oregon association of CLEAN WATER agencies

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October 31, 2019

Aron Borok
Water Quality Division
Department of Environmental Quality
700 NE Multnomah St.
Portland, OR 97232

Sent via email to: mercury2019@deq.state.or.us

Subject: Comments on DEQ Proposed Amendments to Variance Authorization Rule--REVISED

Dear Mr. Borok:

The Oregon Association of Clean Water Agencies (ACWA) appreciates the opportunity to provide comments on the proposed Amendments to the Variance Authorization Rule (Amendments) per public notice issued by DEQ on September 14, 2019. The public notice includes the draft Willamette Basin Mercury Multiple Discharger Variance (MDV).

ACWA is a not-for-profit organization of Oregon's wastewater treatment and stormwater management utilities, along with associated professional consulting firms, which are dedicated to protecting and enhancing Oregon's water quality. Our members provide wastewater and stormwater services to over 2.5 million Oregonians, serving over 65% of Oregon's homes and businesses. Throughout the DEQ's Advisory Committee process, ACWA provided input on the MDV and rulemaking. ACWA's most recent comments submitted via email to DEQ on August 9, 2019 have largely been addressed in the current draft MDV. ACWA appreciates the resulting improvements that have been made to the MDV over time. This comment letter includes new comments on the proposed Amendments.

340-041-0059 Variances
(3) Variance Duration and Re-evaluation

Section (3)(a): The time frames in this section of the rule should be clearer. If ACWA understands correctly, we suggest clarifying as follows: *For variance durations exceeding 5 years, DEQ will re-evaluate highest attainable condition on a frequency of less than 5 years, as specified by DEQ. Re-evaluation shall be based on all existing and readily available information. The re-evaluation frequency shall be set to allow for DEQ's timely submittal of the re-evaluation to EPA within 30 days of DEQ's completion of the re-evaluation.*

ACWA is concerned with this part of the proposed rule: *"If DEQ does not submit the re-evaluation to EPA within the specified timeline, the variance will no longer be the applicable water quality standard*

until DEQ completes the re-evaluation and submits it to EPA." ACWA understands this is how the variance is stipulated under federal rules. However, how are permittees protected against having an unforeseen and unattainable water quality standard in lieu of the variance? Does the variance apply in an NPDES permit until time of permit renewal? ACWA recommends clarification in the rule on this issue.

Section (3)(b): This part of the rule states "*When the duration of the variance is less than the term of a NPDES permit, the permittee must comply with the specified effluent limitation sufficient to meet the underlying water quality standard when the variance expires.*" ACWA assumes this is for variances issued prior to the effective date (i.e. renewal) of a NPDES permit (otherwise a compliance schedule seems more appropriate). ACWA suggests revising the language to read: "*For variances issued prior to renewal of a NPDES permit, either the permittee must comply with the specified effluent limitation sufficient to meet the underlying water quality standard when the variance expires, or a compliance schedule shall be adopted in the permit at renewal to specify when the permittee will comply with the effluent limitation.*"

Section (4)(c) The Amendments require that permittees requesting a waterbody variance coverage "*...must include identification and documentation of any cost-effective and reasonable best management practices for nonpoint source controls related to the pollutant(s) or water quality parameter(s) and water body or waterbody segment(s) specified in the variance that the permittee could implement to make progress towards attaining the underlying designated use and criterion.*" ACWA understands this requirement is part of the federal rules. However, it is not clear to what extent the BMPs need to be considered. ACWA recommends the rule define that the scope is nonpoint sources "within the permittee's control," to clarify the action permittees are required to take.

340-041-0345 Basin-Specific Criteria (Willamette): Water Quality Standards and Policies for this Basin
(6) Multiple Discharger Variance for Mercury

The Variance Rule creates three types of variances: individual, multiple discharger and water body, which have different submittal requirements and different highest attainable conditions. Although titled a multiple discharger variance, the Willamette Mercury Variance only applies to dischargers within the Willamette Basin, so it appears to be a water body variance, not a multiple discharger variance. Since different requirements apply, the rule should clearly state whether the Willamette Mercury variance is a multiple discharger variance or a water body variance.

Section (a)(C): This section states that "*It would cause more environmental harm to install and operate additional treatment technology to remove additional mercury than to reduce mercury through implementing mercury minimization plans. This finding does not affect any requirement that would result in installing additional technology to address pollutants other than mercury.*" ACWA recommends clarifying the second sentence by adding "including technology that may have the additional benefit of reducing effluent mercury concentrations."

Section (f)(B) and (D): Both of these sections require that a mercury minimization plan include at minimum identification and <u>inspection</u> of dental offices, laboratories, schools, and healthcare facilities that may have mercury. Inspection of all such facilities may be unnecessary and burdensome. Since the purpose is to identify facilities and provide outreach through calls, surveys and other tools, the mercury minimization plan should require outreach, not inspections. Note also that the recently promulgated EPA Effluent Limitations Guidelines and Standards for the Dental Category (40 CFR 441) do not

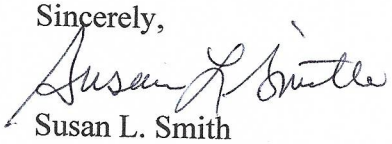
require inspections. The EPA guidelines require the installation, operation and maintenance of amalgam separators, and the implementation of BMPs to reduce mercury discharges from dental offices. Dental offices are required to submit a certification that they are in compliance with the requirements of 40 CFR 441. Thus, ACWA recommends that the term "outreach" be used instead of inspection for dental offices and commercial laboratories.

Section (f)(G): This section requires that the mercury minimization plan include "*Cleanup of legacy mercury from collection systems.*" This item is vague and potentially problematic or unnecessary. It appears that this requirement is based on an unsubstantiated claim on the cause of variations in mercury levels in treatment plant influent in Wisconsin. It is unclear what this requirement would provide in additional mercury reduction. Municipalities already clean their collection systems to maintain capacity and prevent sanitary sewer overflows. It is doubtful that any "legacy mercury" (however that might be defined) remains in the system. This requirement should be deleted from the mercury minimization plans.

Section (i): This section identifies the variance re-evaluation process. Please see the comments above related to 340-041-0059 (3)(a).

Finally, we would like to reiterate our appreciation for DEQ's responsiveness to the local government (ACWA) advisory committee representatives' questions, concerns and recommendations along the way. Thank you for your consideration of ACWA's comments. If you have any questions, please do not hesitate to contact me.

Sincerely,



Susan L. Smith
Executive Director