

“ORSANCO remains committed to the underlying premise: that the current standards written to protect swimmers and boaters from infectious diseases are impossible to meet when heavy rain causes bacteria levels to spike in the river... As written, they set up the potential for unlimited public spending for small benefit.”

Cincinnati Post, October 10, 2006

The Ohio River Valley Water Sanitation Commission (ORSANCO) recently adopted important preliminary changes to its water quality regulations to recognize the unique challenges presented by wet weather events. ORSANCO is continuing to work on a more comprehensive package to implement wet weather standards, building on a set of proposed changes released for public comment in March 2006. ORSANCO's efforts to develop wet weather standards are consistent with concepts embodied in the Environmental Protection Agency's (EPA's) 1994 Combined Sewer Overflow (CSO) Policy.

ORSANCO tailored its proposal specifically for the Ohio River's expected uses in order to provide the most realistic and accurate wet weather standards. Nonetheless, ORSANCO's efforts have attracted criticism from nongovernmental organizations and citizen groups concerned about how wet weather standards would impact water quality in the Ohio River. Opponents of ORSANCO's efforts assert that wet weather standards would decrease the number of days that recreational water quality standards are met in the Ohio River and lower water quality generally. ORSANCO has stood behind the need for wet weather standards, emphasizing how they can be developed in a manner that is both

environmentally and fiscally responsible, as well as consistent with federal intent for geographic areas with significant wet weather sources and a large number of combined sewer communities.

This issue of *Legal Perspectives* discusses the topic of wet weather standards, and provides background on ORSANCO's efforts as a case study. Recognizing that wet weather standards are critical to the clean water community's ability to meet water quality standards during peak flow events, this issue also reflects on ways to achieve greater acceptance of wet weather standards.

I. Background

Approximately 770 U.S. cities use combined sewer systems (CSS), which combine and transport both stormwater and wastewater. During severe rainfall events, a CSS may not be able to handle the combined flows. In order to prevent high flows from flooding and damaging the wastewater treatment plant, emergency discharge points release some of the flow before it reaches the treatment plant. These untreated discharges are known as combined sewer overflows (CSOs). These discharges consist not only of excess stormwater but also untreated wastewater, and flow directly into receiving waters.

In 1994, EPA released its CSO Policy, which put in place a number of key procedures for CSS communities to follow in order to minimize the impact of CSOs on receiving waters. In 2001, Congress endorsed the 1994 Policy when it added Section 402(q) to the Clean Water Act (CWA).

Many of the nation's CSSs are located in the industrial cities of the Northeast and Midwest. The proximity of many CSS in these regions creates a unique water quality challenge for large receiving water bodies in those areas, such as the Ohio River. Effectively managing water quality issues for a waterbody as significant as the Ohio River requires cooperation over multiple federal, state and local jurisdictions, and thus ORSANCO was created. Signed in 1948, the Ohio River Valley Water Sanitation Compact established ORSANCO as an interstate water pollution control agency and authorized it to develop standards for clean water agencies that discharge into the Ohio River. ORSANCO's founding members pledged cooperative action to achieve specific water quality goals in the interstate waters of the Ohio River Valley. The eight member states of ORSANCO (Illinois, Indiana, Kentucky, New York, Ohio, Pennsylvania, Virginia, and West Virginia) work together to improve the Ohio River's water quality.

ORSANCO's standards establish a minimum pollution control level that must be met by all eight states whose discharges flow into the Ohio River Basin. Individual states still have the opportunity to develop more stringent standards for water quality if they so choose. All standards must meet certain criteria based on a determination of the river's suitable uses. Swimming and other recreational activities on the river are among the uses that must be considered, and existing recreational uses must be protected.

II. ORSANCO's Recent Efforts

Wet weather was identified as a key issue for ORSANCO in 2002 and 2003. ORSANCO formed a work group comprised of regulators from ORSANCO, state agencies, and EPA personnel from Headquarters and Regions 3, 4, and 5. This work group was unique from others ORSANCO has established because it included representatives from multiple EPA regions and from EPA Headquarters. In developing a proposal for wet weather standards, the work group took into consideration both the public uses of the Ohio River and the role of non-point sources in contributing to existing pollution. Among the relevant factors were the level of recreational activity that took place in the river during wet weather events, and whether such recreational activity decreased during these peak flow periods. Additionally, ORSANCO studies revealed that urban wet weather sources are the most significant contributor to Ohio River bacteria levels.

Significantly, improvements in the billions of dollars are already underway in the Ohio River Valley to conform to the 1994 CSO Policy. These improvements will result in significantly reduced bacteria levels in the Ohio River, and will greatly increase the number of days that recreational criteria are met. However, ORSANCO studies suggest that under extreme high flow conditions, the recreational criteria still will be exceeded – even if all CSOs are eliminated. Recognizing this reality, ORSANCO and its work group tried to achieve a delicate balance between environmental protection and economic responsibility – striving to improve overall water quality without requiring local municipalities to spend money in ineffective ways.

The work group's initial proposal in March 2006 would have modified ORSANCO's Pollution Control Standards to suspend

recreational bacteria limits when a wet weather event occurred and the river flow was greater than two miles per hour. The proposal anticipated that under these conditions, certain recreational activities such as swimming are not likely, and thus the proposal suggested that bacteria levels to protect recreational activities be temporarily suspended during these periods of peak flow.

ORSANCO's proposal was not well received when released for public comment. In public hearings held on the proposed standards, citizens expressed concern that ORSANCO's proposal would lower the river's overall water quality and increase public health risk. They noted that forms of recreational activity such as boating, kayaking and jet skiing continue to take place at velocities above two miles per hour, and thus a higher cutoff point should be considered.

After a series of public hearings, ORSANCO met again on October 5. Given the controversy, the Commission did not approve a specific point at which recreational bacteria standards would be suspended. However, it adopted an intermediate revision to its Pollution Control Standards that will allow dischargers to seek alternative site specific bacteria criteria following the completion of a Long Term Control Plan (LTCP) and a Use Attainability Analysis (UAA). This modified approach reflects a solid balance between protecting recreational water users and the environment and allowing clean water agencies to focus their wet weather CSO controls. The intermediate revision will provide Ohio River communities with important public health protection and fiscal flexibility to spend money improving the Ohio River's water quality in the most effective and efficient manner.

ORSANCO intends to continue its efforts to develop wet weather standards by addressing

some of the questions that were raised by the public. Further efforts to develop wet weather standards will be accompanied by a greater degree of public education and support so that the ultimate solution receives widespread acceptance.

III. ORSANCO's Efforts are Important

Wet weather standards such as those explored by ORSANCO are essential to achieving the ultimate goals of the CWA and the 1994 CSO Policy. A key principle of the CSO Policy is the directive to consider the site-specific wet weather impact of CSOs when developing CSO wet weather policies. EPA has encouraged clean water agencies to more explicitly define the recreational and aquatic life uses of the receiving water bodies into which CSOs discharge, and to control CSOs accordingly to protect the designated uses. Additionally, the CSO Policy specifically cites the appropriateness of an authority's adoption of partial uses by defining when certain types of recreational activity do not generally occur, such as during a particular type of storm event, and then adjusting the associated water quality criteria accordingly.

ORSANCO's efforts to adopt practical wet weather standards are fully consistent with the 1994 CSO Policy and are an important step in achieving the Policy's directives and fundamental purposes. Furthermore, ORSANCO's efforts are an essential element in allowing all communities along the Ohio River to achieve recreational water quality standards in both an environmentally responsible and cost effective manner. As ORSANCO correctly recognizes, CSOs are only one part of the water quality challenges facing the Ohio River basin. By more accurately defining the attainable recreational uses of the Ohio River and recognizing that there are times when the flows

are such that the river is not suitable for certain recreational uses, ORSANCO can ensure that public health is protected and that expenditures by clean water agencies are focused on control measures that result in meaningful water quality improvements.

As noted earlier, NACWA member agencies and other publicly owned clean water agencies in the Ohio River basin have committed to spend billions of dollars to control sewer overflows. These utilities are in the process of preparing, and in many cases implementing, detailed LTCPs to significantly reduce the frequency and volume of CSO discharges. Federal and state funding for water quality improvements have fallen significantly over the last two decades, leaving citizen ratepayers with the financial burden of meeting these mandates. Thus, it is more important than ever that ORSANCO continue its efforts to develop wet weather standards to allow these communities to better focus their resources and CSO control programs.

IV. NACWA's Supportive Efforts

NACWA has long supported environmentally sound wet weather standards. NACWA was an original participant in the development and implementation of EPA's 1994 CSO Policy and encouraged EPA to provide guidance to states on options to address wet weather conditions in their water quality standard reviews and revisions. In commenting to EPA on the proposed CSO Policy, NACWA suggested that public health is best served by water quality standards that assure low bacteria concentrations during dry weather periods but also acknowledge the site-specific nature of wet weather issues such as CSOs. NACWA's Companion Report to the EPA's 2002 *Report to Congress on Combined Sewer Overflows* also urged EPA to require state water quality standards to take into account the dynamics of wet weather

conditions and to protect community investments in long-term control strategies for sewer overflows. NACWA's data suggests that in many cases additional sewer overflow controls will have little effect in reducing water quality violations in the receiving waters, and that existing state water quality standards are not refined enough to account for wet weather conditions. Furthermore, NACWA's 2005 *CSO/SSO (Sanitary Sewer Overflow) Action Plan* discusses the critical importance of water quality standards that reflect the actual uses of all water bodies.

NACWA believes it is important for ORSANCO to succeed in developing wet weather standards. ORSANCO has the potential to become a national model for wet weather standards. NACWA is closely monitoring ORSANCO's progress, testified before the ORSANCO commission in support of ORSANCO's work on wet weather standards, and assisted in obtaining an October 12 letter of support for ORSANCO's efforts from EPA's Assistant Administrator for Water Benjamin Grumbles. Alan Vicory, ORSANCO's Executive Director and Chief Engineer, spoke at NACWA's 2006 *Summer Conference* to update NACWA's membership on ORSANCO's work

V. Next Steps

ORSANCO will put more work into developing wet weather standards in the coming months. The organization's initial proposals will undergo continued revision in response to public input. In the meantime, the steps taken on October 5 are important because they demonstrate ORSANCO's continued commitment to addressing wet weather issues.

As more and more clean water agencies and regulators nation wide begin to explore wet weather standards, NACWA will continue to advocate on their behalf. A combination of

solid science, fiscal responsibility,
environmental stewardship, and public
education, can result in wet weather standards
that are environmentally and fiscally sound.

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Legal Perspectives is a publication of the National
Association of Clean Water Agencies (NACWA).

Founded in 1970, NACWA represents over 300 of the
nation's clean water agencies. NACWA members are
environmental stewards, serving the majority of the
U.S. sewered population,
and collectively treating and reclaiming over
18 billion gallons of wastewater every day.

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