NEW AND UPDATED REGULATIONS FOR MODIFYING WATER QUALITY STANDARDS

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION
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Improving And Protecting Alaska's Water Quality

WHAT IS DEC PROPOSING? The proposed regulation at 18 AAC 70.205 would adopt by reference the procedures found in federal water quality regulations under 40 CFR 131.14 for authorizing a water quality standards variance. The new regulation describes the requirements and conditions under which a variance may be authorized, but does not grant any specific variances to water quality standards (WQS) or adopt conditions more stringent than that authorized in federal regulation. DEC is also proposing amended language in 18 AAC 70.230 for reclassifying designated uses to ensure consistency with revised federal requirements in 40 CFR 131.10 and public participation procedures in 40 CFR 131.20(b).

WHAT IS A WQS VARIANCE? WQS variances provide a flexible yet defined pathway for wastewater discharge permittees comply with state WQS. A WQS variance is a time-limited modification of an existing designated use and associated water quality criteria. A WQS variance represents the highest attainable condition (HAC) that is both feasible to attain and closest to the protection afforded by the underlying WQS. A WQS variance is authorized for a specific pollutant(s), source(s), waterbody, during a specificed time period. While the underlying WQS reflect what is ultimately attainable, the WQS variance reflects the highest attainable condition for a specific timeframe and is therefore less stringent.

HOW DOES A WQS VARIANCE WORK? A WQS variance is intended to help with the implementation and attainment of a WQS by allowing for improvement of water quality over a defined period of time. Water quality improvements can be achieved through adaptive management, advacements in treatment technologies, control practices, or other changes in circumstances. A WQS variance is considered to be more desireable than permanently modifying (i.e., removing) a waterbody's designated use or developing site specific criteria under certain circumstances.

A WQS variance requires a public notice, a public hearing, and consideration of public comments before inclusion in a final state permit or regulation, similar to any other new or revised water quality standard. All variances are subject to the U.S. Environmental Protection Agency review and approval process before they may be used in Clean Water Act approved programs.

WHEN WOULD DEC AUTHORIZE A WQS VARIANCE? Many states and tribes have found that WQS variances are useful to consider when there is a new or more stringent effluent limits and attainment of WQS may not be feasible under current conditions but may ultimately be over time or if certain conditions change. To qualify for a WQS variance, an applicant must demonstrate that attainment of a water quality standard in a waterbody is not currently feasible due to:

- Naturally occurring pollutant(s);
- Natural, ephemeral, intermittent or low flow conditions or water levels;

- Human caused conditions or sources of pollution that cannot be remedied or would cause more environmental damage to remove than the leave in place;
- Dams, diversions or other types of hydrologic modifications;
- Physical conditions related to the natural features prevent attainment of aquatic life uses;
- Substantial and widespread economic and social impacts; or
- Actions necessary to facilitate water body restoration[1].

WHEN WOULD DEC DENY A WQS VARIANCE? While DEC anticipates that WQS variances will be a useful tool to assist with the implementation of water quality criteria under challenging conditions, there may be situations when a WQS variance will not be appropriate. DEC would not grant a WQS variance in situations where:

- The effluent limit sufficient to meet the underlying WQS can be attained by implementing technology-based effluent limits; or
- Information submitted by the discharger does not provide sufficient information for the state to adopt a variance consistent with the federal regulations at 40 CFR 131.14.

HOW LONG CAN A WQS VARIANCE LAST? DEC regulation, which incorporates by reference the federal regulation at 40 CFR 131.14, requires the variance to last only as long as necessary to meet the terms of the variance and the underlying WQS.

For WQS variances that have a term of greater than five years, the regulation requires that DEC re-evaluate the HAC identified in the WQS variance and the progress towards attainment of the underlying WQS at least once every five years. The permittee is required to submit to DEC all available information including technology improvements, or other supporting data demonstrating reasonable progress towards meeting the underlying WQS have been made. WQS variance re-evaluations must be public noticed and following DEC review, submitted to EPA. EPA approval of the re-evaluation is not required.

WHAT IS REQUIRED DURING THE TERM OF THE WQS VARIANCE? DEC will include the conditions necessary to implement and enforce an approved WQS variance in an Alaska Pollutant Discharge Elimination System permit. The permittee will need to meet the highest attainable condition and applicable criteria throughout the term of the WQS variance as well as actions outlined in the WQS variance to help facilitate progress towards meeting the underlying WQS.

HOW IS A WQS VARIANCE DIFFERENT FROM AN APDES COMPLIANCE SCHEDULE? WQS variances apply in situations where there is uncertainty regarding the actions needed and/or the time period needed to meet standards but it is believed that WQS goals could be achieved should circumstances change. A WQS variance provides the legal basis for a less stringent water quality based effluent limits (WQBEL) during the term of the WQS variance, so that the permittee can remain in compliance.

[1] For more explicit details refer to the Federal Regulations at CFR 40.131.10 and CFR 40.131.14

In contrast, a compliance schedule is a tool used to establish an enforceable sequence of actions when the action(s) needed to meet permit limits or requirements are known and can be implemented to achieve WQS goals within a determined period of time.

Compliance Schedule	WQS Variance
The permit requires compliance with the WQBELs as soon as possible	WQBELs are adjusted to make incremental progress toward attaining the WQS
Actions and time to comply are known	Actions and time to comply are uncertain
A condition included in the permit	WQS basis for a less stringent permit limit and still be in compliance

While WQS variances and compliance schedules are two different Clean Water Act tools, they can also be used together to provide time to meet the highest attainable condition established by the WQS variance.

WOULD A VARIANCE AFFECT TMDL DEVELOPMENT OR 303(D) LISTINGS? No. The underlying designated use and criteria remain in effect for a Section 303(d) listing, total maximum daily load (TMDL) or watershed management plan development regardless of whether if there is an approved WQS variance.