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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



DAN WYANT
DIRECTOR

Variance
Suspension of Enforcement of Portions of Rules 1503, 1504, 1509, 1512,
and 1513

1. Suspension of Enforcement of Portions of Rules 1503, 1504, 1509, 1512, and 1513 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 portions of R 336.2503 (Rule 1503), R 336.2504 (Rule 1504), R 336.2509 (Rule 1509), R 336.2512 (Rule 1512), and R 336.2513 (Rule 1513) of the Michigan Air Pollution Control Rules, 2009 AACS and grants a variance from the aforementioned rules for a period of one year from the effective date of this document.

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.

Part 15 of Michigan's Air Pollution Control Rules, 2009 AACS, R 336.2501 *et seq* (Part 15 rules) require affected electric generating units (EGUs) to submit permit applications, plans and other demonstrations in order to accomplish the overall emissions reduction goals of the Part 15 rules.

Rule 1512 requires submittal of Michigan mercury permit applications by June 1, 2013, under the provisions of a variance granted on June 1, 2012.

Rules 1503(2)(a), 1504(3)(a), and 1513(1) require submittal of multipollutant compliance demonstration project plans, best available control technology demonstrations, and alternate compliance demonstration plans, respectively, by June 30, 2013.

Rules 1503(6), 1504(2)(e), 1509(1), and 1513(3) require submittal of various compliance demonstration plans, respectively, by September 30, 2013.

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 rules limit 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.

The federal Mercury Air Toxics Standards (40 CFR 63, Subpart UUUUU, also known as 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.

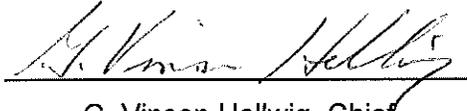
In order to resolve these issues in the Part 15 rules, rule revisions are underway. However, the full promulgation process has not been completed at this time. Further, the Department has concluded that delaying the aforementioned submittals required under Rules 1503, 1504, 1509, 1512, and 1513 does not impact the achievement of the mercury reduction goals of the Part 15 rules.

In light of the foregoing, requiring affected EGUs to make the aforementioned submittals required under Rules 1503, 1504, 1509, 1512, and 1513 would create an unreasonable hardship.

Final Approval

The Department hereby suspends enforcement of the aforementioned portions of Rules 1503, 1504, 1509, 1512, and 1513 and grants a variance from the requirements to make the aforementioned submittals. 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 the rule portions listed. This variance also does not alter the obligations of EGUs to comply with the CAA and the regulations promulgated pursuant to the CAA.

A handwritten signature in black ink, appearing to read "G. Vinson Hellwig", is written over a horizontal line.

G. Vinson Hellwig, Chief
Air Quality Division
Michigan Department of Environmental Quality

Effective Date: May 31, 2013