**Toxics Rulemaking Work Group**

**Variances**

Conference Call No: 1-503-378-3333

January 15, 2010

**AGENDA**

1. **Introductions**
2. **Summary of Substantive Variance Concerns and Opportunity for Discussion**
3. **Variance Options for RWG Discussion**

**Agenda Item C: Variance Options for RWG Discussion**

**Option 1: Multiple Discharger Variance (Background Concentration Allowance)**

*(Refer to complete proposed language in earlier discussion document at 340-041-0061)*

Applicability

* Would apply to multiple pass non-contact cooling facilities
* Additional limitations:
  + The mass of the pollutant in the discharge does not exceed the mass that is attributable to the pollutant in the facility’s intake water
  + The increase in the pollutant’s concentration after complete mixing with the waterbody does not significantly increase the concentration in the waterbody
* DEQ would prepare justification to accompany rule adoption that for these facilities, it is infeasible to meet standards based on one or both of the following criteria: (1) Naturally occurring pollutant concentrations prevent the attainment of the use; or (2) Human-caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place (131.10(g)(1) and (3))
* DEQ would adopt an explicit provision into water quality standards rules describing the types of facilities that would be eligible for coverage under this provision. This rule provision must be adopted by the Commission and approved by EPA.
* DEQ puts boundaries around the circumstances under which a discharger could be granted a variance under the provision and the 131.10(g) demonstration and would be equally applicable to any discharger fitting within these boundaries. Dischargers do not need to individually provide the 131.10(g) demonstration and receive EPA approval.
* A discharger submits data and information to DEQ on an individual basis to show that they meet the conditions outlined in the rule.
* The multiple discharger variance rule provision would undergo periodic DEQ review at a regular interval (e.g., 5 years) to ensure that the conditions and DEQ’s conclusions regarding the basis for the multiple discharger variance is still supported. Results of these periodic reviews are submitted to EPA for review.

Pros:

* Could potentially cover most of the facilities that have non-contact cooling concentration issues without issuing individual variances with each permit, thus streamlining the approval process.

Cons

* DEQ will most likely need to provide a more rigorous upfront demonstration of 131.10(g) factors and explore how much variability exists in evaluating alternatives to treatment for non-contact cooling facilities.
* Relatively narrow applicability--would not include other water quality issues affecting increased effluent concentrations (air deposition, etc.).

**Option 2: Separate Provision in Variance Rules Addressing Background Concentrations**

* Adopt explicit provision as part of variance rules describing the kinds of information that DEQ expects would lead to granting a variance for facilities that concentrate background pollutants
* Applicability: Non-contact cooling; Contact cooling could also be included
* Each discharger provides DEQ with a rationale per 131.10(g)(1) and/or (3) that would be applicable to its discharge, as well as data and information to show that it meets the rule’s applicability criteria.
* Individual variance approved by EPA.

Pros:

* Could potentially address more than non-contact cooling; could also address facilities that concentrate background pollutants but that come into contact with other process water.
* Provides in rule, additional specificity regarding the kind of information DEQ and EPA would expect to grant/approve a variance
* Would most likely streamline the EPA approval process by providing an upfront rationale.

Cons:

* Requires EPA review and approval for each variance issued with the permit.

**Option 3: Do not include any provisions in water quality standards rules addressing background concentration issues**

* Language referencing a background concentration scenario not included in this rulemaking.
* Information supporting variances based on background concentration issues illustrated in IMD to assist permit writers in evaluating variances based on 131.10(g)(1) and/or (3) factors. This illustration would also, most likely, streamline the EPA approval process.
* DEQ will gather more information as variance requests are processed and approved, and evaluate whether or not a multiple discharger variance or other explicit variance provisions are warranted under future rulemaking.

Pros:

* If a multiple discharger variance is delayed, it could potentially give DEQ time to further evaluate data and develop a better understanding of the types and numbers of facilities requesting variances, the pollutants of concern, and the review and approval process.

Cons:

* Additional specificity is not contained in rule
* Rule provisions not specifically authorizing a multiple discharger variance could potentially cause an administrative burden on both discharger and DEQ staff in reviewing and approving variances based on similar situations, such as a non-contact cooling scenario.