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SUNDAY EDITION | Companies upstream of Louisville seek exemptions from new Ohio River mercury pollution rules

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By Marcus Green

CONNECT

LOUISVILLE, Ky. (WDRB) -- Aaron Wheatley estimates he spends four to five days on the Ohio River each week in his hunt for big catfish.

Wheatley said he has fished on the Ohio for about 12 years, sometimes also swimming in the river that flows past his hometown of Owensboro, Ky., along a 981-mile path from Pittsburgh to the Mississippi River.

"I think the river's getting cleaner," he said by phone last week from Alabama, where he was fishing on Wheeler Lake. "We don't catch fish that have four eyes and three tails."

But Wheatley stops short of eating his catch. He said he never acquired a taste for fish – and he's also aware that the Ohio remains [among the most polluted rivers in the United States](#).

The designation is due in part to hundreds of pounds of mercury dumped into the water in recent years, along with other chemicals. The lower stretch of the river, from Louisville to the Mississippi, is considered impaired because of high mercury levels in fish tissue.

Against this backdrop, an eight-state agency that monitors the river's water quality is weighing changes to rules meant to curb discharges of the potentially hazardous substance.

Clean water advocates want the Ohio River Valley Water Sanitation Commission to enforce a ban on so-called "mixing zones" set to start in October. The zones are where some industries measure mercury discharges farther away from the point of release, where newer companies take their readings.

In theory, the zones allow mercury to be mixed in with the voluminous river and diluted. Without them, companies acknowledge they would run afoul of current pollution standards.

The agency approved the riverwide ban in 2003, giving companies a decade to comply. In 2013, commissioners appointed by the states' governors agreed to a two-year delay.

Now, with the ban just months away, a group of industries upstream of Louisville has asked the commission to excuse them from the tougher rules. The companies argue that meeting the new standards could have grave financial consequences and propose other ways of lowering mercury discharges.

But to make those changes, they say they need more time.

The commission – known as ORSANCO -- plans to consider whether to lift the deadline for the mixing zone ban at its meeting in October, said Jason Heath, technical programs manager. He said a committee will review input from a recent public comment period before making a recommendation to the commissioners.

Commission officials note that mixing zones already are outlawed for newer facilities.

Two of Kentucky's three ORSANCO representatives are Lt. Gov. Crit Luallen and Len Peters, Secretary of the state's Energy and Environment Cabinet. Peters said in a statement that Gov. Steve Beshear's administration is aware of the proposal.

"However, that proposed change remains in the public notice and comment stage," he said. "We will review the information from that process before making any decisions or recommendations."

Kentucky's other commission member, C. Ronald Lovan, President and CEO of the Northern Kentucky Water District, did not return a phone call seeking comment.

Louisville environmental attorney Tom FitzGerald, a federal commission member appointed by President Barack Obama, said the public comments were "almost uniformly in opposition" to delaying the mixing zone ban.

FitzGerald declined to say what position he will take, although he said he first backed removing mixing zones more than a decade ago.

"I think the concept of using public water to dilute pollution is one we really need to think long and hard about," he said.

Less mercury in river?

Earlier this year, ORSANCO issued a report on the river's health based on a U.S. Environmental Protection Agency program that tracks the annual releases of toxic chemicals.

More than 24.1 million pounds of chemicals were sent into the Ohio in 2013, more than double the amount in the next-highest polluted waterway, the Mississippi River.

The report, which uses companies' self-reported data, found that mercury discharges in the Ohio climbed to 380 pounds in 2013, up from 147 the year before. It was "the highest amount of mercury reported to be released to the Ohio River as of yet," the commission wrote.

But ORSANCO quietly revised its report last week and now says mercury emissions in the river declined in 2013 to their lowest levels since 2007. In an email, Heath said an unnamed company discovered a reporting error that had inflated the 2013 totals.

FitzGerald said the revised numbers don't affect his concerns about the river's health, in part because of new clean-air rules that may result in more coal-fired power plants discharging mercury into the Ohio.

Angie Rosser, executive director of the West Virginia Rivers Coalition, called the timing of the revisions "interesting." She had relied on the ORSANCO report in discussions with her state's environmental officials about the mixing zone rules, she said.

Mercury is an element that occurs naturally in the environment. But a form of mercury that builds up in fish can be hazardous to people who eat it, particularly pregnant women, and has been linked to neurological problems in children, according to the EPA. "It's with us forever and moves up the food chain," said Rosser, whose nonprofit group is urging ORSANCO to enforce the ban on mixing zones.

Even if the Ohio has less mercury than was previously thought, "it doesn't change our concerns," she said.

Like other cities along the Ohio, Louisville gets its drinking water from the river. Water company officials monitor annually for contaminants and have not detected mercury at any treatment plants, based on data going back to 2000, spokeswoman Kelley Dearing Smith said in an email.

Power could be ceded to states

Founded in 1948 under a compact among eight states in the Ohio River basin and the U.S. government, ORSANCO oversees a range of river monitoring and other work, including setting pollution standards. The agency doesn't issue permits or enforce violations.

Besides considering a delay to the October ban on mixing zones, the commission may give power to the states to decide when the zones should be eliminated "as soon as practicable."

"This is a very complex issue that involves numerous dischargers and each of these dischargers can present unique challenges and those may be best addressed through the permitting authorities," said Richard Harrison, the commission's executive director.

Several organizations – including the East Kentucky Power Cooperative and the Utility Information Exchange of Kentucky – suggested last year that the commission should look at

whether the mixing zone ban is “reasonable” for the Ohio, according to a summary of comments on ORSANCO's website.

The West Virginia Chamber of Commerce argued mixing zones only should apply when high mercury levels are found. (The Kentucky Chamber of Commerce doesn't plan to submit any comments to ORSANCO, a spokeswoman said.)

[Four companies and one city have asked ORSANCO](#) for permission to keep their mixing zones after the October deadline. None is located in Kentucky.

At a meeting next month, Heath said an ORSANCO committee plans to approve granting an exemption to the Pleasants Power Station at Willow Island, [W.Va.](#) The plant, owned by a subsidiary of Akron, Ohio-based FirstEnergy Corp., estimates it would cost \$150 million to install a wastewater treatment plan to meet new mercury rules.

Heath said the committee also will recommend public hearings for three other companies that have asked for the variances and request more information from the city of Toronto, Ohio, which has sought an exemption for a sewage treatment plant.

Some of those companies argue that they have taken steps to deal with mercury.

The Mountain State Carbon coke plant, for example, currently discharges more mercury into the river than would be allowed if its mixing zone were revoked, according to its parent company, AK Steel Corp. of West Chester, Ohio.

The plant has spent \$1 million to treat mercury and other pollutants, and AK Steel notes that mercury levels in the water and fish tissue in the nearby Pike Island Pool already meet the accepted standards. The company is asking for five years to figure out how to add “enhanced mercury removal alternatives.”

Spokesman Barry Racey said in an email that, since acquiring the plant last fall, AK Steel “has been taking steps to analyze the scope of the issue and any available technologies. However, thus far, the company has not completed its investigation.”

But some bristle at the commission possibly extending, once again, a ban that companies have been able to prepare for since 2003.

“They've been giving them a few more years for the past several years, and we think it's time for them to get some enforceable deadlines,” said Richard Hill, vice chairman and executive committee member of the Sierra Club's Hoosier chapter in Indiana.

A question of influence

Ceding decision-making on mixing zones to the states could create a patchwork of regulations, said Judy Petersen, executive director of the Kentucky Waterways Alliance.

“What we're worried about here is that if we just leave it up to the states, states are going to have pressure from companies in their own states to relax the rules or to grant additional mixing zones,” she said.

A review of campaign donations in Ohio River states shows the companies asking for relief from the mixing zone ban routinely give to politicians who control appointments to regulatory agencies – and ORSANCO.

AK Steel and its political action committee have contributed \$39,375 to Kentucky candidates since 2000, according to the Kentucky Registry of Election Finance. Employees of the company have donated \$23,435.70 over that time.

The company's political action committee contributed \$2,500 to Gov. Steve Beshear during his two gubernatorial campaigns and gave \$1,000 to Andrew Beshear, the governor's son, who is the Democratic nominee for Kentucky Attorney General.

FirstEnergy, which is likely to get the first variance, has given \$35,500 to Ohio Gov. John Kasich's campaigns through its PAC since 2010, and former executive chairman Anthony J. Alexander and his wife personally contributed \$50,200 to Kasich during that time, according to the Ohio Secretary of State's office.

Speaking generally, University of Kentucky political science professor Donald Gross said such donations are routine, but he questions whether they indirectly curry influence over appointees on boards and commissions.

“Even if there's not a sort of quid pro quo understanding, it does sort of raise the issue if one can truly act independently,” Gross said.

In addition, at least two companies seeking exemptions – AK Steel and Koppers Inc. of Follansbee, [W.Va.](#) – have sponsored ORSANCO's annual “River Sweep,” according to the

agency's annual reports.

Petersen said she simply wants the commission to stick to its 2003 plan.

"We want them to do what we consider to be the right thing for the people of the Ohio River Valley and the folks here in Louisville and in Kentucky," Petersen said. "And that is to halt this addition of mercury to the river."

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