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**TITLE 327 WATER POLLUTION CONTROL
BOARD**

LSA Document #03-130(F)

DIGEST

Adds 327 IAC 5-3.5 to establish a process and application requirements for obtaining a variance from the existing water quality criterion used to establish a water quality-based effluent limitation for mercury in wastewater discharges permitted under the National Pollutant Discharge Elimination System (NPDES) program. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: #03-130(WPCB), June 1, 2003, Indiana Register (26 IR 3171).

Second Notice of Comment Period and Notice of First Hearing: #03-130(WPCB), June 1, 2004, Indiana Register (27 IR 2884).

Date of First Hearing: September 8, 2004.

Third Notice of Comment Period and Notice of Second Hearing: #03-130(WPCB), November 1, 2004, Indiana Register (28 IR 644).

Change in Notice of Public Hearing: #03-130 (WPCB), January 1, 2005, Indiana Register (28 IR 1197).

Date of Second Hearing and Final Adoption: January 12, 2005.

327 IAC 5-3.5

SECTION 1. 327 IAC 5-3.5 IS ADDED TO READ AS FOLLOWS:

Rule 3.5. Streamlined Mercury Variance Requirements and Application Process

327 IAC 5-3.5-1 Purpose

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2;
IC 13-18-3-3; IC 13-18-4-3

Affected: IC 13-18-4

Sec. 1. The purpose of this rule is to establish a streamlined process and application requirements for obtaining a variance from a water quality criterion used to establish a water quality-based effluent limitation for mercury in an NPDES permit. *(Water Pollution Control Board; 327 IAC 5-3.5-1; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2349)*

327 IAC 5-3.5-2 Applicability

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2;
IC 13-18-3-3; IC 13-18-4-3

Affected: IC 13-14-8-9; IC 13-18-4

Sec. 2. (a) An SMV shall be available for the duration of the NPDES permit issued to a wastewater discharging facility that has an NPDES permit in effect containing a discharge limitation for mercury that cannot be achieved consistently by the facility.

(b) Application for a variance under this rule meets the requirements for a variance under IC 13-14-8-9 and rules adopted by the board.

(c) An SMV is not available for the following:

(1) New or recommencing Great Lakes system dischargers except as provided under 327 IAC 2-1.5-17(a)(3).

(2) Applicants seeking an interim limit whose effluent contains mercury at an average concentration, as determined under

section 8(a) of this rule, greater than thirty (30) ng/l (parts per trillion).
(Water Pollution Control Board; 327 IAC 5-3.5-2; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2349)

327 IAC 5-3.5-3 Definitions

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2;
IC 13-18-3-3; IC 13-18-4-3

Affected: IC 13-11-2; IC 13-18-4

Sec. 3. In addition to the definitions contained in IC 13-11-2 and 327 IAC 5 [this article], the following definitions apply throughout this rule:

- (1) "Department" means the Indiana department of environmental management.
- (2) "Facility" means any NPDES point source or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program. For a municipality, "facility" means a POTW.
- (3) "Pollutant minimization program" or "PMP" means a program developed by an SMV applicant to identify and minimize the discharge of mercury into the environment.
- (4) "Pollutant minimization program plan" or "PMPP" means the plan for development and implementation of the PMP.
- (5) "Publicly owned treatment works" or "POTW" means a treatment works as defined by Section 212(2) of the Federal Water Pollution Control Act owned by the state or a municipality as defined by Section 502(4) of the Federal Water Pollution Control Act.
- (6) "Streamlined mercury variance" or "SMV" means a process established under this rule for obtaining a variance from the water quality criterion used to establish a water quality-based effluent limitation (WQBEL) established for mercury in an NPDES permit.

(Water Pollution Control Board; 327 IAC 5-3.5-3; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2349)

327 IAC 5-3.5-4 Initial SMV application

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2;
IC 13-18-3-3; IC 13-18-4-3

Affected: IC 13-18-4

Sec. 4. (a) The initial SMV application shall be submitted on forms provided by the department.

(b) An applicant for an SMV may submit the application as a part of an application for a:

- (1) new;
- (2) renewed; or
- (3) modified;

NPDES permit.

(c) The initial SMV application must include all information, including the PMPP, required under section 9 of this rule, PMPP requirements. Applications to renew an SMV shall comply with section 7 of this rule.

(d) Upon receipt of a complete SMV application, the department will publish a notice of completeness and availability of the SMV in accordance with section 5 of this rule, public notice of SMV application. The notice of completeness and availability will be published within thirty (30) days of receipt of a complete SMV application.

(e) In order for an application to be considered complete, the application must contain all information required under section 9 of this rule, PMPP requirements. (Water Pollution Control Board; 327 IAC 5-3.5-4; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2349)

327 IAC 5-3.5-5 Public notice of SMV application

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2;
IC 13-18-3-3; IC 13-18-4-3

Affected: IC 4-21.5; IC 13-18-4

Sec. 5. (a) The department shall publish notice of each complete SMV application for public comment:

- (1) in the newspaper with the greatest circulation in the city or county of the applicant's location; and

(2) with a thirty (30) day public comment period.

(b) Public notice may be held simultaneously with the public notice procedures of a new, renewed, or modified NPDES permit.

(c) The department may hold a public hearing on the complete SMV application if a request is received during the public comment period. The public hearing may be held simultaneously with the public hearing on a new, renewed, or modified NPDES permit.

(d) The department shall consider public comments received during:

- (1) the public comment period; and
- (2) the public hearing, if one is held.

(e) The department may require an applicant to modify the SMV application if it is necessary in order for the SMV application to be consistent with the requirements of this rule.

(f) If the SMV application meets the requirements of this rule, the department shall incorporate the SMV into the NPDES permit in accordance with this rule within ninety (90) days, unless the applicant agrees to a longer time frame, following the close of the later of the following:

- (1) The public comment period.
- (2) The public hearing.

(g) A final determination under subsection (e) is an appealable decision under IC 4-21.5. (*Water Pollution Control Board; 327 IAC 5-3.5-5; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2350*)

327 IAC 5-3.5-6 Issuance of SMV

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3

Affected: IC 13-14-8-9; IC 13-18-4

Sec. 6. When an SMV is issued under this rule, the SMV shall be incorporated as a condition of the applicant's NPDES permit through issuance, renewal, or modification of the NPDES permit. The SMV remains in effect until the NPDES permit expires under IC 13-14-8-9. The NPDES permit shall include the requirements of the PMPP and any applicable interim discharge limitation. (*Water Pollution Control Board; 327 IAC 5-3.5-6; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2350*)

327 IAC 5-3.5-7 Renewal of SMV

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3

Affected: IC 13-14-8-9; IC 13-18-4

Sec. 7. (a) An eligible applicant may apply for a renewal of the SMV:

- (1) one hundred eighty (180) days prior to the expiration of its NPDES permit; or
- (2) within one hundred eighty (180) days after issuance of a revised NPDES permit that establishes a revised mercury discharge limit based on the water quality criteria.

(b) The department may renew an initial SMV in accordance with IC 13-14-8-9 if the applicant demonstrates that implementation of the PMPP has achieved progress toward the goal of reducing mercury from its discharge except as provided in subsection (d).

(c) A renewal application shall contain the following:

- (1) All information required for an initial SMV application under section 4 of this rule, including revisions to the PMPP, if applicable.
- (2) A report on implementation of each provision of the PMPP.
- (3) An analysis of the mercury concentrations determined through sampling at the facility's locations that have mercury monitoring requirements in the NPDES permit for the two (2) year period prior to the SMV renewal application.

(4) A proposed alternative mercury discharge limit, if appropriate, to be evaluated by the department according to section 8(b) of this rule, based on the most recent two (2) years of representative sampling information from the facility.

(d) A PMPP must be revised if implementation of the original PMPP does not lead to demonstrable progress in minimizing the discharge of mercury. If the applicant can provide information, as part of a revision to a PMPP, that demonstrates there is no known reasonable additional action that will reduce mercury, the PMPP may remain as previously approved.

(e) A renewal SMV shall be issued in a timely manner and in accordance with the requirements for the issuance of an initial SMV under this rule. If an applicant submits an application for a renewal SMV at least one hundred eighty (180) days prior to the expiration of its NPDES permit, the department shall make a final SMV decision, if requested by the applicant, concurrent with the final decision on the NPDES permit. (*Water Pollution Control Board; 327 IAC 5-3.5-7; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2350*)

327 IAC 5-3.5-8 SMV interim discharge limit

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3

Affected: IC 13-18-4

Sec. 8. (a) The interim limit for mercury discharge for the duration of an SMV shall be based on representative effluent data that have been analyzed using Analytical Method 1631 or any analytical method approved by the department. The interim limit shall be expressed as the highest daily value for mercury from a data set that includes a minimum of six (6) daily values that are generally evenly spaced over the most recent twelve (12) to twenty-four (24) month period and representative of the four (4) seasons. The highest daily value will become the value for the interim limit. Compliance with the interim limit is achieved if the average of the measured effluent daily values over the rolling twelve (12) month period is less than the interim limit. An SMV is not available to an applicant that requests an interim limit greater than thirty (30) ng/l (parts per trillion).

(b) The interim discharge limit shall be evaluated upon receipt of a renewal SMV application based upon available, valid, and representative data of the effluent levels for mercury collected and analyzed over the most recent two (2) year period. Data collection and analyses must be done according to Analytical Method 1631 or the analytical method approved by the department. (*Water Pollution Control Board; 327 IAC 5-3.5-8; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2351*)

327 IAC 5-3.5-9 PMPP requirements

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3

Affected: IC 13-18-4

Sec. 9. (a) A PMPP for a facility must be submitted with an application for an SMV. The PMPP must contain the following:

(1) Results of a preliminary inventory of potential uses and sources of mercury in all buildings and departments and a plan and schedule for providing the department results of a complete inventory.

(2) Preliminary identification of known mercury-bearing equipment, wastestreams, and mercury storage sites.

(3) A list of planned activities to be conducted to eliminate or minimize the release of mercury to the water. The list of planned activities may consider technical and economic feasibility and must include, at a minimum, the following:

(A) A review of purchasing policies and procedures.

(B) Necessary training and awareness for facility staff.

(C) Evaluation of alternatives to the use of any mercury-containing equipment or materials.

(D) Other specific activities designed to reduce or eliminate mercury loadings.

(E) An identification of the facility's responsibilities under P.L.225-2001 (also known as House Enrolled Act 1901 of the 2001 legislative session).

(4) For each activity specified in subdivision (3), the plan must contain the following:

(A) The goal to be accomplished.

(B) A measure of performance.

(C) A schedule for action.

(5) All available mercury monitoring data and any information on mercury in biosolids, if required by an NPDES permit or land application permit, for the two (2) year period preceding the SMV application.

- (6) Identification of the resources and staff necessary to implement the PMPP.**
 - (7) Proof of completion of public notice activities required under this section.**
 - (8) Annual reports according to a schedule in the PMPP. Each annual report must describe the following:**
 - (A) The facility's progress toward fulfilling each of the requirements of the PMPP.**
 - (B) The results of mercury monitoring.**
 - (C) The steps taken to implement each planned activity developed under this subsection and subsection (b) to reduce or eliminate mercury from the facility's water.**
- (b) In addition to subsection (a), a PMPP for a POTW must include the following:**
- (1) Results of a preliminary evaluation of possible mercury sources in the facility's influent and a plan and schedule for providing the department results of a complete evaluation. The evaluation shall include, at a minimum, the following:**
 - (A) Medical facilities, for example, the following:**
 - (i) Hospitals.**
 - (ii) Clinics.**
 - (iii) Nursing homes.**
 - (iv) Veterinary facilities.**
 - (B) Dental clinics.**
 - (C) Public and private educational laboratories.**
 - (D) General industry and all SIUs.**
 - (E) Significant sources of residential and retail contributions of mercury, for example, the following:**
 - (i) Heating, ventilation, and air conditioning contractors.**
 - (ii) Automobile and appliance repair.**
 - (iii) Veterinarians.**
 - (iv) Others specific to the community served.**
 - (F) An identification of the responsibilities under P.L.225-2001 (also known as House Enrolled Act 1901 of the 2001 legislative session) for the significant industrial users for the POTW.**
 - (2) A list of planned activities designed to reduce or eliminate mercury loadings from the sources identified in subdivision (1).**
 - (3) For each activity specified in subdivision (2), the plan must contain the following:**
 - (A) The goal to be accomplished.**
 - (B) A measure of performance.**
 - (C) A schedule for action.**
 - (4) In addition to activities required under subsection (a)(3), activities must also include an education program for the facility employees and the public within the service area of the facility.**
- (c) Prior to submitting the PMPP to the department as part of the SMV application, an applicant shall do the following:**
- (1) Publish notice of the availability of the draft PMPP in a daily or weekly newspaper of general circulation throughout the area affected by the discharge.**
 - (2) Post a copy of the information required by this section at the following:**
 - (A) Principal office of the municipality or political subdivision affected by the facility or discharge.**
 - (B) The United States post office.**
 - (C) If one is available, the library serving those premises.**
- (d) All notices published under this section shall contain the following information:**
- (1) The name and address of the applicant that prepared the PMPP.**
 - (2) A general description of the elements of the PMPP.**
 - (3) A brief description of the activities or operations that result in the discharge for which an SMV is being requested.**
 - (4) A brief description of the purpose of this notice and the comment procedures.**
 - (5) The name of a contact person, a mailing address, an internet address, if available, and a telephone number where interested persons may obtain additional information and a copy of the PMPP.**
- (e) The applicant shall do the following:**
- (1) Provide a minimum comment period of thirty (30) days.**
 - (2) Include a copy of the comments received and the applicant's responses to those comments in the SMV application submitted to the department.**

(f) The department shall consider a PMPP to be complete if it meets the requirements of this section. *(Water Pollution Control Board; 327 IAC 5-3.5-9; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2351)*

327 IAC 5-3.5-10 Transitional mercury effluent limitation

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3

Affected: IC 4-21.5-3; IC 13-14-1-9; IC 13-18-4

Sec. 10. (a) Either at the time a discharging facility applies for or when it receives a renewal of an NPDES permit with a previously established mercury limit from a prior NPDES permit for which a compliance schedule for mercury is not established in the renewed permit and the discharging facility has not had a prior SMV, then the following may be done to assure compliance with the renewed permit:

(1) In a written document to the department, the discharging facility should:

(A) indicate that the discharging facility is planning to apply for an SMV in accordance with this rule; and

(B) provide information to establish a transitional limit consistent with section 8 of this rule.

(2) The department may issue a transitional limit for the discharging facility through a permit modification or an order under IC 13-14-1-9 until the SMV is either approved or denied.

(b) If an SMV is denied, a discharger may request an individual variance, notwithstanding the time limitations set in 327 IAC 5-3-4.1, by doing the following:

(1) Requesting the commissioner's consideration and written determination on a request for a mercury variance from a water quality standard as provided in 327 IAC 2-1-8.8 or 327 IAC 2-1.5-17.

(2) Applying for the mercury variance up to ninety (90) days after the denial of the SMV so long as all other requirements in 327 IAC 5-3-4.1 are met. The applicant may petition the commissioner for up to an additional ninety (90) day period to submit the application.

(Water Pollution Control Board; 327 IAC 5-3.5-10; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2352)

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