

NEW PROPOSED RULE TO IMPLEMENT MCA 75- 5-222(2)

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75-5-222 MCA

- (1) The Department may not apply a standard that is more stringent than the non-anthropogenic condition.

- (2) The Board shall adopt rules for the Department to issue variances from standards
 - The condition cannot be reasonably expected to be remediated in permit term
 - The discharge to which the variance applies would not materially contribute to the condition

WHAT IS A VARIANCE?

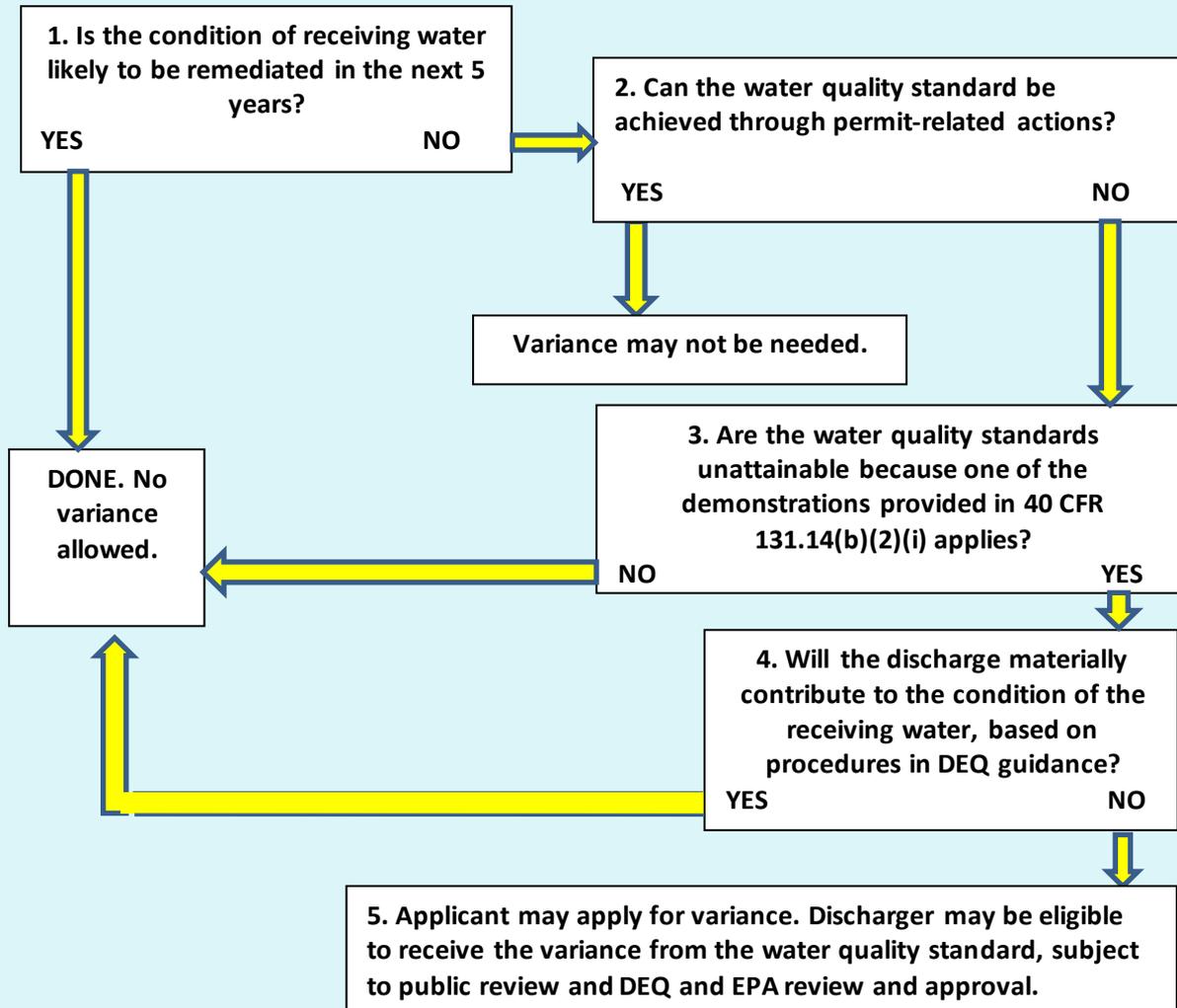
- Clean Water Act tool that is appropriate to apply when:
 - Water Quality Standard in the water body is accurate
 - Flexibility is needed for the permittee meet the standard due specific factors spelled out in state and federal regulations
- What does it do?
 - Allows a discharger to continue current performance (which typically means exceed water quality standards) - for a limited amount of time

OUTLINE OF NEW RULE

This is not a general variance.

- (1) Aligns with Montana statute
- (2) Sets application requirements and aligns with Federal regulations
- (3 and 4) Sets Department review requirements and determination of alternatives
- (5 and 6) Department review of application, public review process and EPA approval
- (7) Connects variance with MPDES permit limits
- (8 and 9) Five year review required

VARIANCE PROCESS

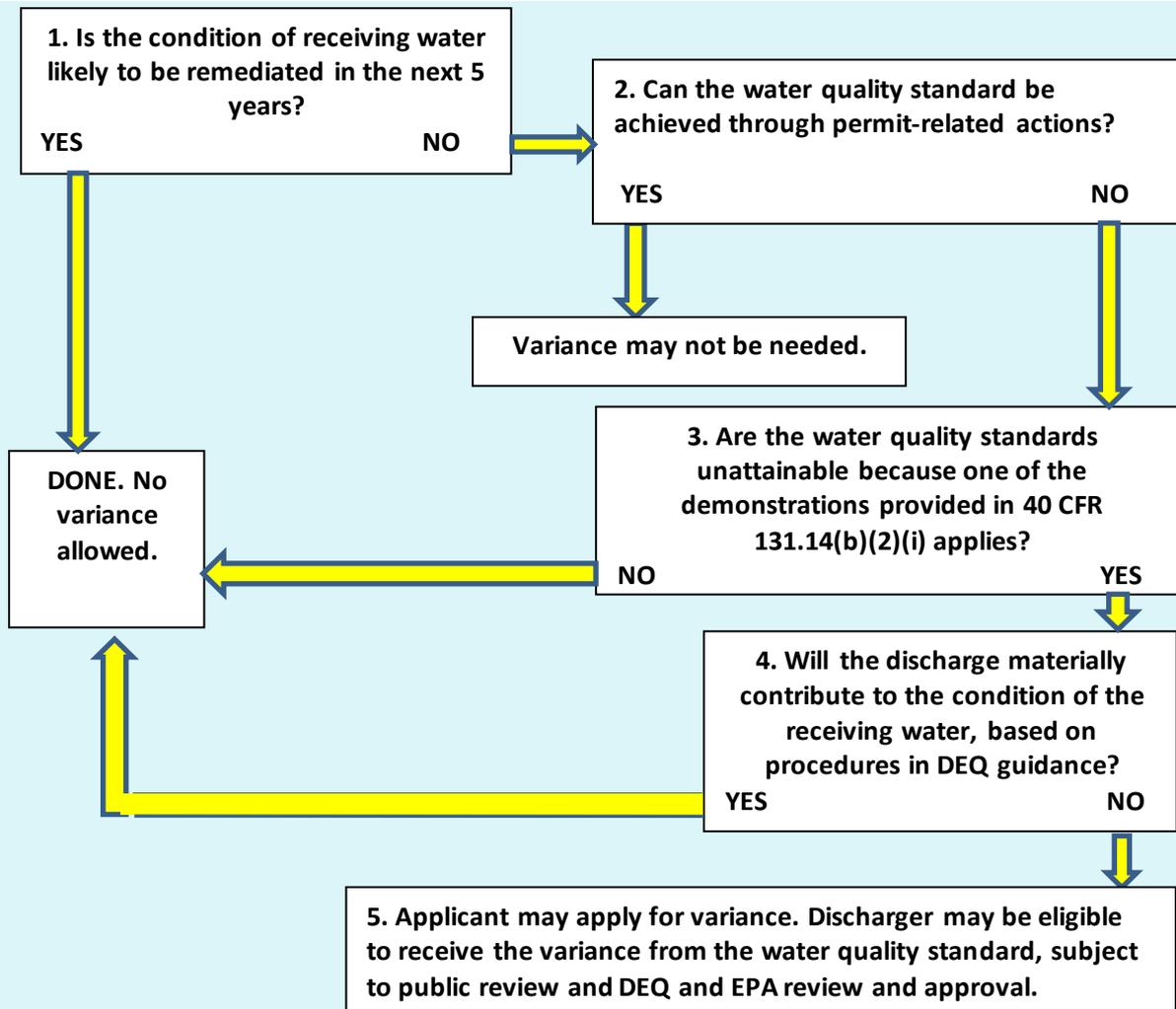


FEDERAL VARIANCE FACTORS APPLICABLE TO 75-5-222(2) MCA

3. Are the water quality standards unattainable because one of the demonstrations provided in 40 CFR 131.14(b)(2)(i) applies?

- Human-caused pollution prevents attainment of use and source cannot be remedied or would cause more environmental damage to correct than leave in place;
- Meeting a water quality standard (e.g., DEQ-7) would cause substantial and widespread economic harm

VARIANCE PROCESS



QUESTIONS?

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