



OHIO RIVER VALLEY WATER SANITATION COMMISSION

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CHARLES A. DURITSA
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August 2, 2011

Bob Perciasepe, Deputy Administrator
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 1101A
Washington, DC 20460

Subject: Pilot Water Quality Trading in the Ohio River Basin

Dear Mr. Perciasepe:

As you know, the Ohio River Valley Water Sanitation Commission (ORSANCO) was established in 1948 to control and abate interstate pollution in the Ohio River Basin. We are an interstate commission representing eight states (IL, IN, KY, OH, NY, PA, VA, WV) with representation from the United States. ORSANCO operates programs to improve water quality in the Ohio River and its tributaries, including: setting wastewater discharge standards; performing biological assessments; monitoring for the chemical and physical properties of the waterways; spill detection and response and conducting special surveys and studies.

Over the past two years, we have been working collaboratively with the Electric Power Research Institute (EPRI) to develop a regional water quality trading program in the Ohio River Basin. The Ohio River Basin Trading Project is developing the world's largest multi-state trading program that intends to produce water quality credits for nitrogen and phosphorous. The project involves a broad coalition of organizations representing key stakeholders including power plants, wastewater utilities, farmers and environmental interests. Successful implementation of this effort is expected to improve water quality, while minimizing costs and optimizing environmental improvements. On June 9, 2011, with the support of its member states, ORSANCO adopted a resolution serving to confirm support of the project.

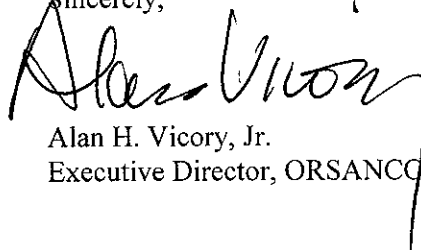
We are now moving forward with defining a set of pilot trades to test the program and quantify the water quality benefits. Given that our project spans the jurisdictions of three EPA regions and may include eight or more states, there is tremendous potential for this effort to support the collaborative approaches described in Coming Together for Clean Waters (EPA, March 2011) and the nutrient reduction framework advanced by Nancy Stoner in a memorandum to EPA Regions (EPA, March 16, 2011). While there are circumstances where trading may meet a compliance target, there are also opportunities for pre-compliance trading where regulatory limits are not yet in place. Direction from EPA on incentives for point sources to voluntarily purchase credits in these pre-compliance settings is expected to accelerate this effort and provide participating EPA regions and states clarity on options for executing the pilot trades.

More specifically, we seek clarification and/or concurrence from EPA on the following specific incentives that may be available to point sources that volunteer to participate in our pre-compliance pilot trades. We understand that, due to delegated NPDES permitting authority to the states, that the state permitting authorities have the final decisions on these matters, with review by EPA. At this time we are asking EPA to weigh in on the viability of the following three incentives, pending further discussion with the state NPDES permitting authorities:

1. Retirement Ratios -- Retirement ratios are not required, but are common in state trading programs to facilitate additional water quality improvements. We seek concurrence from EPA that states may offer credit purchasers smaller retirement ratios for participating in the pilot trades since those trades, in and of themselves, may yield additional water quality benefits. If extended into a post-pilot trading program, credit purchasers that participated in the pilot trades could benefit from an effective discount on all future nonpoint source trades.
2. Uncertainty Ratios -- Modeling-based uncertainty ratios are typically used to account for uncertainties in nonpoint source BMP performance. We plan to use the pilots to field-test the validity of these ratios, and, hopefully to improve the estimates of nonpoint source BMP load reductions used in our model. Once validated, pilot trades would be eligible for smaller uncertainty ratios, and all parties can benefit from improving the model estimates of nonpoint source BMPs more broadly. We seek concurrence from EPA on this approach to reducing the uncertainty ratios through the pilot process.
3. Future Compliance Assumptions and Requirements -- After regulatory drivers (e.g., numeric nutrient criteria, TMDLs and/or water quality-based effluent limitations) are in place, the parties involved in the pilot trades would like assurances that their voluntary efforts will be counted toward any further regulatory requirements, including reasonable assurance under TMDLs. For example, nonpoint sources may generate credits for pilot trades by reducing their loading below current conditions. Likewise, point sources that purchase credits during the pilot trades may seek first rights to the bargained-for reductions in the future. In addition, we would expect permitting authorities to make use of tools like compliance schedules to provide any necessary relief to point sources that volunteer to participate in the pilot trades (e.g., if the pilot program is predicated on overall reductions of 25% and a TMDL eventually dictates reductions of 50%, then permitting authorities may authorize longer-term compliance schedules, if appropriate, for participating point sources to achieve the further reduction). We seek concurrence from EPA on the availability of these options, understanding that the state permitting authority has the final decision on whether to use them.

ORSANCO is proud to be a leader in this innovative project, which builds from over 60 years of collaborative relationships in the Ohio River Basin. We look forward to receiving further direction and/or concurrence from EPA on the points mentioned above, and moving forward with an economical and ecologically effective solution to improving water quality in the basin.

Sincerely,



Alan H. Vicory, Jr.
Executive Director, ORSANCO

cc: Jessica Fox, EPRI
Charles Duritsa



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 12 2011

DEPUTY ADMINISTRATOR

Alan H. Vicory Jr.
Executive Director
Ohio River Valley Water Sanitation Commission
5735 Kellogg Avenue
Cincinnati, Ohio 45228

Dear Mr. Vicory:

A handwritten signature in dark ink, appearing to read "Alan", is written over the typed name "Dear Mr. Vicory:".

Thank you for your August 2, 2011, letter concerning the Ohio River Valley Water Sanitation Commission's collaboration with the Electric Power Research Institute to develop a regional water-quality trading program in the Ohio River Basin. The purpose of this multi-state program, to be known as the Ohio River Basin Trading Project, is to produce cost effectively water-quality credits for nitrogen and phosphorus in advance of any regulatory requirements for capping these nutrients in the watershed.

As you are aware, through our participation in discussions with the trading group, the U.S. Environmental Protection Agency supports your efforts to initiate water-quality trading in the Ohio River Basin using pilot trades. We also want to acknowledge the key role and excellent efforts of the U.S. Department of Agriculture in working with the group to facilitate the establishment of environmental markets that would allow trading across sectors. We agree with your observation that this trading project comports with the nutrient reduction framework contemplated by the EPA and described in a March 16, 2011, memorandum to the EPA's regional offices from Nancy Stoner, acting assistant administrator for the Office of Water.

We understand from your letter that you are seeking some clarity from the EPA as you complete the design of the trading project and define a set of pilot trades. It is likely that the implementation of such a program will be a learning process for federal and state regulators and stakeholders, and, as such, we need to remain somewhat flexible in our approaches. While you seek concurrence from the EPA on specific incentives for these pilot trades, we emphasize that these incentives must align with the Clean Water Act and are at the states' discretion as they have been authorized by the EPA to administer the National Pollutant Discharge Elimination System program.

You ask if states may offer credit purchasers lower retirement ratios as an incentive for early participation in pilot trades. Retirement ratios are considered a discretionary program design element of trading programs generally intended to favor or to better ensure environmental protection. As one tool within an overall framework of verification and accountability, however, we agree that under certain circumstances a state may provide lower ratios as an incentive for pilot trades.

The use of uncertainty ratios is standard practice in trading programs. We believe that your plans to explore ways to reduce those ratios to increase participation are worth consideration. In particular,

efforts to field test best-management-practices efficiencies and actual load reductions as well as getting better model estimates all lead to greater certainty of outcomes and thus support lower uncertainty ratios – again at the discretion of the regulatory authority.

It is difficult to definitively answer your question on future compliance assumptions and requirements in advance of knowing the actual regulatory drivers that might be put in place in the Ohio River Basin. However, we understand that after those drivers are established, the parties involved in the pilot trades might expect assurances that their voluntary efforts will be recognized. We believe those assurances could take several forms, where applicable, including the ones outlined in your letter. Keep in mind the details of these options, such as how a total maximum daily load that recognizes prior action would need to be worked out with the state regulators, with concurrence from the EPA's regional staff. The same would be true of applicable eligibility criteria for NPDES compliance schedules. Also, a facility cannot trade to meet an applicable technology-based effluent limitation unless specifically authorized to do so.

Thank you for your leadership role, along with Electric Power Research Institute, in thinking proactively about achieving nutrient reductions in the Ohio River Basin, thus advancing the protection of our nation's waters. It is the EPA's policy that water-quality trading is an important Clean Water Act tool. Your advocacy of trading through pilot trades sends an important, material signal that finding solutions to nitrogen and phosphorus pollution is possible and must include multiple stakeholders. We are confident that the EPA's regions, working in concert with the states, will support and be engaged in the Ohio River Basin Trading Project and will help to explore these and other incentives that promote water-quality improvement while reducing costs.

If you have further questions, please contact Ellen Gilinsky, senior policy advisor in the Office of Water, at (202) 564-2549 or gilinsky.ellen@epa.gov or your staff may call Bob Rose, also in the Office of Water, at (202) 564-0322 or rose.bob@epa.gov.

Sincerely,

A handwritten signature in black ink that reads "Bob Perciasepe". The signature is written in a cursive, flowing style.

Bob Perciasepe