MEETING SUMMARY for MERCURY WORK GROUP

Date: September 10, 2003
9:30 am –11:30 am
Location: IGCN
Conference Room D
Indianapolis, IN

Present at the meeting:
Tom Barnett (Ispat Inland Steel), John Fekete (Ispat Inland Steel), Eric Fry (Black Beauty Coal), Kevin Hoge (NiSource), and Tom Neltner (Improving Kids' Environment),
Participating by way of conference call were Robin Garibay (The Advent Group), Tim Lohner (AEP), Dan Olson (Michigan City), and Dave Pfeifer (EPA).
Representing IDEM were John Donnellan, Meredith Kostek, Steve Roush, Paula Smith, Bobbi Steiff, and MaryAnn Stevens.

Acceptance of meeting minutes
The August 7th meeting minutes were discussed. A couple of changes were requested to be made to the minutes though the workgroup wanted more time to review and comment on the minutes. Paula Smith asked that anyone wanting to comment on the August minutes should submit comments within two weeks or by September 24, 2003.

Steering Committee Meeting
The Triennial Rulemaking Steering Committee is meeting September 24, 2003, and a volunteer to report about the progress of the mercury workgroup was requested. Tim Lohner agreed to make the mercury presentation to the Steering Committee with Paula helping to prepare his presentation.

First Notice Responses
The comment letters submitted during the first notice comment period have been summarized and IDEM will respond to the comments. The Response to Comments document will be part of the second notice when the draft rule is published for the next comment period.

Decisions made during the workgroup meeting:
Applicability: the streamlined mercury variance (SMV) will be available to dischargers who are eligible for an individual variance.
The elements of the streamlined mercury variance application should be contained in a standardized application letter.
This rulemaking is not going to address modification of the mercury criterion, but the subject of changing the criterion is to be raised as a recommendation to the Steering Committee.

Discussion topics
1. IDEM believes the rulemaking process is at the point ready to move forward with drafting rule language. Meredith Kostek, IDEM attorney, explained it is IDEM's role to write the rule language with the public then providing input to the draft rule. John Fekete contributed that he believes rule language is a first step. Tom Neltner voiced his opinion that IDEM needs to state

its policy decisions before writing rule language. IDEM intends to communicate its policy position.

2. Definition of "streamlined" – the discussion regarding this definition resulted in group consensus that some type of application will need to be filed by a discharger to receive the streamlined mercury variance. Tom Neltner would endorse streamlined as meaning not having to prove socio-economic hardship. Robin Garibay promotes the idea that a streamlined application would not require a detailed program to assess mercury sources as required in the individual application. Robin explained her view that those dischargers eligible for a streamlined variance are a subset of the dischargers who could apply for an individual variance which means the permit holders having a WQBEL in their NPDES permit and whose discharge is above the limit.
   Tim Lohner expressed the view that a streamlined variance should not be available to facilities that have not eliminated mercury from their discharge to the best extent that technology is capable.
   Dan Olsen, Michigan City, explained the flow chart that he included in his first notice comment letter. It shows a path for determining if a discharger may apply for a SMV. The premise is a discharger having a mercury permit limit but cannot meet it.
3. A discussion was held about the different mercury criterion and averaging periods inside and outside the Great Lakes system. Robin Garibay stated that changing the Great Lakes system criterion would be easier than changing the downstate criterion because the GLI rules were approved before EPA established its mercury values. IDEM stated that this rulemaking is about a variance from the existing criterion not changing the criterion. A larger group of stakeholders would be interested parties to a rulemaking intent on changing a water quality criterion. IDEM stated the idea of future modifications to the mercury criterion should be a discussion topic to present to the Triennial Review Steering Committee.
4. Robin Garibay made reference to the federal rule process of including a preamble to a rule that explains the process used to develop the rule. Meredith Kostek replied that Indiana does not use preambles to our rules; however, there are similar documents in our state rulemaking process though they lack the force of law.
5. No net addition expires March 23, 2007 for dischargers inside the Great Lakes system but does not expire outside the Great Lakes system. No net addition only applies if water withdrawal is from the same waterbody as receives the facility's discharge.
6. "Bright line" – Is there a high level of mercury discharge above which a discharger would not be eligible for a SMV? Some members of the workgroup believe a permittee needs to have a bright line value established so the facility does not expend resources on a streamlined variance application only to be denied after going through the process. A related question is whether being denied a SMV would render a discharger ineligible to apply for an individual variance. Tom Neltner disagreed that a discharger would be wasting resources since getting a SMV will be so easy. Going through the process of applying for a SMV would cause the discharger to collect data about its mercury discharge.

Next Step

IDEM to establish policy decisions followed by drafting rule language

To Do List

Workgroup members asked for activity on the following:

1. the elements of a SMV application – Robin Garibay is to work on these
2. decision on a bright line value - IDEM
3. bulleted list of permit conditions –what are the requirements to be placed on a discharger receiving a SMV - IDEM
4. IDEM to decide on ability to regulate hospitals, schools, and dental offices.
5. IDEM to consider where to fit the mercury variance rule into existing rules.
6. IDEM to categorize the first notice comments

Next meeting

The next meeting is scheduled for October 8, 2003, from 9:30 to 11:30 A.M., in IGCN, Twelfth Floor, Conference Room D.