

Protocol for Addressing Interstate Inconsistencies

Background

Many of the issues addressed by ORSANCO involve differences among the states. Those differences may be the result of agency procedure, adopted policies, or established regulations. The perception is that, when different rules apply on different sides of the same river, the result will be an inequity between the states involved.

Examples of inconsistencies among the Commission's member states include:

- Differences in in-stream criteria
- Differences in design stream flow for application of water quality standards
- Differences in mixing zone policies
- Differences in assumptions regarding cancer risk level protection
- Differences in terminology used in NPDES permits
- Differences in content of fish consumption advisories

The application of these differences to shared water such as the Ohio River causes confusion to the regulated community and to the public at large.

ORSANCO Protocol

The Ohio River Valley Water Sanitation Commission will utilize existing its mechanisms (the Technical Committee, the Water Quality Review Committee) to assess inconsistencies among its member states. It is the intent that, for each inconsistency, an assessment will be made as to the source of the conflict, its effects, and what it would take to resolve it.

1. Identification of the inconsistency

An interstate inconsistency might be discovered through a number of means, such as in the course of a staff investigation of an issue, through discussion at a meeting of the Technical Committee or one of its work groups, through one of the Commission's advisory committees, or from comments at a public meeting. Regardless of the means by which an inconsistency is first discovered, initial consideration will be by the Technical Committee. This is appropriate inasmuch as that committee includes representatives of the water quality agencies of the member states.

The first step in the resolution of an interstate inconsistency is to identify exactly what is inconsistent and which states are involved. This information will be reported to the Technical Committee at its first regular meeting following the discovery of an inconsistency.

2. Assessment of the inconsistency

Upon the identification of an inconsistency, staff will carry out an assessment that will address the following:

- a. What is the impact of the inconsistency?
- b. Who is affected?

- c. What is the basis of the inconsistency? (i.e., difference in states' laws, rules, or policies; differences among US EPA Regions)
- d. What actions are necessary to resolve the inconsistency?
- e. Who is empowered to carry out the actions in (d)?

The results of this assessment will be reported to the Technical Committee. That Committee may adopt a course of action to resolve the inconsistency, or it may report the inconsistency and its assessment to the Commission. Following the initial assessment by the Technical Committee, oversight responsibility for all inconsistencies will be assigned to the Water Quality Review Committee, which includes the Chairmen of the Technical and Pollution Control Standards Committees. The Water Quality Review Committee will assess where the inconsistency should be resolved-i.e. at the Technical Committee or Commission level, or beyond.

3. Alternative courses of action for the Commission

The assessment of the inconsistency should yield one or more courses of action to address the situation. Courses of action might include:

- a. *Staff work with the states involved to resolve the inconsistency-* This might be the best alternative if the inconsistency involves a difference in approach (not specified in regulation) by two states.
- b. *Resolve through the Technical Committee-* This would be the preferred course when more than two states are involved, and the difference results from agency policies. It would also be the initial approach to differences among EPA Regions.
- c. *Resolve at the Commission level-* This would be the probable course if the inconsistency results from differences in state regulations. The Commission might choose to recommend changes to the states, or might adopt its own regulation.
- d. *Resolve through Commission-level contacts with state government-* Article VIII of the Compact includes a directive to the Commission to recommend state legislation necessary to advance the objectives of the Compact.
- e. *Take no action-* It is conceivable that, after careful consideration, it might be concluded that the effort needed to resolve the inconsistency outweighs the benefit that might be gained. If this is the chosen course of action, the particular inconsistency should not be raised for consideration again unless there is some change in one or more of the factors that led to this decision.

4. Implementing the selected course of action

Once a course of action has been determined, the Water Quality Review Committee will monitor progress towards resolution of the inconsistency. The Committee should determine the desired end point, the responsibilities of the entities involved, and the time frame for action.

5. **Documentation**

A written record of the consideration of an interstate inconsistency will be developed and maintained by the Commission. The written record will include each of the steps presented above, including the outcome of the selected course of action.

Informing the Public

Inconsistencies among states can be confusing to the public. Because those who encounter an inconsistency are unlikely to understand the background of the situation, they could have a negative impression of the states involved. To help allay this, ORSANCO will adopt a public information document on interstate inconsistencies, which will explain the reasons for inconsistencies and the role of the Commission in resolving them.