Message

From: Labiosa, Rochelle [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DED3654216C9461D95CD5A3CEEC507EF-LABIOSA, ROCHELLE]
Sent: 11/21/2019 5:27:59 PM
To: Guzzo, Lindsay [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8643d3d6703a4886b13c5548d22307a0-Guzzo, Lindsay]
Subject: RE: OR MDV - background for our discussion

Thanks - Note that Hanh and I will be about 15 mins late or so to the call today

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Water Division
US EPA, Region 10
1200 Sixth Avenue, Suite 155, MC: OWW-191
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From: Guzzo, Lindsay <Guzzo.Lindsay@epa.gov>
Sent: Thursday, November 21, 2019 8:16 AM
To: Labiosa, Rochelle <labiosa.rochelle@epa.gov>
Subject: FW: OR MDV - background for our discussion

Lindsay Guzzo

Lindsay Guzzo
US EPA Region 10
Water Division
Standards and Assessment Section
1200 Sixth Avenue, Suite 155 (WD 19-H16)
Seattle, WA 98101

phone: 206-553-0268
guzzo.lindsay@epa.gov

From: Fleisig, Erica <Fleisig.Erica@epa.gov>
Sent: Thursday, November 21, 2019 7:45 AM
To: Nalven, Heidi <Nalven.Heidi@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>
Cc: Fidis, Alexander <Fidis.Alexander@epa.gov>; Guzzo, Lindsay <Guzzo.Lindsay@epa.gov>; Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>; Vlcan, Manjali <Vlcan.Manjali@epa.gov>; Dreyfus, Melissa G. <Dreyfus.Melissa@epa.gov>; McConkey, Diane <Mcconkey.Diane@epa.gov>; Schroer, Lee <schroer.lee@epa.gov>
Subject: RE: OR MDV - background for our discussion

Thanks so much Heidi. Just for additional context, Ex. 5 AC/DP

Ex. 5 AC/DP

Ex. 5 AC/DP I've attached the relevant docs (easiest to probably look at slide 5 in the attached PPT for excerpts from the docs in Libby's attached email). Ex. 5 AC/DP

Ex. 5 AC/DP

Thanks again,
Erica

From: Nalven, Heidi <Nalven.Heidi@epa.gov>
Sent: Thursday, November 21, 2019 10:35 AM
To: Keating, Jim <Keating.Jim@epa.gov>; Fleisig, Erica <Fleisig.Erica@epa.gov>
Cc: Fidis, Alexander <Fidis.Alexander@epa.gov>; Guzzo, Lindsay <Guzzo.Lindsay@epa.gov>; Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>; Vlcan, Manjali <Vlcan.Manjali@epa.gov>; Dreyfus, Melissa G. <Dreyfus.Melissa@epa.gov>; McConkey, Diane <Mcconkey.Diane@epa.gov>; Schroer, Lee <schroer.lee@epa.gov>
Subject: RE: OR MDV - background for our discussion

Ex. 5 AC/DP

Since factor 3 is used to justify the variance, specifically 'cannot be remedied," then for the HAC3 justification, the EPA recommends that DEQ include a discussion of what can be remedied by the state and the dischargers covered by the variance. Please describe the reasons why the reductions achievable through the Mercury Minimization Plans (MMPs) are those can be remedied within the 20-year term of the variance. In addition, the variance must identify how other sources (beyond the point sources) of mercury can be remedied and include those activities. For example, this could include non-point source reductions; commitments under existing programs, such as the Forest Practices Act and Ag Water Practices Act; and possibly air quality permitting or controls. Please cite to existing information sources.

From: Nalven, Heidi
Sent: Thursday, November 21, 2019 10:20 AM
To: Keating, Jim <Keating.Jim@epa.gov>; Fleisig, Erica <Fleisig.Erica@epa.gov>
Cc: Fidis, Alexander <Fidis.Alexander@epa.gov>; Guzzo, Lindsay <Guzzo.Lindsay@epa.gov>; Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>; Vlcan, Manjali <Vlcan.Manjali@epa.gov>; Dreyfus, Melissa G. <Dreyfus.Melissa@epa.gov>; McConkey, Diane <Mcconkey.Diane@epa.gov>; Lee Schroer <schroer.lee@epa.gov>
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Thanks Erica. This paper is extremely helpful for someone (like me) who is coming cold to understand the key issues.

As a general matter, I think Ex. 5 AC/DP

Ex. 5 AC/DP

[1] 51036: "As an alternative to identifying the specific dischargers at the time of adoption of a WQS variance for multiple dischargers, states and authorized tribes may adopt specific eligibility requirements in the WQS variance. This will make clear what characteristics a discharger must have in order to be subject to the WQS variance for multiple dischargers. It is EPA's expectation that states and authorized tribes that choose to identify the dischargers in this manner will subsequently make a list of the facilities covered by the WQS variance publicly available (e.g., posted on the state or authorized tribal Web site). "

On the existing use question, I think Ex. 5 AC/DP

Ex. 5 AC/DP

"In response to the comment that EPA should add a provision to section 131.14 to protect existing uses because that is an "absolute floor" of water quality, EPA agrees that existing uses are an "absolute floor." However, EPA disagrees that such an approach is necessary to protect existing uses. Unlike a designated use change which changes the ultimate desired condition for a water body, the purpose of a WQS variance is to provide a mechanism that will facilitate incremental progress toward achieving the currently adopted designated use (and thus the existing use, if one is not being attained) in an accountable and transparent manner. Such a tool would be unavailable to states and authorized tribes if EPA included a provision that prohibits WQS variances where the time-limited "designated use and criterion remove necessary protections for existing uses" (as suggested by the commenter). On the other hand, allowing the use of a WQS variance independent of the existing use would promote the environmental outcome to "restore" water quality consistent with the CWA objective to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. However, EPA agrees that it is imperative that WQS variances do not make the water quality worse than what it currently is and has thus specifically included a provision in section 131.14(b)(1)(ii) to ensure that WQS variances do not result in any lowering of the currently attained ambient water quality which would jeopardize meeting the CWA objective. This provision includes a single exception for the situation where a WQS variance is necessary for restoration activities under section 131.14(b)(2)(i)(A)(2)). The provision at section 131.14(b)(1)(ii) is consistent with the purpose of a WQS variance to facilitate the restoration of water quality rather than serving as a mechanism to lock in status quo."

Ex. 5 AC/DP

RTC: 3-369:

B. "No Control" over Nonpoint Source Controls

Commenters expressed concern that states and authorized tribes would be required to list BMPs for sources over which they have no regulatory authority. Similarly some commenters said that because a state or authorized tribe does not regulate NPS of pollution, identification and documentation of any cost-effective and reasonable BMPs for NPS controls cannot occur. EPA considered these comments carefully but concluded that, for WQS variances applicable to a water body or waterbody segment, it is a reasonable requirement that states and authorized tribes identify and document BMPs for NPS even if the state or tribe does not regulate those sources. The state and tribal water quality agencies are responsible for understanding and evaluating the waters within their jurisdictions. Under CWA section 303(d) states and authorized tribes must assess and identify waters not meeting WQS and develop TMDLs for those waters even if the waters are impaired solely by NPS. EPA acknowledges that some states and authorized tribes may not regulate NPS of pollutants. However, the final rule does not compel states and authorized tribes to implement NPS controls or otherwise regulate NPS of pollutants.

Another commenter suggested revisions to the regulatory text specifying that, for a waterbody variance, the state must identify and document any cost-effective and reasonable BMPs for NPS controls *under the control of the discharger* that could be implemented to make progress towards attaining the designated use and criterion. One commenter expressed concerns that failure of a state agency to address the NPS requirements could penalize point sources by delaying issuance of variances. For the reasons discussed above, EPA concluded against including language in the final rule limiting the scope of BMPs that states and authorized tribes would need to identify and document. For WQS variances applicable to a water body or waterbody segment, often NPS will not be under the control of a discharger subject to a National Pollutant Discharge Elimination System (NPDES) permit. For discharger specific variances, any consideration of BMPs would be expected to be those

under the control of the discharger. Regarding the final comment raising concern in delay of issuance of a variance, while the requirement to identify and document BMPs will add some time, EPA believes it is warranted by the benefits of having and considering that important information in the development of the WQS variance.

Final rule preamble – 51037

EPA defines PMP at § 131.3(p) as follows: ''*Pollutant Minimization Program,* in the context of § 131.14, is a structured set of activities to improve processes and pollutant controls that will prevent and reduce pollutant loadings . . . .'' Pollutant control technologies represent a broad set of pollutant reduction options, such as process or raw materials changes and pollution prevention technologies, practices that reduce pollutants prior to entering the wastewater treatment system, or best management practices for restoration and mitigation of the water body. This option requires states and authorized tribes to adopt the PMP along with other elements that comprise the highest attainable condition. As part of the applicable WQS, the permitting authority must use the PMP (along with the quantifiable expression of the ''greatest pollutant reduction achievable'') to derive NPDES permit limits and requirements

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From: Keating, Jim <Keating.Jim@epa.gov>
Sent: Thursday, November 21, 2019 8:43 AM
To: Fleisig, Erica <Fleisig.Erica@epa.gov>
Cc: Nalven, Heidi <Nalven.Heidi@epa.gov>; Fidis, Alexander <Fidis.Alexander@epa.gov>; Guzzo, Lindsay <Guzzo.Lindsay@epa.gov>; Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>; Vlcan, Manjali <Vlcan.Manjali@epa.gov>; Dreyfus, Melissa G. <Dreyfus.Melissa@epa.gov>
Subject: Re: Fleisig, Erica shared "Issue Paper_OR Mercury MDV_11 20 19" with you.

Hi Erica,
I think this paper looks good and will effectively help guide our discussion. Ex. 5 AC/DP

Ex. 5 AC/DP

Thanks for putting this together.

Sent from my iPhone

On Nov 20, 2019, at 5:51 PM, Fleisig, Erica <Fleisig.Erica@epa.gov> wrote:

All, I drafted a paper to guide our discussion on the OR MDV tomorrow. If you have a chance to review and make sure it is complete before we share with the larger group around noon EST Thursday, that would be great. The Thursday meeting invite has the comment letters that are referenced in this paper, as well as a link to OR's documentation. I tried to distill for a one hour discussion but we'll have to move efficiently! Thanks - Erica

<AttachedImage> This link only works for the direct recipients of this message.

<AttachedImage> Issue Paper_OR Mercury MDV_11 20 19

Open

<AttachedImage>

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