemicals of Concern (BCCs). The Committee invites comments on alternatives to the proposal including the elimination of the mixing zone prohibition for BCCs altogether or to maintain the current mixing zone prohibition for BCCs which is scheduled to go into effect on October 16, 2015. The Committee also invites comment on the specification of frequency in duration for which numeric criteria will be applied. These items would be included in the public notice process for the Standards.

ACTION: Motion by Commissioner Bruny, second by Commissioner FitzGerald and carried (Commissioner Hedman abstaining), to authorize a public comment period and public hearing for the proposed changes to the Water Pollution Control Standards.

The Pollution Control Standards Committee is also asking the Commission to authorize a public comment period and hearing regarding **Attachment II** – Draft Variance from the Mixing Zone Prohibition for Bioaccumulative Chemicals of Concern for FirstEnergy Corp., Pleasants Power Station. Please see the attachment for the specific proposal. The committee is recommending that a variance to allow a mixing zone for total mercury be granted for a two-year period and proposes to significantly reduce effluent limitations from current permit conditions. The variance requires semi-annual progress reports, mercury monitoring, and a mercury reduction plan.

Commissioner FitzGerald provided the following comments regarding the variance request. “I ask that you vote not to send the request by First Energy for a variance from the prohibition on mixing zones for bioaccumulative chemicals of concern (BCCs), because I believe that the grant of a variance based on the information supplied would be fundamentally inconsistent with the plain language of the ORSANCO Pollution Control Standards, and would weaken the position of the Commission as an advocate for protection and improvement of the water quality of the Ohio River Basin.

The proposal to grant a variance from the mixing zone prohibition for mercury to an applicant that has failed to satisfy the legal standards for awarding such a variance, occurs against a background of widespread contamination of fish, predominantly from deposition of atmospheric inorganic mercury from coal combustion, as noted in the 2014 USGS Circular *Mercury in the Nation's Streams-Levels, Trends, and Implications*. As the Clean Air Act MATS standard requires power plants and other coal combustion sources to remove more mercury from exhaust emissions that mercury will be managed along with other utility wastes and may result in increased entrainment of mercury in wastes with discharges into the river and its tributaries.

The application for a variance submitted by First Energy suffers from a complete lack of any assessment of alternatives (including a no-discharge alternative) and fails to even marginally address many of the criteria for a variance. Granting a mercury variance in the absence of the analyses and demonstrations required by the ORSANCO Pollution Control Standards rewards the source for not having properly characterized and analyzed waste management strategies despite having over a decade's advance notice that mixing zones would be phased out for such bioaccumulative toxins. Failing to hold the line and to require compliance with the regulatory standards in this instance sets a poor precedent, which I am concerned will come back to haunt the Commission at a later time because there are a number of similarly situated power plants who will have to address mercury in wastewater discharges. Minimization of reliance of the public's waters for discharges of a bioaccumulative toxin should always be the goal, and granting a variance on the basis of an application so wanting in compliance with the Commission's standards for such a grant, unacceptably lowers the bar.

I ask that the Commission not send this proposal out for public comment." For the record, Commissioner FitzGerald voted "no" on the motion to authorize a public comment period for the proposed variance.

ACTION: Motion by Commissioner Bruny, second by Commissioner Duritsa and carried (Three voting no, and Commissioners Hedman, Easterly, Flannery, Paylor abstaining), to authorize a public comment period and public hearing for this proposed variance.

The Commission also has received variance requests from the mixing zone ban for BCCs from Mountain State Carbon and Valley Converting. There have been discussions with two other Ohio River dischargers which also may be requesting variances. The Committee will address these requests during its next teleconference meeting.

Report of the Program and Finance Committee

Commissioner Conroe, Committee Chairman, reported that the Program and Finance Committee met on February 11th to continue discussions on several issues in preparation for the April Committee meeting. The Committee further discussed ORSANCO's reserve funds to define appropriate funding levels and how to best invest such funds. Pension Plan funding was also discussed and additional consideration was given to the possible impacts of an additional one-time lump sum contribution from excess reserve funds. The remaining duration of the facility's mortgage was discussed in terms of future capital improvement needs. Staff will continue working on these issues in preparation for the April Committee meeting.

Report of the ORSANCO/Ohio River Users Program Advisory Committee

Commissioner Potesta, Committee Chairman, reported on the following items:

Fundraising Efforts

Staff has developed a marketing brochure that provides background on the River User Program and solicits suggestions for future studies to be undertaken through the program and encourages interested stakeholders to financially support the completion of these studies. The fundraising campaign will involve three key elements including, 1) direct mailing of the brochure, 2) email and online distribution of the marketing materials, and 3) enlisting the assistance of River Users Committee members to reach out to fellow colleagues within their industries to encourage support of the program. This fundraising effort is set to launch by the end of this month.

Committee Membership

Committee members appointed to the Ohio River Users Program Advisory Committee serve an initial three-year term and are then eligible to be re-appointed to a second three-year term. Tara Lanier, from Marathon Petroleum, has reached the end of her second term on the Committee. The Committee wishes to thank Tara for her dedication and hard work to make this program a success.

Marathon Petroleum has shown a continued commitment to ORSANCO and the River Users Program and wishes to retain membership on the River Users Advisory Committee. They ask that the Commission consider Greg Wilkins for membership.

ACTION: Motion by Commissioner Potesta, second by Commissioner FitzGerald and carried, to appoint Greg Wilkins as a member of the ORSANCO/ Ohio River Users Program Advisory Committee.

Report of the Public Interest Advisory Committee (PIACO)

Betsy Mallison, Committee Chairman, reported that the Committee met on February 11, 2015 and discussed a number of topics.

The Committee discussed the annual Toxic Release Inventory (TRI) Report and supports staff's proactive approach, rather than its past reactive approach, to providing facts and ORSANCO's position on this report via ORSANCO's website and social media. Efforts will be made to communicate the improved health and positive aspects of the River.

The Committee also discussed and defined objectives for the Committee to better serve the Commission and the general public. Ms. Mallison concluded by noting that the Committee has several openings for members and requests recommendations from Commissioners and others.

Report of the Water Users Advisory Committee

Bruce Whitteberry, Committee Chairman, reported that the Committee met in January and continues to focus on source water protection efforts. The Committee appreciates ORSANCO's role in these source water protection activities. Staff has shown willingness to expand and help the utilities with other components of their source water protection strategies.

The Committee is pleased with the development of a harmful algal bloom response strategy. This is an integral component to source water protection.

The Committee discussed whether the upgraded Organics Detection System (ODS) can be used to expand the chemicals monitored within the parameters of the existing equipment. The Committee continues to work with staff to define the appropriate direction. The equipment is capable of detecting a number of additional chemicals.

Bromide continues to be a concern relative to the increasing levels and how this affects the formation of disinfection byproducts. The Committee looks forward to the conclusions of US EPA's RARE grant conducted in Region 3. It is hoped that this study will lead to a potential appropriate scientific basis for a bromide standard or provide guidance on additional research required.

The Committee also discussed the issue of proprietary chemicals relative to spills which is of concern to the utilities. It is difficult to respond when the spilled content is unknown.

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

Alex Novak, Committee Chairman, reported that the Committee had not met in over a year. The goal is to reenergize the Committee and seek a broader grouping of participants. He hopes that the Committee will meet and have more to report at the next Commission meeting.

Comments by Guests

Judy Peterson, Kentucky Waterways Alliance (KWA), provided comments in opposition to the proposed FirstEnergy variance. She indicated that KWA will be providing comments during the upcoming comment period.

Richard Harrison, named as ORSANCO's next Executive Director, introduced himself and provided some comments on his organizational vision and priorities.

Recognition of Service

The following ORSANCO staff members were recognized for service milestones:

David Bailey – 15 years

Jeff Thomas – 15 years

Upcoming Meetings

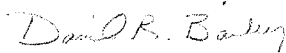
Chairman Easterly noted the following schedule for upcoming Commission meetings:

- June 16-18, 2015 Clifty Falls, Madison, Indiana

Adjournment

The 211th Commission meeting was adjourned at 10:40 A.M.

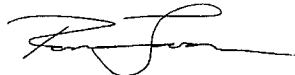
Prepared by:



Date: March 30, 2015

David Bailey
Director of Administration

Approved by:



Date: April 8, 2015

Ron Lovan
Secretary/Treasurer

ROSTER OF ATTENDANCE
211th Commission Meeting
February 13, 2015

Commissioners

Illinois

Toby Frevert
Phillip Morgan

Indiana

Thomas Easterly
John Kupke
Joseph Harrison, Jr.

Kentucky

Ron Lovan
Bruce Scott (PROXY for Leonard Peters)
Peter Goodmann (PROXY for Lt. Governor Abramson)

New York

Douglas Conroe

Ohio

Paul Tomes
Craig Butler
Stuart Bruny

Pennsylvania

Charles Duritsa
Ron Schwartz (PROXY for Acting Secretary Dana K. Aunkst)

Virginia

David Paylor

West Virginia

David Flannery
Ron Potesta

Federal

Susan Hedman
Tom FitzGerald
George Elmaraghy

Legal Counsel

Ross Wales

Executive Director

Peter Tennant

Guests

Tim Henry – US EPA Region 5; Betsy Mallison – PIACO; Bruce Whitteberry – WUAC; Alex Novak – POTW; Joe Lapcevic – First Energy Corporation; Sara Smith – Smith Management Group; Judy Petersen – PIACO; Randy Payne – Kentucky; Patrick Frambes – Barnes Dennig; Karl Gebhardt – OEPA; Richard Harrison – NKY Water District; John Hirschfield – Axiall; Heather Mayfield – FORE

Staff

David Bailey, Jason Heath, Sam Dinkins, Jerry Schulte, Lisa Cochran, Steve Braun, Travis Luncan, Rob Tewes, Ryan Argo, Tracey Edmonds, Lila Ziolkowski, Stacey Cochran, Jeff Thomas, Greg Youngstrom

**Preliminary Proposal for 2015 Revisions to the Pollution Control Standards
For Discharges to the Ohio River**

1) Revise Chapter 4, Section F, mixing zone prohibition for bioaccumulative chemicals of concern, as follows:

F. Mixing Zones for Bioaccumulative Chemicals of Concern

1. Facilities with discharges which were in existence on or before October 16, 2003 will have mixing zones eliminated for any bioaccumulative chemical of concern (BCC) as soon as is practicable, as determined by the permitting authority, considering the following criteria:
 - i. Measures taken during the current permit cycle and an evaluation of those measures proposed to be taken during the next permit cycle to reduce or eliminate the necessity of a mixing zone for each BCC;
 - ii. The concentration and duration of the discharge, bioaccumulation factors and exposure considerations for each BCC for which the mixing zone is sought to be continued.
2. The necessity for continuation of a mixing zone for a BCC shall be evaluated and determined by the permitting authority during each permit renewal and reissuance.
3. The addition of waste streams to an existing facility shall be evaluated under this section by the permitting authority at the time of permit review.
4. Mixing zones shall continue to be prohibited for BCCs for discharges from facilities that came into existence after October 16, 2003.
5. No mixing zone for a BCC shall be approved by a permitting authority that would result in a violation of any water quality standard or impairment of any designated use of a waterbody.
6. BCCs are defined as any chemicals that accumulate in aquatic organisms by a human health bioaccumulation factor (BAF) greater than 1000 (after considering various specified factors), and have the potential upon entering surface waters to cause adverse effects, either by themselves or in the form of their toxic transformation, as a result of that accumulation. Currently, the list of BCCs, as described in the Final Rule to Amend the Final Water Quality Guidance for the Great Lakes System to Prohibit Mixing Zones for Bioaccumulative Chemicals of Concern, includes:

Bioaccumulative Chemicals of Concern

Lindane	Mirex
Hexachlorocyclohexane	Hexachlorobenzene
alpha-Hexachlorocyclohexane	Chlordane
beta-Hexachlorocyclohexane	DDD
delta-Hexachlorocyclohexane	DDT
Hexachlorobutadiene	DDE

Photomirex	Octachlorostyrene
1,2,4,5-Tetrachlorobenzene	PCBs
Toxaphene	2,3,7,8-TCDD
Pentachlorobenzene	Mercury
1,2,3,4-Tetrachlorobenzene	Dieldrin

2) Total Mercury Water Quality Criterion

- a. Do not revise the total mercury water quality criterion (magnitude) during this review. Complete two additional mercury bioaccumulation studies in the middle and lower Ohio River before reconsidering the magnitude of the criterion, which would most likely occur during the next triennial review. A mercury bioaccumulation study has been completed in the upper Ohio River. A draft report was distributed for comment. Comments have been received from Axiall Corp., IDEM, PIAC, USGS and USEPA. Two additional sites, in the middle and Lower River, will be selected for follow up study at the February TEC meeting.
- b. Consider revisions to the “not to exceed” component of the criterion based on a completed review of #8 below concerning the specification of appropriate frequency and duration for numeric criteria. Completion of this task will involve asking the public for comment during the next public comment period.
- c. Review how states are currently utilizing the total mercury criterion in permits.

3) Total Dissolved Solids Criterion (500 mg/L)

- a. Do not revise the total dissolved solids criterion (TDS) during this review. The Committee believes that no new information has been generated which would cause them to recommend revising or removing the current criterion. The committee does recommend referring the issue of protecting industrial water supply intakes for TDS to the newly-authorized “Chemical Industry” Advisory Committee, Power Industry Advisory Committee, as well as other applicable entities. The new advisory committee is in the early stages of being formed.
- b. The committee recommends considering new criteria for individual constituents of TDS, but that a significant effort would be required to do so. Thus, the committee recommends deferring consideration of new criteria for individual constituents of TDS until the next triennial review.
- c. Clarify footnote D, Table 3.1 by adding “drinking water” immediately before “intakes”. This is an editorial revision which does not substantially change the content of the standards.

4) Ammonia Criteria for Aquatic Life Protection

The committee recommends revising the aquatic life ammonia criteria per USEPA’s new recommendation. The USEPA-recommended criteria tables are attached including tables for when mussels are absent. These tables are contained in USEPA’s recommended criteria, however USEPA generally recommends that the mussels present tables only should be utilized. In addition, the USFWS has recommended against including the mussels-absent tables for multiple reasons, including the possibility that use of these tables in areas without mussels could preclude recolonization of mussels in the future.

5) Human Health Temperature Criterion (110 deg F)

Revise wording of human health temperature criterion to clarify that the criterion applies anywhere public access is possible, both inside and outside the mixing zone. This revision represents a clarification, not a substantive change to the section.

F. TEMPERATURE: The maximum temperature at any location where public access is possible, whether inside or outside a mixing zone, shall not exceed 110 degrees F to protect human health caused by exposure resulting from water contact.

6) E. coli Criteria

The committee recommends not revising the E. coli criteria during this review. None of the ORSANCO states have adopted the new criteria but are waiting for the USEPA to issue implementation guidance. The committee recommends monitoring the status of states' adoption of new USEPA Beaches Act recommendations and reconsideration during next triennial review.

7) Nutrients Criteria

The committee recommends not proposing numeric nutrients criteria until such time as ORSANCO's new monitoring approach produces the data necessary to develop scientifically-defensible criteria. Continue to analyze data from new monitoring approach and reconsider during next review.

8) Specification of Frequency and Duration For Numeric Criteria

The committee recommends the language below to be included in the announcement of a public comment period on proposed standards revisions. The language asks for additional public input as follows:

“The ORSANCO Pollution Control Standards contain over 130 individual water quality criteria for the protection of the water quality and beneficial uses of the Ohio River. Some of these criteria specify permissible durations of exposure or frequencies for permissible exceedances of the criteria, but many of the criteria do not have any duration or frequency associated with them. In cases where those values are specified, the Commission wants to ensure that the duration and frequency values in the current Pollution Control Standards remain scientifically sound and appropriate for the Ohio River. In cases where no duration or frequency is specified, we want to identify and incorporate an appropriate duration for averaging exposure for acute and chronic values, and a frequency of excursions of water quality criteria that is determined to be appropriate and allowable without significantly increasing the frequency or severity of all stresses to which ecological communities are naturally subjected.

The U.S. Environmental Protection Agency recommends that for acute criteria, the 1-hour exposure should not exceed the criterion maximum concentration (i.e. an averaging period of 1 hour) and for chronic criteria, an averaging period of 4 days, so that the 4-day averaging exposure should not exceed the chronic water quality criterion value.

With respect to the allowable frequency at which a criterion may be exceeded without causing a violation of the water quality criteria, EPA has recommended an average frequency for excursions of both acute and chronic criteria not to exceed once in three (3) years.

The Commission seeks public comment on the frequency and duration values appropriate to the acute, chronic, human health (carcinogen), human health (non-carcinogen), and fish consumption criteria contained in the existing Pollution Control Standards, and encourages commenters to provide technical support and references for the frequency and duration values proposed in the comments.”

9) Radionuclide Criteria

The committee recommends considering revisions to radionuclide criteria during the next review due to resource constraints.

10) Public Comments Submitted Under the Issue of “Fracking”

The committee recommends not revising the standards based on recommendations under “Fracking”, including utilization of analytical detection levels to set criteria, development of criteria for bromide and salinity, and requiring 10-year surety bond for shippers of fracking waste. The committee does not believe that setting criteria at detection levels is scientifically defensible, that information concerning criteria for bromide and/or salinity will be better developed in the near future, and that the surety bond issue is not appropriate to include in the standards.

11) Chloride Criterion for the Protection of Aquatic Life.

The committee recommends that no criteria be recommended during this review, and that information will be more developed for reconsideration during the next review.

12) Thallium Criteria

The committee recommends no action regarding thallium during this review due to the absence of a scientifically defensible rationale to do so.

13) Development of Additional Metals Translators

Public comments were submitted regarding the development of additional metals translators and allowance of the use of the water effects ratio within the context of the standards criteria site-specific criteria development. The committee believes no action on these comments are warranted at this time because there is not enough data to support an expanded translator list at this time, and the site-specific criteria provision of the standards would allow for the utilization of water effects ratio (WER) approach for developing site-specific criteria.

14) Public Comment on the Notification of Upsets and Bypasses

Public comment was received on this provision. The committee recommends revising the standards to extend this provision to include spills as follows:

5.5.C. Industrial waste treatment facilities shall notify ORSANCO of all upsets, bypasses and spills within two hours of their discovery.

15) Public Comment to Revise “months” to “periods” in 2.2.B

The committee recommends no action on this recommendation.

16) Public Comment to Revise Section on Analytical Methods

The committee recommends no action on this recommendation.

17) Public Comment to Utilize a Different term than “Variance”

The committee recommends no action on this recommendation.

18) Public Comment to Revise All Criteria To Protect Mussels

The committee recommends no action on this recommendation.

19) Public comment to Revise All Criteria to Align With USEPA’s National Recommendations

The committee recommends no action on this recommendation.

Approved Variances from Pollution Control Standards

II. FirstEnergy Corp, Pleasants Power Station, Willow Island, WV (Permit WV0023248)

- 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 2013 Revision, Chapter 4.F, Mixing Zone Prohibition for Bioaccumulative Chemicals of Concern is granted to FirstEnergy Corp., Pleasants Power Station (NPDES Permit WV0023248) for a period not to exceed two years, beginning October 16, 2015.
- 2) FirstEnergy Corp. will be allowed a mixing zone as specified above; however, at WV0023248 Outfall 001, the monthly average limit for Total Hg shall not exceed 0.022 ug/L, and a maximum daily limit shall be determined by the West Virginia Department of Environmental Protection (WVDEP) in accordance with WVDEP's mixing zone and NPDES rules, regulations, and policies.
- 3) FirstEnergy Corp's mercury reduction plan submitted to the Commission in its application dated November 26, 2014 shall be fully implemented.
- 4) FirstEnergy Corp. shall submit to the Commission and WVDEP semi-annual progress reports beginning October 16, 2015 including the status of implementing its mercury reduction plan and all mercury monitoring data collected as a requirement of this variance and NPDES Permit WV0023248.
- 5) Beginning October 16, 2015, monthly Ohio River in-stream sampling for Total Hg shall be conducted upstream of WV0023248 Outfall 001 and downstream of Outfall 001 at the downstream and lateral edge of the regulatory mixing zone as specified by WVDEP in the NPDES permit. Samples shall be representative of the entire water column at each location.
- 6) Beginning October 16, 2015, annual fish tissue monitoring for total and methyl mercury shall be conducted downstream, in the vicinity of WV0023248 Outfall 001. A minimum of three samples each from trophic levels three and four fish shall be collected annually. FirstEnergy 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. WV0023248 for Outfall 001.