

Comments on the ORSANCO Proposed 2019 Revision to the Pollution Control Standards

To: ORSANCO Commissioners

From: Kentucky Waterways Alliance

Date: April 15, 2019

RE: Comments on the ORSANCO Proposed 2019 Revision to the Pollution Control Standards

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

Kentucky Waterways Alliance and our 600 members and supporters appreciate the opportunity to provide these comments in response to ORSANCO's request for public comment on its review of the proposed 2019 revision to the Pollution Control Standards (PCS) for Discharges to the Ohio River.

In the past 14 months, ORSANCO has solicited stakeholder and public input on several different proposals and has received overwhelming support for continuation of the PCS in its current form. We maintain our position that all member states should be required to adopt the ORSANCO PCS standards into their state water quality standards. These standards represent the best available science that take into account the entire river system. Moreover, Article VI of the Compact authorizes the Commission "to adopt, prescribe and promulgate rules, regulations and standards for administering and enforcing the provisions of this article". We expect the Commission to uphold its role in maintaining the health of the Ohio River and prescribe as rule the PCS to enforce the standards or requirements of the Compact throughout the river system.

The current proposal makes the PCS discretionary, weakening their ability to protect the integrity of the river system and allows for a state by state approach to managing the River. However, ORSANCO has not provided any rationale for allowing a state by state approach for Ohio River standards. The lack of adoption/implementation by the states of the PCS into state standards appears to be the driving force behind the proposal but no information or analysis has been provided. Eliminating the expectation and requirement for the PCS to address states out of compliance with adoption of the PCS is misguided and short sighted. The issue that needs to be solved is how ORSANCO can assist states in the adoption of the PCS rather than changing the PCS.

A state by state by state approach results in a river segment by river segment approach defined by state boundaries, thereby precluding management of the river as a system. Regional cooperation remains the most effective, efficient and fair way to prevent pollution into the Ohio River. Working together, states have been able to limit pollution into the river to protect people and wildlife. We believe that consistency and shared responsibility for downstream impacts remain paramount.

Proposed Revisions to Pollution Control Standards – Marked-up Version

1. Page 2, Paragraph 4: this paragraph lacks information about different scenarios other than the one presented and provides no information about the ramifications of any such scenario. The paragraph includes language for a scenario that a "...discharge permit issued pursuant to the Clean Water Act or other federal or state law may not contain requirements addressing one or more of the Pollution Control Standards." This is a singular situation and does not identify the potential scenario that a discharge permit may include requirements that conflict with the PCS.
2. The proposal neglects to describe or make any reference to any process or procedures should either of these scenarios occur. This language leaves open many questions about implementation including:
 - o What benchmarks will ORSANCO use to ensure compliance with the beneficial uses?
 - o What is the obligation of the state to respond to ORSANCO's review?
3. The proposal calls for the states to provide notice and an opportunity *to the Commission* of any draft or proposed permit. We have grave concern the proposal does not include any obligation by the states to inform the public of any variation in a discharge permit from the PCS. For the PCS to have value, there must be transparency in any variation from its application. This is a role for the states to implement as they bear the responsibility for any proposed variation.
4. No justification has been provided as to why a state by state approach is preferred. We have yet to see any analysis that describes how this approach benefits the river that member states to the Compact have agreed to manage collectively. Once again we ask the question, what is the problem we are trying to solve? Without any justification, one presumes the rationale is that it is easier for the states "to go their own way" without the challenges of complying with the PCS. It is easy to understand why a state might prefer an easier course of action but we maintain that is acting solely in their own interests and not in the interests of the basic tenets of the Compact all states have signed on to.
5. The proposal does not make any reference to how ORSANCO will develop the 305(b) report nor the triennial review, a critical process to ensure the standards are kept up to date.
6. We oppose the provision in the proposal for ORSANCO to utilize the NPDES review to determine states adherence with the standards and designated uses. ORSANCO should review the states' proposed standards for alignment with the PCS and make a determination about the appropriateness of the proposal.

In summary, this proposal does not include any protocol for proposed variances from the PCS to include a science-based justification, opportunity for public review and comment and an ORSANCO review. There is no inclusion of any process for resolution should a state's proposed variance conflict with ORSANCO or public review. We are opposed to the 2019 proposed revision and maintain that the PCS should continue with the expectation for full adoption by the member states that border the river.

Sincerely,
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Executive Director, Kentucky Waterways Alliance