

7052.0280 VARIANCES FROM WATER QUALITY STANDARDS.

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. 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 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;

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. **Term.** A variance must not exceed five years or the term of the permit, whichever is less.

Subp. 3. **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 GLI pollutant concentrations prevent attainment of the water quality standard;

(2) natural, ephemeral, intermittent, or low-flow conditions or water levels prevent the 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 the attainment of water quality standards 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, 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 water quality standards; 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. 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. 4. **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. 5. **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. If the variance is being considered for renewal, the effluent limitation must be 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;

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.** To be eligible for renewal of a variance, the permittee is subject to the requirements of subparts 1 to 5.

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

Subp. 8. **Public notice and review.** The agency shall provide public notice and review all variances currently in effect as required in part 7050.0190, subpart 9. 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: *22 SR 1466; 41 SR 463; 41 SR 545*

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