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STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



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DIRECTOR

Variance
Suspension of Enforcement of Rules 1506 and 1507

1. Suspension of Enforcement of Rules 1506 and 1507 and Granting of Variance to Affected EGUs Granted an Extension of Compliance under the MATS

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 R 336.2506 and R 336.2507 of the Michigan Air Pollution Rules, 2009 AACS (Rules 1506 and 1507) and grants a variance from Rules 1506 and 1507 for a period of one year from the effective date of this document to each affected electric generating unit (EGU) that has been granted an extension of compliance for the federal Mercury and Air Toxics Standards (MATS).

2. Statutory and Regulatory Background

Part 55 of Act 451, along with rules promulgated pursuant to Act 451, regulates 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, 42USC 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 1506 allows the authorized representative for any affected EGU to submit a request for a technical extension to the mercury emission standards in Rule 1503(1) which are effective January 1, 2015. The request for a technical extension must be made by the end of June, before the applicable compliance year.

Rule 1507 allows the authorized representative for any affected EGU to submit a request for an economic extension to the mercury emission standards in Rule 1503(1) which are effective January 1, 2015. The request for an economic extension must be made by the end of June, before the applicable compliance year.

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, 33USC 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 AACRS, 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. Affected EGUs that require additional time to comply with Part 15 may request an economic or technical extension under Rules 1506 or 1507, respectively.

The federal MATS promulgated pursuant to the CAA became effective on April 16, 2012, 77 Fed. Reg. 9304 (February 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 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.

The federal MATS allow extensions of compliance pursuant to 40 CFR §63.6(i). Further, the Department has concluded that if the authorized representative of an affected EGU has obtained an extension of compliance for MATS, it is equivalent to obtaining an approved economic or technical extension allowed under Rule 1506 or 1507 for the timeframe of the extension of compliance for MATS.

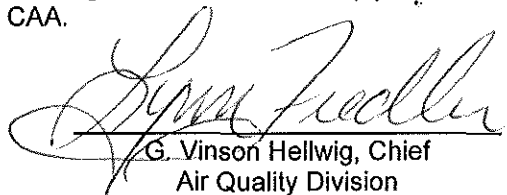
In order to reach a single set of criteria, the revisions to the Part 15 rules are underway. However, the full promulgation process has not been completed at this time.

In light of the foregoing, requiring an affected EGU that has an approved MATS extension of compliance to also obtain a technical or economic extension under Rule 1506 or 1507 would create an unreasonable hardship.

Final Approval

For each affected EGU for which a MATS extension of compliance has been granted, the Department hereby suspends enforcement of Rules 1506 and 1507 and grants a variance from the requirement to obtain a technical or economic extension pursuant to Rules 1506 or 1507. 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.

The 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 Rules 1506 and 1507. This variance also does not alter the obligation of EGUs to comply with the CAA and the regulations promulgated pursuant to the CAA.


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Michigan Department of Environmental Quality
Effective Date: February 28, 2013