

7052.0280 VARIANCES FROM WATER QUALITY STANDARDS OR CRITERIA.

Subpart 1. **Applicability.** This part applies to GLI pollutant-specific variance requests from individual point source dischargers to surface waters of the state in the Lake Superior Basin for WQBELs which are included in a permit. This part does not apply to new dischargers, unless the proposed discharge is necessary to alleviate an imminent and substantial danger to public health and welfare. A water quality standards or criteria variance must not be granted if any of the following conditions exist:

A. if it would jeopardize the continued existence of any 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 such species' critical habitat; or

B. if standards or criteria will 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 source control.

Subp. 2. **Maximum time frame.** A variance must not exceed five years or the term of the permit, whichever is less.

Subp. 3. **Conditions to grant a variance.** The agency must grant a variance if the following conditions are met:

A. the permittee demonstrates to the agency that attaining the water quality standard or criterion is not feasible because:

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

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

(3) human-caused conditions or sources of pollution prevent the attainment of water quality standards or criteria and 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 the attainment of water quality standards or criteria, and it is not feasible to restore the waterbody 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 waterbody, such as the lack of a proper substrate cover, flow, depth, pools, riffles, and the like, unrelated to chemical water quality, preclude attainment of water quality standards or criteria; 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 economic and social impact;

B. the permittee shows that the variance conforms with agency nondegradation procedures; and

C. the permittee characterizes 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.

Subp. 4. **Variance application submittal, public notice of preliminary determination, and notice requirements.** Variance application submittal, public notice of preliminary determination, and notice requirements must conform to part 7000.7000.

Subp. 5. **Agency final decision; variance requirements.** The agency must issue a final decision regarding the variance request that conforms to the procedural requirements in part 7000.7000. If a variance is granted, it must include and incorporate into the permit the following conditions:

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

B. a schedule of compliance activities for attaining water quality standards or criteria;

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

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

E. for BCCs, a GLI pollutant minimization program consistent with part 7052.0250, subpart 4.

Subp. 6. **Renewal of variance.** The renewal of a variance is subject to the requirements of subparts 1 to 5.

Subp. 7. **Notice of variances.** The agency must list all variances to state water quality standards as required in part 7050.0190, subpart 2.

Statutory Authority: *MS s 115.03; 115.44*

History: *22 SR 1466*

Published Electronically: *June 16, 2005*