Background Pollutant Discussion Item

Talking Points

April 27, 2010

**Overall**

* For today’s discussion, we will be focusing on 3 tools to address background pollutants and deciding on which ones to include for this rulemaking
* Applicability of 3 tools:
  + Applies to industrial facilities
  + Only HHC
  + Applies to situations where the source water and discharge water are taken from and into the same waterbody
* Recommendations
  + DEQ recommends using a de minimus approach as one tool to address background pollutants.
  + General permits can be developed under existing permitting regulations. No additional rule language is needed.
  + DEQ analysis indicates that a limited number of non-contact cooling facilities would fit under the currently proposed applicability criteria for a multiple discharger variance (MDV). Given the limited applicability of this tool, DEQ does not see a compelling reason to propose a MDV for non-contact cooling facilities at this time.

**Multiple Discharger Variance**

Description

* A MDV is a variance that applies to more than 1 discharger who cannot meet WQS. Typically, MDVs have been established for a particular pollutant or class of discharger. The MDV provision would be adopted by the Commission (and approved by EPA) into OR’s WQS regulations. However, each application of the MDV would be granted by DEQ in conjunction w/ the NPDES permitting process and would not have to be individually approved by EPA.

Scope

* As proposed, this provision would only apply to industrial facilities who use non-contact cooling processes and do not increase mass of pollutant
* Based on 40 CFR 131.10(g)(1) and (3) demonstration factors:
  + 1. Naturally occurring pollutant concentration prevent the attainment of the use
  + 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.

Recommendation

* Only a limited # of facilities (approximately 15—only 3 majors) may fall under the applicability factors of the proposed MDV provision. At this time, DEQ does not see a compelling reason to include a MDV for this rulemaking.
* Additional work would be needed:
  + Justifying and supporting more than one pollutant
  + A rationale to support the 2 demonstration factors that would be equally applicable to any MDV discharger
  + A determination that treatment or other alternatives do not vary significantly
* DEQ would certainly consider a separate rulemaking for a MDV if future circumstances warranted this approach
* DEQ would still include MDV authorizing language in WQS regs—separate rulemaking would be done

**Questions**

1. General questions

2. Do work group members support DEQ’s recommendation at this time?

**Restoration Standards**

Description

* Developed for waterbodies where restoration efforts may take many years (Kathryn proposed looking at this tool in an earlier meeting).
* As proposed in the FL Rule and other discussion circles, it would be a waterbody-specific WQS that is adopted into WQS regulations. Interim less stringent criteria and DUs would be adopted during a prescribed timeframe and are enforceable
* Could adopt restoration standards under current regulatory authorities
* DE Bay WQS Implementation Plans for PCBs: up to 20 yr compliance plan, but currently do not have enforceable interim numeric limits—this compliance approach hasn’t been approved by EPA

Scope

* Any impaired waterbody where an assessment had been performed in order to develop interim criteria over a given timeframe (up to 20 years)

Recommendation

* Restoration standards could be a potential tool, but a specific waterbody has not yet been identified in order to be included in this rulemaking
* **Enforceable interim designated uses and criteria must be determined and approved through rulemaking. Determining what these criteria levels should be at a point sometime in the future could be challenging (need a lot of data and analysis and even then, will be challenging)**