

**WAC 173-201A-420 Variance.** (1) **General provisions.** Variances for individual facilities, a group of facilities, or stretches of waters may be issued for the criteria and designated uses established in WAC 173-201A-200 through 173-201A-260 and 173-201A-600 through 173-201A-612. The following conditions apply when considering issuance of a variance:

(a) A variance may be considered when the standards are expected to be attained by the end of the variance period or the attainable use cannot be reliably determined.

(b) The variance applies to specific parameters and all other applicable standards remain in effect for the water body.

(c) The modification must be consistent with the requirements of federal regulations (currently 40 C.F.R. 131.14).

(d) Reasonable progress must be made toward meeting the underlying standards during the variance period.

(e) A variance renewal may be considered if the renewal request meets the above conditions.

(2) **Types of variances.** Upon request or on its own initiative, the department will consider granting the following types of variances to existing water quality standards:

(a) An individual variance is a time-limited designated use and parameter-specific change to the standard(s) of the receiving water body for a specific discharger. The temporary standard(s) only apply at the point(s) of compliance for the individual facility.

(b) A multidischarger variance is a time-limited designated use and parameter-specific change to the standard(s) of any water body that receives discharges from a permitted facility defined within the scope of the multidischarger variance. Any permitted discharger that is defined within the scope of the variance may be covered under the variance that is granted by the department, provided all requirements of the variance for that discharger are met.

(c) A water body variance is a time-limited designated use and parameter-specific change to the standard(s) for a stretch of waters. Any discharger of the specific parameter that is defined within the geographic scope of the water body variance may be covered under the variance that is granted by the department, provided all requirements of the variance for that discharger are met.

(3) **Requirements.** Any entity initiating a variance request or applying for coverage for an individual, multidischarger, or water body variance must submit the following information to the department:

(a) The pollutant-specific criteria and designated use(s) proposed to be modified by the variance, and the proposed duration of the variance.

(b) A demonstration that attaining the water quality standard for a specific pollutant is not feasible for the requested duration of the variance based on 40 C.F.R. 131.14.

(c) An evaluation of treatment or alternative actions that were considered to meet effluent limits based on the underlying water quality criteria, and a description of why these options are not technically, economically, or otherwise feasible.

(d) Sufficient water quality data and analyses to characterize receiving and discharge water pollutant concentrations.

(e) A description and schedule of actions that the discharger(s) proposes to ensure the underlying water quality standard(s) are met or the highest attainable use is attained within the variance period. Dischargers are also required to submit a schedule for development and

implementation of a pollutant minimization plan for the subject pollutant(s).

(f) If the variance is for a water body or stretch of water, the following information must also be provided to the department:

(i) The results from a pollutant source assessment that quantifies the contribution of pollution from permitted sources and nonpermitted sources;

(ii) All cost-effective and reasonable best management practices for permitted sources that address the pollutant the variance is based upon; and

(iii) Best management practices for nonpermitted sources that meet the requirements of chapter 90.48 RCW.

(g) Any additional information the department deems necessary to evaluate the application.

(4) **Public review and notification.** The decision to grant a variance is a formal rule making subject to a public and intergovernmental involvement process.

(a) The department will provide notice of the proposed variance and consult with Indian tribes or other states that have jurisdiction over adjacent and downstream waters of the proposed variance.

(b) The department shall maintain and make publicly available a list of dischargers that are covered under the variances that are in effect.

(5) **Period during which the variance is in effect.** A variance is a time-limited designated use and criterion.

(a) Each variance will be granted for the minimum time estimated to meet the underlying standard(s) or, if during the period of the variance it is determined that a designated use cannot be attained, then a use attainability analysis (WAC 173-201A-440) will be initiated.

(b) The ability to apply a variance in permits or other actions may be terminated by the department as a result of a mandatory interim review.

(c) Variances are in effect after they have been incorporated into this chapter and approved by the USEPA.

(6) **Contents of a variance.** At a minimum a variance adopted into rule will include the following:

(a) The time period for which the variance is applicable.

(b) The geographic area or specific waters in which the variance is applicable.

(c) A description of the permitted and unpermitted dischargers covered by the variance.

(d) Identification of required actions and a schedule, including any measurable milestones, for all pollution sources (permitted and unpermitted) subject to the variance. Dischargers are required to use adaptive management to fine-tune and update actions, schedules, and milestones in order to achieve the goals of the variance.

(e) A provision allowing the department to reopen and modify any permits and to revise BMP requirements for unpermitted dischargers as a result of the mandatory interim review of the variance (see subsection (8) of this section).

(7) **Variance permit conditions.** The department must establish and incorporate into NPDES permits all conditions necessary to implement and enforce an approved variance, including:

(a) Effluent limits that represent currently achieved or achievable effluent conditions, or effluent limits that are sufficient to

meet the underlying water quality standard upon expiration of the variance;

(b) Monitoring and reporting requirements; and

(c) A provision allowing the department to reopen and modify the permits based on the mandatory interim review of the variance.

(8) **Mandatory interim review.** The department will conduct an interim review of each variance at least once every five years after the variance is adopted and approved to determine that conditions of the variance are being met and to evaluate whether the variance is still necessary.

(a) Review process for individual discharger and multidischarger variances:

(i) The review shall be coordinated with the public review process of the permit renewal if the variance is being implemented in a permit.

(ii) The review will be focused on the discharger's compliance with permit conditions that are required by the variance as well as an evaluation of whether the variance is still necessary.

(b) Review process for water body variances:

(i) Variances for stretches of waters will be reviewed in a public process conducted by the department every five years after the variance is adopted into this chapter and approved by the USEPA.

(ii) The review will evaluate whether the variance is still necessary, any new information on sources of the pollutant that indicates that reductions could be made that would allow water quality standards to be met in a shorter time frame, as well as any new information that indicates water quality improvements may require more time.

(c) A variance that applies to a permit will be shortened or terminated if the review determines that:

(i) The conditions and requirements of the variance and associated permit requirements have not been complied with unless reasons outside the control of the discharger prevented meeting any condition or requirement; or

(ii) Water quality standards could be met in a shorter time frame, based on new information submitted to the department.

[Statutory Authority: RCW 90.48.035, 90.48.605 and section 303(c) of the Federal Water Pollution Control Act (Clean Water Act), C.F.R. 40, C.F.R. 131. WSR 16-16-095 (Order 12-03), § 173-201A-420, filed 8/1/16, effective 9/1/16. Statutory Authority: RCW 90.48.035. WSR 11-09-090 (Order 10-10), § 173-201A-420, filed 4/20/11, effective 5/21/11. Statutory Authority: Chapters 90.48 and 90.54 RCW. WSR 03-14-129 (Order 02-14), § 173-201A-420, filed 7/1/03, effective 8/1/03.]