Responsiveness Summary

2019 Revisions to ORSANCO's Pollution Control Standards for Discharges to the Ohio River

At its June, 2019 meeting, the Commission took action to adopt the 2019 proposed revisions to its Pollution Control Standards for the Ohio River. This effort reflects the culmination of a four-year effort which involved three public comment periods, four hearings, and six webinars, during which, all totaled, the Commission received over 10,000 comments. The vast majority of comments were not in favor of the Commission's proposals. The Commission reviewed and considered all public input, and subsequently revised (to its current form) an earlier 2018 proposal which would have eliminated all criteria contained in the standards.

During the final 2019 public review, the Commission received over 4,000 comments, the vast majority of which were not in favor of the 2019 proposal which has now been adopted. The predominant concern expressed in the comments was that the 2019 proposal threatens Ohio River water quality, implying that protections are solely dependent on ORSANCO's standards. The overwhelming majority of Commissioners believe this is a misconception led by a general misunderstanding of the proposal and the states permitting and water protection programs mandated under the Clean Water Act.

Part of the actual language of the amendment states that, "the Commission, and each signatory state, have committed to implementation of discharge permit limitations that provide comparable use protection and achievement of the Compact goals as provided by these standards." The end goal of states' NPDES permitting programs is to protect receiving stream and downstream designated uses, and designated uses may be defined by instream water quality criteria. This proposal maintains ORSANCO's water quality criteria. Further the Commission recognizes that member states programs to protect the Ohio River and tributaries within the Basin have been developed under the federal Clean Water Act. Each state has developed and administers standards and permitting programs that have been federally approved to achieve environmental goals common to both the Compact and Clean Water Act. The 2019 revisions acknowledge the varied approaches member states have employed to attain these common goals and alleviates potential conflict between ORSANCO's standards program and individual state programs. As a result, all Ohio River uses are protected and ORSANCO's Pollution Control Standards remain in effect for state utilization consistent with their state laws and administrative programs.

Specifically, the 2019 Revision:
1. maintains the PCS for the Ohio River consistent with current utilization and achieves heightened efficiency in program activities of the Commission and its member States;
2. provides needed flexibility for member states to utilize the PCS in their environmental programs as needed to protect the Ohio River and achieve the goals of the Compact and the Clean Water Act;
3. ensures ORSANCO's role in water quality protection is consistent with its Compact;
4. preserves the PCS to guide Commission activities when addressing future water quality issues within the mainstem Ohio River;

5. allows the Commission to focus on its area of strength associated with its science, assessment and source water protection programs, while its member States and the USEPA focus on their strengths associated with water quality standards development and implementation for the Ohio River as mandated by the federal Clean Water Act; and

6. recognizes that Ohio River water quality consistency among member states is best achieved through utilizing the Commission's PCS as the baseline for maintenance of the protective uses for the Ohio River as established in its Compact.

In connection with the adopted revisions, the Commission took action which commits the Commission to conduct an evaluation of its current programs that involve implementation of the pollution control standards, and provide a report to commissioners containing the results of this evaluation.