

# Revisions to Michigan's Mercury NPDES Permitting Strategy

Brenda Sayles

September 24, 2008



# Hg Permitting Strategy History

- Applicable to mercury requirements in NPDES permits
- First strategy developed in 2000
- Reason developed: 1999 mercury method 1631, 0.5 ng/L vs. 200 ng/L old method
- Developed to address potential widespread noncompliance
- Included a multiple discharger variance and implementation details

# Variations - general

- Water Quality Standards (R 323.1103)
  - A variance may be granted from any water quality standard that is the basis of a WQBEL in an NPDES permit
- A variance is an effluent limitation in a NPDES permit that is the **level currently achievable** vs. water quality or treatment technology-based effluent limits

# Variance restrictions

- Applies only to the permittee requesting the variance
- Generally does not apply to new dischargers
- Cannot jeopardize threatened/endangered species
- Cannot be granted if WQS can be achieved with CWA treatment technology or cost-effective best management practices
- Cannot exceed the duration of the permit

# Variance demonstration

- Demonstrate that attaining WQS not feasible
  - Natural pollutant levels exceed water quality standards
  - Unreasonable economic burden to meet the WQS
- Characterize increased risk to humans/environment
- Show that variance conforms with antidegradation demonstration requirements



# Variance obligations

- Establishment of Level Currently Achievable
- Make reasonable progress to attain WQS
  - pollutant minimization program required for bioaccumulative substances, e.g. mercury



# Multiple discharger variances

- Water Quality Standards (R 323.1103(9))
- Used to address widespread WQS compliance issues
- Demonstration requirements waived, obligations retained
- The Mercury MDV is the only developed to date

# Permitting Strategies

- 2000 Mercury Permitting Strategy
  - Included a multiple discharger variance
  - Level Currently Achievable (LCA) = 30 ng/l
  - Approved by EPA
- 2004 Revised Mercury Permitting Strategy
  - LCA = 10 ng/l
  - Expires 9/30/09
  - Approved by EPA

# The Lawsuit

- 2006: NWF/Lone Tree v. USEPA and MDEQ. Issues:
  - Statewide LCA of 10 ng/L vs. facility specific
  - Compliance schedule use for LCA
  - Pollutant Minimization Plan (PMP) triggers
    - 1 data point vs. 12 months of data

# Settlement

- Multiple discharger variance will continue
  - Current variance expires 9/30/09
  - Need to renew prior to 2010
- Compliance schedules
  - No compliance schedule for LCA (previous up to 2 year allowed before LCA of 10 ng/L was effective)
- Pollutant Minimization Programs
  - For permits with mercury monitoring only (i.e. no limit) a PMP trigger of 5 ng/l was added

# Settlement, cont

- LCAs must be facility specific
  - 2004-2009 permitting strategy LCA is 10 ng/l
  - No longer valid after September 30, 2008
  - Draft LCA procedure included with settlement
  - Intended for use beginning October 1, 2008
  - Draft LCA procedure was noticed in DEQ Calendar for comment Feb 18-Mar 18, 2008
  - Requires EPA approval

# Draft LCA procedure - generally

- Uses the reasonable potential approach in R323.1211 as a basis
- If reasonable potential exists for the Hg discharge concentration to exceed WQS, a site-specific LCA will be developed
- LCAs will increase and decrease
- EPA approval of the draft procedure is expected soon

# Summary

- Court settlement
- New LCA process
- No more LCA compliance schedules
- PMP trigger of 5 ng/l in some permits

# Questions/Additional info

- For questions or a copy of the draft LCA procedure, contact Brenda Sayles:
  - [Saylesb@michigan.gov](mailto:Saylesb@michigan.gov)
  - Call 517-335-4198