

**7050.0190 VARIANCE FROM STANDARDS.**

Subpart 1. **Applicability.** A variance under this part is a temporary change in a state water quality standard for a specified pollutant that reflects the highest attainable conditions for a permittee during the term of the variance. This part applies to variance requests from individual point source discharges to surface waters of the state for any water quality-based effluent limit based on a water quality standard of this chapter that is included in a permit. To be eligible for a water quality standards variance, the permittee must demonstrate to the agency that the permittee has met the following conditions:

A. the variance would not jeopardize the continued existence of an endangered or threatened species listed under chapter 6134 or section 4 of the Endangered Species Act, United States Code, title 16, section 1533, or result in destruction or adverse modification of the species' critical habitat;

B. standards will not be attained by implementing effluent limitations required under sections 301(b) and 306 of the Clean Water Act, United States Code, title 33, sections 1311(b) and 1316, and by the permittee implementing cost-effective and reasonable best management practices for nonpoint sources under the permittee's control as established under state authority; and

C. the variance would not remove an existing use.

Subp. 2. **Listing.** The agency shall advise the United States Environmental Protection Agency of variances granted by the agency under this part, together with information as to the need for the variance. By October 1 each year, the commissioner shall prepare a list of the variances currently in effect and approved by the United States Environmental Protection Agency or granted by the agency under part 7053.0195. The list must be available for public inspection and must be provided to the United States Environmental Protection Agency. The list must identify the person that received the variance, the rule from which the variance was granted, the water body affected, the year approved by the United States Environmental Protection Agency or granted by the agency under part 7053.0195, the date the variance expires, and any restrictions that apply in lieu of the rule requirement.

Subp. 3. [Repealed, 41 SR 463]

Subp. 4. **Conditions for approval.** Before a variance can become effective, the variance must be submitted to and approved by the United States Environmental Protection Agency in accordance with section 303(c) of the Clean Water Act and Code of Federal

Regulations, title 40, sections 131.20 and 131.21. To be eligible for a preliminary determination by the agency to grant the variance, the permittee must:

A. demonstrate to the agency that attaining the water quality standard is not feasible because:

(1) naturally occurring pollutant concentrations prevent attainment of the water quality standard;

(2) natural, ephemeral, intermittent, or low-flow conditions or water levels prevent attainment of water quality standards, unless these conditions may be compensated for by discharging sufficient volume of effluent to enable water quality standards to be met without violating the water conservation requirements of Minnesota Statutes, chapter 103G;

(3) human-caused conditions or sources of pollution prevent attainment of water quality standards, and the conditions or sources cannot be remedied or would cause more environmental damage to correct than to leave in place;

(4) dams, diversions, or other types of hydrologic modifications preclude attainment of water quality standards, and it is not feasible to restore the water body to its original condition or to operate the modification in a way that would result in attainment of the water quality standard;

(5) physical conditions related to the natural features of the water body, such as the lack of a proper substrate cover, flow, depth, pools, riffles, and the like, unrelated to chemical water quality, preclude attainment of aquatic life protection uses; or

(6) controls more stringent than those required under sections 301(b) and 306 of the Clean Water Act, United States Code, title 33, sections 1311(b) and 1316, would result in substantial and widespread negative economic and social impacts;

B. show that the variance conforms with parts 7050.0250 to 7050.0335;

C. characterize the extent of any increased risk to human health and the environment associated with granting the variance, such that the agency is able to conclude that any increased risk is consistent with the protection of the public health, safety, and welfare; and

D. show sufficient information to allow the agency to determine the water quality currently attained and the interim numeric effluent conditions that reflect the highest attainable conditions for a permittee during the term of the variance.

Subp. 5. **Submittal and notice requirements.** Variance application submittal, public notice of the agency's preliminary determination to grant the variance, and notice requirements must conform to part 7000.7000.

Subp. 6. **Agency final decision; variance requirements.** The agency must make a final decision regarding the variance request that conforms to the procedural requirements in part 7000.7000. The agency must hold at least one meeting that meets the minimum public participation requirements in Code of Federal Regulations, title 40, section 25.5, before the agency makes a final decision on the variance request. If the agency grants the variance and the variance is approved by the United States Environmental Protection Agency, the permit issued by the agency must include and incorporate the following variance terms and conditions:

A. an effluent limitation representing currently achievable treatment conditions based on discharge monitoring or projected effluent quality that is no less stringent than that achieved under the previous permit;

B. a schedule of compliance activities to improve water quality and move toward attainment of the underlying water quality standard;

C. an effluent limitation sufficient to meet the underlying water quality standard, upon the expiration of the variance, when the duration of the variance is shorter than the duration of the permit; and

D. a provision allowing the agency to reopen and modify the permit based on agency triennial water quality standards revisions applicable to the variance.

Subp. 7. **Renewal.** To be eligible for renewal of a variance, the permittee is subject to the requirements of subparts 1 to 6.

Subp. 8. **Term and expiration.** The terms and conditions of a water quality standards variance are included and incorporated in the permit issued by the agency. The term of a variance must only be as long as necessary to achieve the highest attainable condition. For a variance with the term greater than five years, only if requested in writing by the permittee, the agency shall reevaluate the variance every five years in accordance with Code of Federal Regulations, title 40, section 131.14 (b)(1)(v) and (vi), as provided by the Federal Register, volume 80, page 51048. If the permittee does not request a reevaluation, the variance expires at the end of the five-year period.

Subp. 9. **Public notice and review.**

A. Every three years, the agency shall provide public notice of a list of variances currently in effect at the time of public notice, consistent with the triennial review of water quality standards required under Code of Federal Regulations, title 40, section 131.20. The public notice shall include a statement that a person may submit to the agency new information that has become available relevant to the list of variances.

B. If a permittee requests a renewal of a variance according to subpart 7, the agency shall consider information submitted under item A in its review for renewal of the

variance. Variances from discharge effluent limits and treatment requirements are granted by the agency under parts 7000.7000 and 7053.0195.

**Statutory Authority:** *MS s 115.03; 115.44; 116.07*

**History:** *9 SR 913; 12 SR 1810; 19 SR 1310; 32 SR 1699; 41 SR 463; 41 SR 545*

**Published Electronically:** *December 9, 2016*