

**OHIO RIVER VALLEY WATER SANITATION COMMISSION**

**MINUTES**

**210<sup>th</sup> Commission Meeting  
Oglebay Resort & Conference Center  
Wheeling, West Virginia  
Thursday, October 9, 2014**

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## MINUTES

210<sup>th</sup> Commission Meeting  
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Wheeling, West Virginia  
Thursday, October 9, 2014

Chairman Thomas Easterly, Presiding

### Call to Order

Chairman Easterly called the 210<sup>th</sup> meeting of the Ohio River Valley Water Sanitation Commission to order at 9:00 A.M., Thursday, October 9, 2014.

Commissioner Easterly led the Commission in the Pledge of Allegiance.

### Quorum Call

Commissioner Lovan declared that a quorum was present (see Roster of Attendance, page 15).

### Action on Minutes

**ACTION:** Motion by Commissioner Duritsa, second by Commissioner Bruny and carried, that the minutes of the 209<sup>th</sup> meeting of the Commission and of the June 2014 Executive Session, electronically distributed on September 18, 2014, be adopted as presented.

### Report of the Treasurer

Commissioner Lovan noted that a Treasurer's report as of June 30, 2014 was provided in the agenda packet.

The report indicates a balance of \$411,456 in accounts receivable due the Commission as of June 30, 2014. The balance represents \$364,405 due from Federal sources and \$47,051 due from other sources.

Additionally, the report indicates receipts of \$3,992,710 plus carryover of \$1,661,633 totaling \$5,654,343 through the end of June 2014. Of that amount, \$3,297,088 was expended on programs, leaving resources of \$2,357,254 available for the continuation of ORSANCO's programs into its 2015 Fiscal Year.

Commissioner Lovan also commented that since July 1, most of the receivable balance has been collected and ORSANCO remains in a strong financial position with appropriate cash flow and funds in the bank.

**ACTION:** Motion by Commissioner Fitzgerald, second by Commissioner Elmaraghy and carried, to receive the Treasurer's Report as presented.

### Report of the Chairman

Chairman Easterly began by showing the recently produced video depicting the benefits of the Organics Detection System (ODS) and current activities underway to upgrade the system.

Mr. Easterly recognized and thanked Commissioner Frevert for his service to the Commission as outgoing past Chairman and presented him with a set of flags.

Chairman Easterly then began his report with a brief historical perspective. He noted that the last Indiana agency representative to serve as the Commission Chairman was Ralph Pickard in 1976. Issues occurring during his term included: PCBs in fish tissue and organic chemicals in drinking water, the latter leading to a study of organic chemicals in drinking water supplies; a 1977 spill of carbon tetrachloride in the Kanawha River; Organics Detection System conceived and received USEPA funding in 1978; and spills of tritium and acrylonitrile led to a review of spill response procedures. Things have improved greatly since this time, but there is always more work to do.

Chairman Easterly then turned his attention to visioning sessions conducted in 1998, the 50<sup>th</sup> anniversary of ORSANCO. Outcomes of these sessions highlighted the need to increase focus on public education and collaboration; dissemination of water quality information; increased monitoring; and partnering to achieve our goals. In 2009, an extensive review of ORSANCO's Strategic Plan highlighted similar themes to those identified in 1998. These were communication; revenue enhancement; data sharing and management; cooperation and collaboration; rightsizing technology; and the need to explore involvement in water resources.

Chairman Easterly concluded that these past sessions, as well as others, identified the important work that remains to be done, so the Commission just needs to move forward and do this work to the best of its ability. This is what the taxpayers expect.

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

Mr. Tennant started by thanking staff for their continued good work in preparing for the Technical and Commission meetings. He then directed Commissioners' attention to the 2014 Annual Report and asked them to consider their preference for distribution of the Report to their respective governors.

Mr. Tennant reported that during the 1970's ORSANCO was rarely informed of spill events and did not play an active role during such events. Information did not flow across state lines and clearly there was a need for interstate communication and collaboration during spill events. ORSANCO filled this need and interstate communication and collaboration during spill events has vastly improved over the years. Today, ORSANCO is totally involved during spills and is invited to participate in response center activities.

Mr. Tennant continued with the following report regarding a protocol for providing Commission comments and positions. (**Attachment 1 – Overview of Protocol**) The Protocol is intended as guidance, providing some level of flexibility when the need arises to provide comments.

From time to time, the Commission may offer comments on proposed legislation or regulations, or may be asked to take a position on a matter of concern. Ideally, any comments or positions attributed to the Commission would be carefully considered and reviewed by all commissioners; however, there can be instances where this is not feasible. The following outline sets forth processes to be used in three instances – 1) the preferred situation in which the Commission decides to produce comments and is able to fully review them before they are submitted; 2) an instance where an advisory committee or the Technical Committee might originate comments and seek to have them sanctioned by the Commission; and 3) an instance where there is insufficient time for complete vetting by the full Commission.

In the ideal situation, the Commission would agree to develop comments and would also agree on the points to be included in those comments. Staff would then flesh out the comments into a draft statement or letter that could be reviewed by all Commissioners and adopted at a regular or special meeting. The comments would be submitted via a letter signed by the Commission Chairman.

An advisory committee or the Technical Committee might choose to develop comments on an issue and seek to have them endorsed by the Commission. Upon review of the comments, the Commission might choose to adopt them as its own and submit them as above. Alternatively, the Commission might choose not to endorse the comments. The Committee that originated them might choose to submit them on its own but would need to state clearly at the onset that these were not comments endorsed by ORSANCO.

A fairly common situation is that a matter arises that might be appropriate for Commission comment but time is short and consideration of comments by the full Commission is not feasible. In such an instance, there would be a discussion, probably through a combination of email and conference calls, in which the Commission would decide to submit comments and would agree on points to be included in the comments. It would then be left to staff to develop comments with oversight by the Commission Chairman and other commissioners as practical and appropriate. The comments would be submitted in a letter signed by the Executive Director.

Any person associated with ORSANCO – staff member, committee member, etc – is free to submit their own comments on any issue, but in doing so they are requested to clarify up front that they are not speaking on behalf of the Commission. Such comments should not be sent on Commission letterhead.

On occasion, staff may be requested to provide a previously-adopted ORSANCO position on an issue. When such a position is available, it can be submitted without undergoing the processes described above; however, such positions need to be made available to all commissioners and should be revisited from time to time. One example of this sort of situation would be when a state is reviewing its standards. Commission staff might submit the current ORSANCO standards with a cover letter calling attention to the need for consistent requirements for the Ohio River.

Several concerns and issues were raised. These included: clarification on the need for a simple majority or unanimous consensus of Commissioners for comments; a method for individual Commissioners to disassociate or not be party to the comments; a provision for when a Commissioner does not or can't agree with comments; and clarification on comments provided by Commission committees.

Suggestions included footnoting when individual Commissioners do not subscribe to the comments; developing language for those cases when a federal government representative may not comment; and ensuring that committee comments are not represented as Commission comments.

Work will continue on this guidance with a draft proposal presented for consideration at the February 2015 Commission meeting.

## **Report of the Bylaws Committee**

Bruce Scott, Committee chairman, reported that the Committee convened to consider the following four issues:

1. The meeting dates prescribed in the Bylaws often cause conflicts for Commissioners which require the dates to be changed.
2. The Bylaws do not establish a requirement that minutes of meetings be taken and retained, nor that recordings of the meetings be made and retained.
3. The Rules of Procedure for Public Hearings are mentioned, but not contained, in the Bylaws.
4. The Rules of Procedure currently require that legal notices be published in newspapers in the area affected by the matter to be considered. Costs of legal notices have risen sharply in recent years, while at the same time the decline in newspaper readership has made such notices ineffective in reaching the public.

A summary of the Bylaws sections that would be changed is provided in **Attachment 2**.

### **Issue One**

#### **Discussion:**

The current Bylaws allow the Commission Chairman to designate the meeting date, which probably provides sufficient flexibility to accommodate potential conflicts. It might be advisable to consider a time frame in which a meeting date could be changed from that specified in the Bylaws; however, this might prove to be constricting in some unforeseen circumstance.

#### **Recommendation:**

No change to the current Bylaws.

### **Issue Two**

#### **Discussion:**

The concern with minutes and recordings is that staff receives requests for recordings of past meetings. Recordings can deteriorate over time; while we have tapes of meetings from more than ten years ago, they may not be audible. It would be helpful to have language in the Bylaws that specifies that minutes are taken and retained for posterity, and that audio recordings are retained only for a limited time.

#### **Recommendation:**

The following language is recommended for addition to the end of Section V of the current Bylaws:

*Minutes shall be taken of all meetings of the Commission and, upon adoption by the Commission, shall be retained as the official record of Commission actions. Audio recordings of meetings shall be retained for not less than three years after the meeting date.*

### **Issue Three**

#### **Discussion:**

The relationship of the Rules to the Bylaws is currently unclear.

#### **Recommendation:**

It is recommended that the Rules be made an Appendix to the Bylaws, with a reference inserted in the third paragraph of Section XIII.

## **Issue Four**

### Discussion:

The rules specify four means of notification for a hearing on Standards revisions: paid advertisements in newspapers or notices in official state publications, first-class mail or email to Commissioners, email notice to parties who register to receive same, and notice on ORSANCO's web page. Given the pace of new developments in communications in today's world, it is felt that the Bylaws should be less specific on the means to be used and instead call for efficient notification of necessary parties.

### Recommendation:

It is recommended that the current Section III.B.2 of the Rules of Procedure for Public Hearings be replaced by the following:

*In instances involving revision to the Commission's Pollution Control Standards, notification shall be provided to affected and interested parties through available effective means including posting on the Commission web site, written notification to federal, state, and local agencies as well as identified wastewater dischargers and water users, email notification to all parties who have requested same, and such other means as might become available.*

**ACTION:** Motion by Bruce Scott, second by Commissioner Potesta and carried, to adopt the revisions to the Bylaws as presented, with the following two amendments:

1. Section XII.A.7 of the Bylaws change wording from September to October.
2. Section III.B.2 of the Rules of Procedure for Public Hearings, add direct mail if requested to email notification.

## **Report of the Technical Committee**

Commissioner Frevert, Committee chairman, reported that the 206<sup>th</sup> Technical Committee meeting took place on October 7-8, 2014. Six states, three federal agencies, and three advisory committees were represented. Commissioner Frevert reported on the following Committee activities:

### Development of Harmful Algal Bloom Response Plan

A Technical Committee workgroup consisting of the states, federal agencies, water utilities and PIACO has been established to develop a harmful algal bloom response and notification plan for the Ohio River. This initiative is in part due to the recent impacts on the Toledo drinking water utility resulting from Lake Erie HABs. An initial conference call has taken place to begin developing the plan.

### Review of ORSANCO Spill Notification Procedures

Staff briefed the Committee on ORSANCO's spill response and notification procedures as directed by the Commission at the June roundtable session. Staff will be developing a revised plan in the coming months and vetted through the Water Users Advisory Committee and Technical Committee.

### Consideration of Waters of the US Proposal

The U.S. EPA and USACE have issued draft clarifying language on the federal rule regarding definition of Waters of the United States. Comments on this are due on November 14, 2014. Because it is anticipated to have no impact on the Ohio River, the Committee recommends that ORSANCO not submit comments on the proposal.

### Report of the NPDES Subcommittee

The Committee received a report of the NPDES Subcommittee addressing issues identified for the 2015 standards review, including the Total Dissolved Solids (TDS) criterion and the potential need to specify frequency and duration of exceedance for criteria contained in ORSANCO's standards. It appears that there are few Ohio River permits that contain effluent limits for TDS, but that one discharge in West Virginia has required a compliance schedule as a result of ORSANCO's TDS criterion. The NPDES Subcommittee did not believe that the lack of frequency and duration associated with ORSANCO's criteria presented any difficulties for states' permit writers. The Subcommittee has also developed a procedure for calculating effluent limits for TDS and ammonia which are the criteria that apply at the nearest downstream drinking water intakes.

### 2015 Review of Pollution Control Standards

The Committee received a report on the status of the 2015 review of the Pollution Control Standards.

### Summer 2014 Water Quality Conditions

Staff presented results of ORSANCO's summer monitoring efforts. All planned field efforts have been or will be completed. In general, water quality conditions were good this summer, in part due to moderate flows and temperatures. In addition, staff completed sampling the remainder of 41 monitoring sites for the USEPA's National Rivers and Streams Assessment. This effort benefits the U.S. EPA and also provides the Commission with significant funds in excess of the cost to complete the work. These excess funds are then available to the Commission to carry out additional program activities. The staff puts in a lot of extra hours for this benefit to the Commission, and they should be commended for their dedication.

### Status of EPRI Trading Project

Several pilot interstate nutrient trades in Indiana, Kentucky and Ohio are underway or have been completed. An auction for additional nutrient trades is planned for the first quarter of next year. Of particular significance, EPRI has begun exploring how and by whom the trading program will be administered in the future. EPRI will be phasing out its involvement in the program towards the end of next year but may stay involved in certain technical aspects of the program.

### Numeric Nutrients Criteria Development

Staff has initiated a new monitoring effort aimed at the development of numeric nutrients criteria for the Ohio River. Previous monitoring efforts were determined to be ineffective. The new program involves continuous monitoring for dissolved oxygen at 60 macroinvertebrate sampling sites annually. Results will be evaluated and reported to the Technical Committee as they become available.

### Fish Tissue Mercury Trends Analysis

Staff has been working to analyze long-term temporal trends in mercury in fish tissue. Draft results indicate no increasing or decreasing trends in fish tissue mercury levels over the period 1983 through 2010, with the exception of white bass, which indicates an increasing trend. A draft report will be prepared and vetted through the Technical Committee.

### Ohio River Fish Consumption Advisory Protocol

ORSANCO has been working for several years to develop consistency among the states regarding the states' issuance of fish consumption advisories for the Ohio River. To date, four of six mainstem states have signed an MOU in this regard, and staff continues to work with the two remaining states.

## Water Resources Initiative

The Committee received an update on the Water Resources Initiative.

## Protocol for the Use of Outside Data

At its previous meeting, the Technical Committee approved a protocol for the use of outside data in 305b use attainment assessments for the Ohio River. At that time, the Committee suggested extending that protocol to other ORSANCO program areas. A draft of that protocol was circulated to Committee members for comment by December 1. The revised protocol will be considered by the Committee for approval at the February meeting which will extend the protocol to other ORSANCO program areas including development of Pollution Control Standards and other studies for which scientific reports will be generated.

## Mercury Bioaccumulation Study

The Committee received results of a mercury bioaccumulation study completed downstream of the Axiall facility that has a variance from ORSANCO. The study was designed to evaluate the Commission's water quality criterion for total mercury. A draft report has been completed and was provided with the agenda. The Committee directed staff to immediately initiate a peer review of the study prior to conducting similar studies in the middle and lower Ohio River. Results of these studies will be used to determine the scientific validity of the Commission's total mercury water quality criterion. The Committee voted in favor of the following action.

**ACTION:** Motion by Commissioner Frevert, second by Commissioner Fitzgerald and carried, to accept the Technical Committee's recommendation to proceed with additional mercury bioaccumulation studies in the middle and lower Ohio River following a peer review of the study that has already been completed and to include selenium as an additional component of the study.

## Report of the Pollution Control Standards Committee

Commissioner Bruny, Committee Chairman, reported that at its February 2014 meeting, the Commission authorized a triennial review of its Pollution Control Standards, and the Pollution Control Standards Committee met by conference call on March 18, 2014 to initiate the review. An initial public comment period was opened from March 20, 2014 through May 9, 2014 to accept comments on all aspects of the standards. Eight specific issues were identified as potentially requiring revisions as follows, while additional issues were identified through the public review process are also being addressed:

- 1) Specification of frequency and duration for all criteria.
- 2) Review of total mercury water quality criterion.
- 3) Review of total dissolved solids criterion.
- 4) Review of *E. coli* water quality criteria.
- 5) Review of human health temperature criterion.
- 6) Review of aquatic life ammonia criteria.
- 7) Evaluation of prohibition of mixing zones for bioaccumulative chemicals of concern.
- 8) Continued efforts to develop numeric nutrients criteria.

Specific proposals for revision are to be developed by the February 2015 Commission meeting, and the Pollution Control Standards Committee is meeting on November 6 for this purpose.



### FirstEnergy Variance Application

The Commission received a variance application from the FirstEnergy Pleasants Power Station; Willow Island, WV on May 15, 2014, regarding the Commission's pending prohibition on mixing zones for mercury. On June 24, members of the Pollution Control Standards Committee met with FirstEnergy to discuss additional information needs. FirstEnergy submitted additional information to ORSANCO as requested on August 1. Subsequently, the Pollution Control Standards Committee met to consider the application and determined that the information provided by the company was not sufficient to allow the Committee to make an initial decision on the application. A letter was sent to FirstEnergy on August 19 requesting further information, and the Pollution Control Standards Committee is currently waiting for a response.

### States' Adoption of ORSANCO's Pollution Control Standards

A number of issues have arisen more recently which has generated the question of how states adopt ORSANCO's Pollution Control Standards. The Commission's legal counsel, Ross Wales, has undertaken a review of the states' enabling legislation, and he will be called on to provide a report on this issue.

### **Report of the Program and Finance Committee**

Commissioner Conroe, Committee Chairman, reported that the Program and Finance Committee met on October 7 to follow-up on issues identified during the Committee's April 2014 meeting. The following issues were discussed:

#### Review of ORSANCO's Pension Benefits

Staff provided an update on the Committee's directive to complete a comparative assessment of ORSANCO's Plan benefits to those of the Compact states. Information has been requested from the states and will be compared and summarized when received.

The Committee also discussed Plan funding as it relates to ORSANCO's budget. The Committee does not necessarily intend to recommend changes but to ensure the Plan is current in today's pension climate. A report is expected by the February Commission meeting to provide input prior to the spring budget meeting.

#### Status of ORSANCO's Reserve Fund

Staff provided an overview of how reserve funds are currently managed. Action by the Commission in 2005 set funding levels for these accounts. Staff will discuss reserve fund options with the Commission's auditor, actuary, and banking institutions. The Committee will further discuss this information when available.

The Committee also discussed the Executive Director's level of authority to approve reserve fund expenditures. The Committee recommends that the Executive Director be authorized to approve expenditures of up to \$10,000 from reserve accounts, and would require Commission Chairman co-approval for amounts beyond this. Commissioners should be made aware of such expenditures.

**ACTION:** Motion by Commissioner Conroe, second by Commissioner Fitzgerald and carried, to amend the reserve fund policy language to "Because of the emergency nature of some unbudgeted escrow expenditures and the issue of timeliness, the Executive Director is permitted to approve escrow spending, with the exception that any expenditure in excess of \$10,000 must be advance co-approved by both the Executive Director and Commission Chairman."

### Organics Detection System (ODS)

The Committee discussed a number of issues identified at its April 2014 meeting. These included equipment replacement, status of upgrade schedule and equipment capabilities by site, federal funding status, and program costs over the next few years.

Consideration regarding water users cost sharing and future vision for the system continues. Further discussion will take place in February to prepare for possible recommendations to be vetted at the spring Program & Finance Committee meeting.

### Report of the Water Resources Committee

Commissioner Potesta, Committee Chairman, reported that the Committee held its seventh meeting on June 24, 2014 in Cincinnati, Ohio. Representatives from six states, the US Army Corps of Engineers, the US Geological Survey, the Tennessee Valley Authority, and the National Weather Service were in attendance. Key agenda items included: 1) a status report on the Water Resources Initiative; 2) a presentation on water resource management in the Great Lakes; and 3) a discussion on the Commission's future role in water resource management.

### Water Resources Initiative

The Committee received an update from staff on the current and upcoming activities related to the Water Resources Initiative, a three-year effort funded by philanthropic foundations to characterize water resource management in the Ohio River Basin. Staff distributed two draft reports to the Committee for review. The first report quantifies inter-basin water transfers into and out of the Ohio River Basin and discusses the current status of inter-basin transfer regulations. The second report characterizes the current status of shale gas development and the potential impacts on water resources.

### Water Resources Management in the Great Lakes

Dave Naftzger, Executive Director of the Council of Great Lakes Governors, gave an overview on water resource management under the Great Lakes-St. Lawrence River Basin Compact. The Compact, which became law in 2008, calls for the states to work collaboratively to manage and protect the Great Lakes. It also provides a framework for states to implement programs and laws protecting the Basin. While the circumstances that led to the compact in the Great Lakes are considerably different than that in the Ohio River Basin, much can be learned from the overall process employed to foster a collaborative approach to multijurisdictional water resource management.

### ORSANCO's Role in Water Resources

The Water Resources Committee had an extended discussion regarding the Commission's future involvement in water resource activities. The goals of the Water Resources Initiative were to report on the water resource issues and needs in the Ohio River Basin and to evaluate the Commission's future role in addressing these issues. The water resource characterization reports are nearly complete, and it is now time to set sights on the next steps. Funds for the three-year initiative are nearly exhausted and will only support one additional Water Resources Committee meeting in FY2015. The Committee believes the forum provided for the states and federal agencies to discuss the water resource issues of the Basin is of significant value and encourages the Commission to continue providing this service.

Previously, a Water Resources Memorandum of Understanding (MOU) was drafted to serve as an endorsement by the states allowing the Commission to engage in water resource activities beyond water quality issues. At this most recent meeting, the Committee moved to change the title of the document from an MOU to a “cooperative agreement.” While this is a minor grammatical change, members from at least two states believed this adjustment would improve the chances for acceptance within their states.

Adoption of the Water Resources Cooperative Agreement is viewed as the critical next step in advancing a sustained role for the Commission in water resources. The cooperative agreement opens the door for ORSANCO to engage in water resource activities and puts the Commission in a stronger position to seek funding for sustained involvement. Members of the Water Resources Committee are very supportive of the cooperative agreement; however, they believe that Commissioners are better positioned than those on the Committee to effectively pursue approval by the governors and to secure funding. The Water Resources Committee recommends that the Executive Committee develop a process to seek approval by the governors and to develop a long-term funding strategy.

Commissioner Potesta indicated that the original funding available to initiate the water resources studies and meetings are almost exhausted, with enough funding left to support one additional Committee meeting. The Committee feels that the states’ interest in ORSANCO being involved in water management is also a state’s commitment to fund this activity. The Committee recommends that the Commission considers advancing the Cooperative Agreement to pursue water management activities and associated funding.

Chairman Easterly commented that in light of upcoming elections, this may not be the appropriate time to advance the Cooperative Agreement. Once governors are in office, the Agreement could be advanced. Commissioner Duritsa indicated that this may be an opportune time in Pennsylvania to advance the Agreement. However, concern remains over a new administration accepting a previous administration’s commitment. This issue will be further vetted at the next scheduled teleconference of the Executive Committee.

### **Report of the Executive Director Search Committee**

Commissioner Tomes, Committee Chairman, reported on the following Committee activities:

Chairman Easterly appointed a Search Committee with representation from each of the states as well as Personnel Committee members and officers of the Commission. Subsequently, the Executive Director position was advertised with resumes required to be submitted by August 8, 2014. Forty-eight applications were received. Through a screening process, 17 applicants met the qualifications stated for the position. The Search Committee met via conference call on September 29 and reported on the outcomes at the October 8 Executive Committee meeting.

The Committee will proceed with interviewing ten candidates for the position. The Committee will then develop a short list of candidates for further consideration. The Committee will then report the results of this process to the Executive Committee via conference call to determine next steps. This will be accomplished prior to the February 2015 Commission meeting.

**Report of the Congressional Liaison Committee**

Commissioner Flannery, Committee Chairman, presented the following resolution for adoption by the Commission:

**RESOLUTION 6-14**

**RECOGNITION OF SERVICE  
SHELLEY MOORE CAPITO**

**WHEREAS:** Shelley Moore Capito has served the citizens of West Virginia for the past fourteen years, representing the second Congressional District in the United States Congress, and

**WHEREAS:** Congresswoman Capito has served as a co Chair of the Ohio River Basin Congressional Caucus since its inception in 2009, and

**WHEREAS:** Congresswoman Capito has supported the wise use of our Nation's water resources, particularly in the Ohio River Basin and the State of West Virginia, and

**WHEREAS:** Congresswoman Capito has ably represented the interests of the region concerning education, energy and financial services, and

**WHEREAS:** Congresswoman Capito will complete her service in the United States House of Representatives at the end of 2014,

**NOW, THEREFORE, BE IT RESOLVED:** The Commissioners of the Ohio River Valley Water Sanitation Commission express their heartfelt gratitude for Congresswoman Capito's service, and wish her all the best in her future endeavors.

**ACTION:** Motion by Commissioner Flannery, second by Commissioner Potesta and carried, to adopt Resolution 6-14 as presented.

**Report of the Public Interest Advisory Committee (PIACO)**

Betsy Mallison, Committee Chairman, reported that the Committee met via teleconference on October 1, 2014.

Committee members reported that they received feedback from their constituents regarding the following issues: drilling and fracking under the Ohio River in West Virginia; 250 new super-barges being constructed for transport of frack wastewater and other materials on the Ohio River; a plan to reduce the outfall of CSO events in Owensboro, KY that is gaining momentum; harmful algal blooms (HAB) in the water in Ohio and New York; and Pittsburgh Triathlon issues regarding problems with testing the River and communicating the results to athletes who want to swim in the River following a rain event.

The Committee recommends that ORSANCO staff create statements about a position on fracking and its effect on the Ohio River, as well as standard talking points for staff who may speak to the media. The statements and talking points will help to create a more consistent, stronger ORSANCO message during spill events.

ORSANCO public information staff is visiting member states' public information offices to create relationships and determine the states' most effective communication techniques. The Committee also discussed ORSANCO's current communications plan and will revisit the plan once the information from the state visits is added. The Committee commended staff on the social media outreach and recommends that staff, Commissioners, and all committee members "like" the ORSANCO FaceBook page.

The Committee also recommends that a Commissioner be available to attend future Committee meetings when requested to provide feedback on communications issues.

### **Report of the Water Users Advisory Committee**

Bruce Whitteberry, Committee Chairman, reported that the Committee met recently and focused discussion on source water protection issues. The Committee received a presentation on the recent Duke Energy diesel fuel spill on the Ohio River and the incident command structure from the U.S. EPA emergency response coordinator. Although utilities are familiar with the command structure, it was beneficial to have a refresher since the utilities do not utilize this frequently.

The Committee also received a general presentation on hydraulic fracturing from a representative of the West Virginia Oil and Natural Gas Association. The presentation provided information on some of the technical issues associated with hydraulic fracturing and the water utilities had the opportunity to share concerns relating to fracturing. The Association expressed willingness to continue open communications with the Committee.

The Committee discussed the Organics Detection System (ODS), in particular the issue of staff turnover at the participating utilities who operate the system. New staff is not necessarily intimately familiar with the commitment of both ORSANCO and the utility to the system. As a result, the Committee recommends that the Commission update and formalize the memorandum of understanding between ORSANCO and the ODS host sites. As part of the process, ORSANCO staff should clarify the responsibilities and commitments of both ORSANCO and the host sites. It will also be advantageous to clarify ownership of the analytical equipment as well as the data produced by the system. This process will assist ORSANCO with maintaining the system and will ensure that staff and decision-makers at the utilities understand their commitments.

### **Report of the Power Industry Advisory Committee**

Rob Reash, Committee Chairman, reported on several federal rulemaking activities:

The final 316(b) Rule issued by U.S. EPA in July 2014 regulating fish entrainment and impingement became effective in September 2014. The industry response to this Rule was that it was reasonable, and it provided several flexible methods for compliance.

U.S. EPA's Coal Combustion By-Product Rule is scheduled to be issued on September 19, 2014. The Rule will determine whether the regulation of coal combustion byproducts will be at the state or federal level. The other issue is if U.S. EPA will make a determination if coal combustion by-products are hazardous waste or solid waste. Mr. Reash believes the determination will be that these by-products are not hazardous waste.

The third upcoming rule is the final Steam Electric Power Generating Effluent Guidelines Rule. This Rule will set minimum wastewater treatment requirements for all power plants on a nationwide basis. This Rule is set to be issued in September 2015. U.S. EPA will set numerical limitations for FGD wastewater which will have to be met at end-of-pipe. These limitations will apply to arsenic, selenium, mercury and nitrates. This Rule will clearly force utility companies to phase out wet fly ash disposal. Some utilities have already transitioned to dry fly ash disposal in anticipation of this Rule.

Mr. Reash concluded by mentioning the closing of several power plants on the Ohio River due to several factors, one being complying with the Clean Air Act Ash Rule. In some cases it is not economical to install advance scrubbers. In addition, the low cost of natural gas on the open market is another factor in retiring some older plants. Some utilities will be retrofitting coal boilers with natural gas boilers. Some companies will opt to purchase power on the open market to provide electricity for times of high demand.

### **Comments by Guests**

Mr. Bud Smith of Mountain State Carbon commented that, in the past, U.S. EPA would propose and issue regulations prior to the availability of technology to meet such regulations. The only recourse for a discharger would be to request and receive a variance from these regulations. A variance is issued to allow time for such technology to be developed. Despite being probably the only coke plant with tertiary treatment, the company's new permit limit still cannot be achieved. Current technology is not available to meet the permit limit. It appears the in some cases the regulations go beyond the ability to catch up technically. A variance creates a vulnerable position due to the fact that when the variance ends the permit limits will still not be achievable.

Mr. David Altman of DuPont and Chairman of the West Virginia Manufacturer's Association commented that there is growing interest in more involvement with the Commission by the chemical industry. Mr. Altman requested consideration to reinstate the Chemical Industry Advisory Committee. He indicated that there was a formal proposal in the meeting packet (**Attachment 3**).

**ACTION:** Motion by Commissioner Flannery, second by Commissioner Potesta and carried, to reestablish the Chemical Industry Advisory Committee.

Mr. Bruce Whitteberry, Water Users Advisory Committee Chairman, commented on recent issues with proprietary chemical spills. In some situations, the company was not willing to share the nature of the proprietary chemicals in a timely manner. The Committee recommends that ORSANCO looks at the feasibility of putting together a policy that could protect the proprietary nature of these chemicals in order to receive this information to make informed decisions and respond appropriately to spill incidents.

### **Upcoming Meetings**

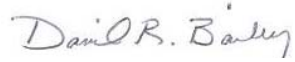
Chairman Easterly noted the following schedule for upcoming Commission meetings:

- February 11-13, 2015                      Covington, Kentucky
- June 16-18, 2015                              Clifty Falls, Madison, Indiana

**Adjournment**

The 210<sup>th</sup> Commission meeting was adjourned at 11:00 A.M.

Prepared by:



Date: November 13, 2014

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David Bailey  
Director of Administration

Approved by:



Date: November 13, 2014

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Ron Lovan  
Secretary/Treasurer

**ROSTER OF ATTENDANCE**  
**210<sup>th</sup> Commission Meeting**  
**October 9, 2014**

**Commissioners**

Illinois	Toby Frevert Phillip Morgan
Indiana	Thomas Easterly
Kentucky	Ron Lovan Bruce Scott (PROXY for Leonard Peters) Peter Goodmann (PROXY for Lt. Governor Abramson)
New York	Douglas Conroe Mike Wilson
Ohio	Paul Tomes Karl Gebhardt (PROXY for Craig Butler) Stuart Bruny
Pennsylvania	Charles Duritsa Ron Schwartz (PROXY for Acting Secretary Dana K. Aunkst) Greg Phillips
West Virginia	David Flannery Ron Potesta Scott Mandirola (PROXY for Randy Huffman)
Federal	Susan Hedman Tom FitzGerald George Elmaraghy
Legal Counsel	Ross Wales

**Executive Director**

Peter Tennant

**Guests**

Tim Henry – U.S. EPA Region 5; Betsy Mallison – PIACO; Bruce Whitteberry – WUAC; Kevin Sheridan – Westlake Chemical; Kenny Akins – Axiell; Debbie Lee – USACE; David Altman – DuPont; Rob Reash – AEP; Bud Smith – Mountain State Carbon;

**Staff**

David Bailey, Jason Heath, Sam Dinkins, Jerry Schulte, Lisa Cochran



## **Protocol for Providing Commission Comments and Positions**

### Preferred Process:

1. Commission agrees to submit comments.
2. Staff prepares draft for Commission review.
3. Comments are submitted, letter signed by Commission chairman.

### Alternate Process

1. Advisory Committee or Technical Committee originates comments.
2. Commission reviews comments.
3. Two options:
  - a. Commission agrees – comments are submitted as above.
  - b. Commission disagrees – committee may submit comments on its own but must clearly state that comments do not represent ORSANCO.

### Short Turnaround Process

1. Commission agrees to submit comments; key points are understood.
2. Staff prepares comments; chairman reviews.
3. Comments are submitted, letter signed by Commission Director.

### Other

1. Any individual may submit comments; however, any staff member or other person associated with ORSANCO who submits comments must clearly state that his/her comments do not represent the Commission.
2. Submittal of a Commission resolution, regulation, policy or other document that has previously been adopted by the Commission shall not be subject to the above processes.

**Summary of Recommended Revisions  
ORSANCO Bylaws**

**V. MEETINGS**

Regular meetings of the Commission shall be held on the second Thursday of February, June and October, or at such time as may be designated by the Chairman. The agenda for each regular meeting of the Commission shall be mailed to members of the Commission not later than three weeks prior to the date of the meeting. Additional items may be placed on the agenda with the consent of a majority of the Commissioners present at any meeting.

Special meetings may be called at any time and place by the Chairman, or in his absence or non-availability, by the Vice-Chairman or Acting Chairman, and shall be called at the request of a majority of the Commissioners of at least three states, or by a majority of the Executive Committee.

Notice of special meetings shall be given by telephone or electronic means at least five days prior to the date of the meeting, or by mail at least seven days prior to the date of the meeting. The subject matter to be discussed or acted upon at a special meeting of the Commission shall be set forth in the call for the meeting and no other subjects may be considered at such meeting except by the unanimous consent of those present.

Meetings of the Commission shall be open to the public except that the Commission reserves the right to hold executive sessions at the direction of the Chairman for discussion of internal matters or such matters as in the judgment of the Commission call for such consideration. Executive sessions shall be attended only by Commissioners and their duly authorized proxies, except that the Chairman may, at his discretion, invite members of the staff or others to attend for all or any portion of an executive session.

**Minutes shall be taken of all meetings of the Commission and, upon adoption by the Commission, shall be retained as the official record of Commission actions. Audio recordings of meetings shall be retained for not less than three years after the meeting date.**

**XIII. PUBLIC HEARINGS**

Public Hearings may be held upon all matters requiring public consideration, and except as hereinafter otherwise provided, shall be held upon any matter upon the request of the Commissioners from each of not less than two states.

Public hearings authorized by Article VI of the Ohio River Valley Water Sanitation Compact, shall be held whenever, after full investigation by the Commission into the necessity for such a hearing, the Commission by a majority vote of the Commissioners present at a meeting duly held, shall direct, or, without a meeting whenever, after full investigation by the Commission into the necessity for such a hearing, the Commission by a majority of Commissioners then appointed and qualified under the provisions of the Compact may direct in writing.

Public hearings authorized by Article IX of the Compact shall be held whenever, after full investigation by the Commission, the Commission by a majority vote of the Commissioners present at a meeting duly held, shall direct. Public hearings shall be called and carried out in accordance with the “Rules of Procedure for Public Hearings” adopted by the Commission (**Appendix A to these Bylaws**).

### **Rules of Procedure for Public Hearings**

#### *III. B. Publication and Distribution*

*Not less than thirty (30) days prior to the date of any such hearing, notice thereof shall be published and distributed, in the form above specified, as follows:*

1. In instances when an issue involves only a specific location/entity, publication as a paid advertisement in at least one newspaper of general circulation servicing the community that is affected by said hearing. Notice shall also be sent via first class postal service mail or e-mail to all entities that are the formal subject of said hearing.
2. In instances involving revision to the Commission's Pollution Control Standards, ~~publication (1) as a paid advertisement in at least one newspaper of general circulation serving at least one community within each of the states that border the Ohio River (i.e., Pennsylvania, West Virginia, Ohio, Kentucky, Indiana and Illinois) and within the Ohio River Basin watershed of the states of New York and Virginia or as a notice posted in each of the aforementioned state's official notification publication or bulletin, or any combination thereof amongst the several states so that a notice is posted in each state; and (2) via first class postal service mail or e-mail to all ORSANCO commissioners; and (3) via e-mail to all parties who register with the Commission as desiring to receive said notices; and (4) on the ORSANCO Web Page Bulletin Board.~~ **notification shall be provided to affected and interested parties through available effective means including posting on the Commission web site, written notification to federal, state, and local agencies as well as identified wastewater dischargers and water users, email notification to all parties who have requested same, and such other means as might become available.**
3. *Such other and additional publication and distribution as the Chairman of the Commission may consider necessary and desirable in order to insure adequate notification to parties who may be interested in or affected by the subject matter of the hearing.*



### **Proposed Re-Organization of the ORSANCO Chemical Industry Advisory Committee**

The chemical industry continues to demonstrate a commitment to safety and responsible environmental practices. The West Virginia Manufacturers Association, Kentucky Chemical Industry Association, Kentucky Association of Manufacturers, and Ohio Manufacturers Association formally petition the Ohio River Valley Water Sanitation Commission to re-establish an active Chemical Industry Advisory Committee.

A newly activated committee could serve to advise the Commission on how actions of ORSANCO affect the chemical industry and provide another means of distributing information about ORSANCO actions to the companies represented by these trade groups. The Committee would provide a structure for chemical manufacturing plants, with their similar interests in ORSANCO initiatives, to discuss matters of common interest and to assemble comments on proposed Pollution Control Standard changes. This committee will provide a direct line of communications for general information regarding the chemical industry, as well as a forum to discuss issues and provide input to the Commission in a collaborative manner.

There was a previous Chemical Industry Committee that was active in the past, but had disbanded. Interest in the changes to the Pollution Control Standards that resulted in a prohibition of mixing zones for bioaccumulative substances, and other actions taken by the Commission, have led some in the chemical industry to believe that a more active role for the industry may be appropriate. This Committee is intended to facilitate that goal.

Subject to approval by the Commission both individual chemical plants along the Ohio River, and associations in which they participate will be included as members in this committee. Given the interest demonstrated, initial projections for membership are between 20 and 30 companies and associations. Additional invitations could be extended by the Commission and by the associations that are submitting this request, including companies and associations not within Ohio, Kentucky and West Virginia.