

## Comments on the ORSANCO Proposed Revision to the Pollution Control Standards

To: ORSANCO Pollution Control Standards Committee & Commissioners

From: National Wildlife Federation, Citizens for Pennsylvania's Future, West Virginia Rivers Coalition, Kentucky Waterways Alliance, Prairie Rivers Network, Ohio Conservation Federation, Indiana Wildlife Federation, Virginia Conservation Network, and Environmental Advocates of New York

Date: August 20, 2018

RE: Comments on the ORSANCO Proposed Revision to the Pollution Control Standards

-----Submitted via email-----

The National Wildlife Federation (NWF) and the undersigned affiliate organizations appreciate the opportunity to provide these comments in response to ORSANCO's request for comment on its review of the Pollution Control Standards (PCS) for Discharges to the Ohio River - 2015 Revision. NWF is the largest conservation organization in the U.S. with more than 6 million members, and supporters across the country.

The Ohio River is an important resource as a working river for cargo transport, a source of drinking water for five million people, a place for recreation along its 981 mile length and a home for diverse habitat for wildlife and fish. The Commission is a regional body with the mandate to manage the Ohio River as a basin system, a unique role that was forward thinking in 1948 and just as necessary today. We strongly oppose any retraction in ORSANCO's role in the development and administration of the PCS.

ORSANCO provides valuable assistance to member states in stream assessment, monitoring and spill response, and PCS administration. The rationale provided for the proposed retraction of ORSANCO's role with the PCS rules is vague with no firm analysis.

We believe that the proposed alternatives are an abdication of ORSANCO's responsibilities for managing the Ohio River as a basin system rather than individual stream segments. The purpose of ORSANCO is to provide the forum for the collaboration needed to ensure the safeguards are in place to protect upstream uses from downstream impacts.

1. The ORSANCO website says that the review process would include consideration of the comments received received in the initial public comment period that closed in February and formulation of specific revisions to the Standards. Yet no response summary has been prepared of the many detailed comments received, nor any proposed revisions based upon those comments. No information has been provided on how the comments were considered beyond the summation of the numbers of comments received. The lack of any response to these comments by ORSANCO is a disregard of the public input. The lack of any authentic engagement with stakeholders and the public creates serious questions about this process. It appears that ORSANCO and its commissioners are moving towards a final decision based upon an insular review with a forgone conclusion without any thoughtful consideration to a lawful public review.

A closing date of August 20 for the current public comment period leaves less than six weeks to the October Commission meeting when a final vote on the proposed action is expected. Presumably,

materials will need to be prepared prior to that time. There appears to be little to no opportunity for any potential revisions to be prepared and subsequent Commission review and consideration. The PCS is a highly technical, detailed program that could have many permutations worthy of consideration that could come from public input but there is very little opportunity for any thoughtful analysis much less any revisions, in this schedule.

2. The comparison tables released by ORSANCO in February depict wide variability in the number and stringency of standards by the states. We are very concerned that the response to this variability is to eliminate ORSANCO's role in the development of the standards and defer to the states. Resorting to administration by the states may seem to be an expedient approach to the Commission, but it represents a failure to invest in the collaboration needed to think beyond jurisdictional boundaries and manage the river as a whole system. The issue that needs to be solved is not the role of ORSANCO, but rather the lack of adoption/implementation by the states of the PCS into state standards.

The tables make it apparent that there are many gaps and inconsistencies among the states, ORSANCO and USEPA criteria. Yet in the narrative materials presented by ORSANCO, there is no information or analysis as to why these discrepancies have been allowed to persist. We reiterate our contention that a fundamental purpose of ORSANCO's role with the PCS is to facilitate collaboration for the establishment, adoption and implementation of the PCS.

3. We acknowledge that states have challenges in the development, promulgation and implementation of the PCS. The missed opportunity is that ORSANCO and the member states should be using their collective leverage towards getting the PCS adopted among the states so that the Ohio River is managed as one river basin, not individual stream segments within state boundaries. A regional body speaking with one voice can wield significant influence at the state level by providing a broader, more strategic view of what is best for the Ohio River. Rather than weakening the role of the body created for the purpose of facilitating a unified approach to managing the river, the Commission should be evaluating different options to bring consistency among the states in PCS adoption as part of its intended mission.

The variability among the states' adoption and implementation of the PCS should be a call to action. The only allowable variation to the PCS should be where the states have a more stringent standard. Leadership and cooperation are needed by the Commission *and* its member states to honor the pledges made by each state for the oversight of pollution abatement and health of the entire Ohio River. The Commission Compact compels the member states to act on behalf of a water body beyond its jurisdictional waters, a unique role that demands actions beyond parochial interests.

4. Elimination of the ORSANCO PCS means significant investments will need to be made by the states for the technical development of standards, the procedures for adoption, implementation of those standards and future triennial reviews as required by the Clean Water Act. While some states can adopt the PCS by reference in their state procedures, others cannot. Those states that have adopted the PCS standards by reference must now take on the work currently done by ORSANCO. There would be six public agencies conducting the work currently done by one entity. The costs of expanding this work from one entity to six should be factored into any analysis of the overall impact. The most cost-effective solution should be a primary driver for any proposed change.
5. The argument that there is redundancy between the states' water quality standards programs and ORSANCO is not valid. Yes, both the states and ORSANCO have congruent functions in the development and review of water quality standards, but that does not mean there is a duplication of

effort. The focus of ORSANCO on the mainstem of the Ohio River allows the states to utilize their resources on the other water bodies within their state jurisdictions. The 981 mile length of the Ohio River requires specialized expertise for the development of standards that do not impact not only waters within a given segment of the river, but also does not jeopardize downstream water resource integrity.

We maintain that the elimination of the PCS **will result** in significant duplication of effort and increased costs. The materials provided by ORSANCO do not provide any cost/benefit analyses of the proposed alternatives.

6. The analysis conducted by the Environmental Law and Policy Center (described in the comments submitted by the Environmental Law and Policy Center) identifies more than twenty NPDES permits in six states that utilized more stringent criteria than the state standard in the interest of a more protective standard for the Ohio River. No comparative analysis has been undertaken to identify any permit limits whereby the state standard was more stringent than the ORSANCO PCS. However, this is precisely the analysis that ORSANCO should have undertaken to fully realize the potential consequences and impacts that could result should this proposal go forward. The ramifications of the elimination of the PCS need to be fully understood for Commission members to make an informed decision. The impacts to NPDES permit limits, a cost-benefit analysis and defined criteria for a selected course of action should be part of this process. Without these steps, Commission members are faced with a decision that lacks a full accounting of the impact to the Ohio River.
7. It defies logic that two sides of the same river segment require two separate sets of water quality standards. Unless water quality standards are consistent for the same segment of river, one set of state standards by comparison will be less restrictive and in conflict with the opposite side of the river. The guiding principle of the Compact is that no pollution from an individual State shall "injuriously affect" interstate waters. It is the Commission's responsibility to ensure protection for the river and should not sanction a framework that would allow for such inconsistencies and violation of the founding mission of the Commission.
8. The proposed alternatives will unnecessarily complicate the biennial Section 305(b) reports and the 303(d) list for the Ohio River main stem. How will ORSANCO determine which of the state standards will apply for the analyses required by the Clean Water Act? Attempting to address multiple state standards will require more time and analysis to complete these reports for USEPA.
9. A framework for inconsistent standards for the same water body will create confusion and economic harm for the regulated community as they seek to comply with different standards. Additionally, such a framework would also establish a lack of equity among the states in its attempts to regulate discharges to the river. Economic development efforts will be compromised if differing standards are in place for different states.
10. The proposed framework will also generate great confusion for the greater public with the issuance of advisories, both fish advisories and recreational contact advisories. How is the public to interpret an advisory issued on one side of the river but not the other? What is in the best interest of public health? We acknowledge that there are current inconsistencies for fish consumption advisories. There is no discussion in the materials on how this situation has persisted nor how it would be addressed in a future framework with independent state standards.
11. We remain very concerned that the alternative was selected without any criteria used as part of the decision process. If criteria were in fact used, they should be made available to the public. As a

public institution, ORSANCO is beholden to an open, transparent review process congruent with its delegated authorities under federal law.

12. Looking at the totality of the comments provided in January along with the minority report for Alternative #2, clearly there is not overwhelming support for the “preferred” Alternative #2 from those voices within the ORSANCO structure and most familiar with the workings of the PCS program. We question the value of advancing a proposal that has so little support and would result in a fundamental diminishment of water quality protections for the Ohio River.

In summary, forty six years of water program administration under the Clean Water Act has taught us that we need to manage our water bodies as connected systems within drainage boundaries, not disjointed administration by separate jurisdictional boundaries. Any proposal to resort to pollution control oversight within state borders is a step backward. The Compact compels the member states to act on behalf of a water body beyond its jurisdictional waters, a unique role that demands action beyond parochial interests.

Respectfully submitted,

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