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April 15, 2019

ORSANCO
5735 Kellogg Avenue
Cincinnati, OH 45230

Re: 2019 Review of Pollution Control Standards for the Ohio River

Dear ORSANCO staff and commissioners:

Please accept the following comments from the Sierra Club Hoosier Chapter.

The Ohio River Valley Water Sanitation Commission's (ORSANCO) latest proposed Pollution Control Standards (PCS) recommendations are an improvement over the proposed action under consideration last year—referred to as Alternative 2—but the recommendations are not adequate and should be withdrawn. ORSANCO should maintain the PCS standards and maintain the requirement that all states revise their state water quality standards and permitting programs to use the ORSANCO standards when issuing discharge permits into the Ohio River.

Setting pollution control standards is the most important work that ORSANCO performs. The majority of the mainstem states for which the standards is an issue already use these standards in their permitting decisions. Indiana and Pennsylvania do so as a matter of regulation, West Virginia does so as a matter of policy, and Kentucky incorporated the ORSANCO standards into its water quality standards for the Ohio until 2009, when it determined that except for three parameters, the state standards were equivalent to the ORSANCO standards. Ohio has a separate set of water quality standards for discharges into the Ohio River, which incorporate some, but not all, of the standards. Illinois does not use the ORSANCO standards at all in its permitting decisions.

The standards are the product of decades of deliberation by the ORSANCO technical committee and other committees, and by the commission itself, based on a determination that these standards are necessary and appropriate for improving the health of the river and maintaining water quality necessary to fully support all designated uses outlined in the Compact. The commission should not alter the applicability of the standards by making them “advisable” to accommodate the two mainstem states that do not currently use the standards or their equivalent. These standards are necessary to protect the Ohio River, which five million people rely on for drinking water. ORSANCO's proposal would make subtle changes to the language that would have serious impacts and leave key pollution control standards on the cutting room floor.

The draft PCS would eliminate the current mandate for states to adopt the PCS, making these protections optional. Currently, citizens can use the Compact to pressure state governors and the water quality agencies to

do more to protect the Ohio River and the drinking water of five million people. If the standards become voluntary, our elected officials will be able to use that fact to avoid discussions and actions to improve the health of the Ohio River. A patchwork of standards will lead to confusion for businesses and be less cost-effective. Uniform standards provide cost-effective management for the Ohio River states as well as providing clarity for businesses applying for permits.

With our criticism of the current proposal, the Hoosier Chapter also wants to express its appreciation to the ORSANCO commissioners for hearing and acting on the public criticism of Alternative 2 expressed throughout 2018, and for the decision in October 2018 to take no action on Alternative 2 at the fall commission meeting. During 2018, Sierra Club chapters and the vast majority of the public expressed strong opposition to any action that would end ORSANCO's responsibility to set pollution control standards for the Ohio River as was proposed in Alternative 2. We thank you for hearing the public and rejecting this proposed action.

If the commission determines to move forward with the proposal that it has presented for public comment, it should defer adoption until an appendix to the PCS is developed that addresses the issues relating to implementation in order to make the process robust and to hold those states not using the standards accountable to the public and the other Compact states. These matters should be incorporated into an appendix, released for public review.

Final approval of the proposed revision to the PCS should be accompanied by revisions addressing each of these points:

- a. The notice and opportunity for Commission staff to review must be on a permit-by-permit basis. For those states not using ORSANCO standards or their state equivalent, the review should focus on whether the discharge permit limitations and other requirements of the draft permit provide comparable use protection and achievement of Compact goals as if the ORSANCO standards were being used to set permit limits.
- b. The notice and opportunity for staff review should occur prior to the commencement of the public notice and comment process under a state's NPDES program. The staff determination regarding whether the draft permit provides comparable use protection and achievement of Compact goals, should be placed into the record at the time that the draft permit is public-noticed and the public comment period begins.
- c. Any discharge permit proposed by a state not using the ORSANCO standards or their equivalent should include this fact in the public notice, state whether the ORSANCO review found the draft permit provided comparable protection, and mention that the ORSANCO determination is available for public review.
- d. In addition to the permit-by-permit review, ORSANCO staff should review and comment on the differences between the PCS standards and the water quality standards of each state during their triennial review processes, and each state not using the ORSANCO standards or equivalent standards should have to justify its decision not to adopt each of the standards into the state water quality regulations.

Finally, the river and watershed need nutrient criteria and standards. By revising the PCS to only apply to an "entity discharging sewage or industrial waste" ORSANCO may seek to avoid this responsibility. ORSANCO should work with the states to create such parameters, as has been done for the Great Lakes and the Chesapeake Bay. ORSANCO should take the lead in setting numeric nutrient standards for the Ohio River. This need is longstanding and ORSANCO is in the best position to lead. In fact, ORSANCO reported that it was working on this in the most recent 2018 ORSANCO Annual Report.

The Sierra Club stands ready to work with ORSANCO to improve and protect the water quality in the Ohio River. We can help the public better understand what ORSANCO does and to build public support for your work. We reaffirm our opinion that ORSANCO's role of setting Ohio River Pollution Control Standards is the most important role for ORSANCO.

Sincerely,

Bowden Quinn
Director
Sierra Club Hoosier Chapter