EPA Plugs Test Method Loophole for NPDES Permits

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On Aug. 19, 2014, EPA published notice of a final rule that requires National Pollutant Discharge Elimination System (NPDES) permit applicants to use “sufficiently sensitive” analytical test methods when collecting data to be included in a permit application. The rule also now mandates that state permitting authorities must prescribe that only “sufficiently sensitive” test methods be used by dischargers when monitoring for compliance with permit limitations. The new rules are effective Sept. 18, 2014. States will have one year to make necessary changes to revise their NPDES regulations in conformance with EPA’s rule or two years if statutory changes are needed.

EPA's rule codifies a 2007 guidance document on analytical methods for mercury and expands the requirements to all pollutants. EPA took this step because it has approved multiple analytical methods for Clean Water Act (CWA) pollutants under 40 CFR Part 136. Certain analytical test methods, particularly newer methods, have greater sensitivities and lower minimum levels or method detection limits (MDL) than other methods for the same pollutant. This situation has led to the potential for a NPDES applicant or discharger to select a less sensitive method with a minimum level higher than the applicable water quality criterion or effluent limitation and thereby mask the presence of a pollutant in its discharge.

This loophole has now been effectively closed by the new rules. If a permit applicant does not use a sufficiently sensitive analytical method, the permitting agency may now deem the application incomplete and require the submittal of new data. By mandating that permits require use of sufficiently sensitive analytical methods for compliance monitoring, failure to do so could result in an enforcement action.

Under the new rule, an EPA-approved analytical method is considered “sufficiently sensitive” where:

- The method's minimum level is at or below the applicable water quality criterion or permit limitation; or
- The method has the lowest minimum level of the available EPA-approved methods; or
- In the case of permit applications, the method's minimum level is above the applicable water quality criterion but the amount of the pollutant in the discharge
is high enough that the method detects and quantifies the level of the pollutant.

This rule does not require the use of the most sensitive method as long as the selected method meets the “sufficiently sensitive” criteria. The requirement to use a sufficiently sensitive EPA-approved method does not apply where no EPA-approved method exists. In those cases any suitable method may be used as long as a description of the method is provided to the permitting agency.

NPDES permit holders will need to work with their laboratories to ensure that the appropriate analytical method is used. Permit holders should anticipate that the “sufficiently sensitive” requirement will be included in permits upon renewal once the state regulations are revised.

The new rule only applies to direct dischargers. Facilities that are indirect dischargers to a Publicly Owned Treatment Works (POTW) are not subject to the rule. The rule is available at 79 Federal Register 49001.

To view a complete PDF of the Environmental Letter October 2014 Issue, please click here.

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