DISCUSSION DRAFT

Rationale for Variance Term

Federal variance rules, adopted by EPA in 2015, specify that variance terms shall be only as long as necessary to meet the highest attainable condition.[1] The rules also specify that for a variance with a term greater than five years, that the State must reevaluate the highest attainable condition at least every five years.[2] Current Oregon rules limit the term of the variance to the term of the associated NPDES permit, including any administrative extension.[3] As part of this rulemaking, DEQ is amending its rules to be consistent with the 2015 federal rules, including those rules regarding the term of the variance.

DEQ proposes that the Willamette Basin mercury MDV have a twenty-year term. A twenty-year term will provide a sufficient length of time for point sources to plan, implement and evaluated the results of their mercury minimization programs. Some point source dischargers have been implementing mercury minimization programs for many years; others may are just beginning to develop such programs. Twenty years will be sufficient time for DEQ to work with all covered point sources to ensure that their minimization programs are fully developed. Moreover, twenty years will provide DEQ sufficient time to have data to determine the extent to which minimization programs and technological fixes have resulted in decreased influent and effluent mercury concentrations.

DEQ expects that it will take much longer than 20 years to implement all activities that will be needed to meet the water quality standard instream. After twenty years, DEQ will have the option to renew the multiple discharger variance, develop a waterbody variance, or, if there's sufficient information to determine that the human health criterion for mercury is not attainable, develop a site-specific criterion. It's also possible that treatment technology will have advanced to the point that some point sources will be able to meet effluent limits required to meet the water quality standard.

As required by federal variance rules and DEQ's proposed revisions to state rules, DEQ will re-evaluate the highest attainable condition for each covered permit every five years.

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[1] 40 CFR 131.14(b)(1)(iv)
[2] 40 CFR 131.14(b)(1)(v)
[3] OAR 340-041-0059(3)