# Variance
# Suspension of Enforcement of Rule 1512

1. Suspension of Enforcement of Rule 1512 and Granting of Variance

   Pursuant to the provisions of Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, MCL 324.5501 *et seq* (Part 55), the Michigan Department of Environmental Quality (Department) hereby suspends the enforcement of Rule 1512 of the Michigan Air Pollution Control Rules, 2009 AACS, R 336.2512 (Rule 1512), and grants a variance from Rule 1512 for a period of one year from the effective date of this document to each affected electric generating unit (EGU) that is required to apply for a Michigan mercury permit pursuant to Rule 1512.

2. Statutory and Regulatory Background

   Part 55 and the Michigan Air Pollution Control Rules promulgated pursuant to Part 55 regulate emissions of air pollutants to the ambient air.

   Section 5535 of Part 55, MCL 324.5535, allows the Department to suspend enforcement of any rule that would be an unreasonable hardship upon any person, provided it is granted by variance and it does not violate the federal Clean Air Act, 42 USC 7401 *et seq* (CAA).

   Section 5536 of Part 55, MCL 324.5536, specifies factors the Department shall consider in granting any variance and requirements the Department may establish.

   Section 5538 of Part 55, MCL 324.5538, specifies that any variance granted pursuant to Section 5535 shall be for a period of time specified by the Department at the time of granting, but not to exceed one year. However, any variance may be continued from year to year.

   Rule 1512 requires the representative for any affected EGU to submit an application for a Michigan mercury permit by June 20, 2012, and the representative of any affected new EGU to submit an application by the date on which the EGU commences operation. Among other things, the application shall include requirements for mercury emissions, monitoring, recordkeeping, and reporting. Rule 1512 also provides that each Michigan mercury permit shall be incorporated as an attachment into the renewable operating permit for each stationary source with an affected EGU.

3. Justification for the Department's Position

   Mercury is a potent neurotoxin that can impact the nervous system, affecting behavior and development. The Michigan Department of Community Health continues to issue mercury fish consumption advisories for all of Michigan's 11,000 inland lakes. The largest atmospheric source of mercury is from coal-fired power plants within and outside of Michigan. Once it is released into the environment in air emissions, mercury contaminates aquatic ecosystems through atmospheric deposition.

   The federal Clean Water Act, 33 USC 1251 *et seq*, requires states to develop Total Maximum Daily Loads (TMDLs) for all impaired waters, establishing allowable loads that will achieve water quality standards and allocating the allowable loads among contributing sources. The Department is in the process of working with the U.S. Environmental Protection Agency (EPA) to develop statewide mercury TMDL.

   Part 15 of Michigan's Air Pollution Control Rules, 2009 AACS, R 336.2501 *et seq*, limits the air emissions of mercury from EGUs, to provide a significant reduction in the collective mercury

loading to waters of the State and support the goals of eliminating fish consumption advisories and achieving water quality standards. To assess the proposed plans of how each EGU will comply with the Part 15 limits, Rule 1512 requires the submittal of a mercury permit application by June 20, 2012.

The federal Mercury Air Toxics Standards (MATS) promulgated by EPA pursuant to the CAA became effective on April 16, 2012, 77 Fed Reg 9304 (Feb 16, 2012). Approximately 70 petitioners have filed petitions for review with the U.S. Court of Appeals for the District of Columbia Circuit, *White Stallion Energy Center, LLC v EPA*, No. 12-1100 and consolidated cases, to either challenge or support the MATS. In addition, approximately 20 petitions for reconsideration of the MATS have been filed with EPA. In light of the petitions for review and petitions for reconsideration, all or part of the MATS may be stayed or vacated and the MATS mercury emission limits may not be legally enforceable.

The Department supports the use of a single set of requirements to limit, monitor, record, and report mercury emissions from EGUs rather than overlapping requirements under the MATS and the Part 15 rules. The Department also supports eliminating duplicative requirements that impose wasteful and unnecessary burdens on EGUs and the Department. However, due to the uncertainty over the status of the MATS, the Part 15 rules remain necessary to ensure that mercury emissions from EGUs are reduced in the event of a stay or vacatur of the MATS. Further, the Department has concluded that delaying the Rule 1512 permit application deadline does not impact the achievement of the mercury reduction goals of the Part 15 rules.

In light of the foregoing, requiring affected EGUs to submit a mercury permit application by June 20, 2012 under Rule 1512 would create an unreasonable hardship.

## Final Approval

The Department hereby suspends enforcement of Rule 1512 and grants a variance to each affected EGU that is required to apply for a Michigan mercury permit pursuant to Rule 1512. The duration of this variance is one year from the effective date set forth below. The Chief of the Air Quality Division has been delegated authority to suspend enforcement of rules and grant Part 55 variances by the Director of the Department.

This variance will not cause a violation of the CAA. In addition, this variance does not alter the obligations of EGUs to comply with the requirements of Part 55 and its rules other than Rule 1512. This variance also does not alter the obligations of EGUs to comply with the CAA and the regulations promulgated pursuant to the CAA.

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Effective Date: June 1, 2012