



# WPCAC

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June 3, 2022

# Water Quality Standards

- Beneficial uses such as recreation, aquatic life, drinking water, agriculture
- Water quality criteria (numeric and narrative)
- Nondegradation = protection of high-quality waters



# New Rule: Temporary Water Quality Standards Variances

- These rules require conformance with 40 CFR 131.14 (federal regulations for water quality standard variances under the Clean Water Act)
- Not nutrient specific; applicable to all pollutants and available variance factors under CFR 131.14

*(1) Naturally occurring pollutant concentrations prevent the attainment of the use; or*

*(2) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use,*

*(3) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or*

*(4) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use,*

*(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 water quality, preclude attainment of aquatic life protection uses; or*

*(6) Controls more stringent than those required by sections 301(b) and 306 of the Act would result in substantial and widespread economic and social impact.*

# New Rule: Temporary Water Quality Standards Variances

- Implementing rules for 2019 legislation (75-5-320)

*Department may adopt rules providing criteria and procedures for the department to issue a temporary variance to water quality standards if:*

- (a) a variance will not result in a lowering of currently attained, ambient water quality;
  - (b) the department rules are consistent, as necessary, with federal rules that authorize states to adopt variances from standards, including but not limited to 40 CFR 131.14; and
  - (c) (i) a permittee cannot reasonably expect to meet a water quality standard during the permit term for which the variance is approved; and  
(ii) a permit compliance schedule is not feasible to preclude the need for a variance during the permit term for which the variance is approved.
- (2) In order to receive a temporary variance, a permittee shall evaluate facility operations and infrastructure to maximize pollutant reduction through an optimization study. The variance must require the implementation of optimization study actions as terms and conditions of the discharge permit.
  - (3) The department shall review a temporary variance issued pursuant to this section at least once every 5 years and may continue, modify, or terminate the temporary variance as a result of the review.

# New Rule: Temporary Water Quality Standards Variances

- Modeled closely after variance rules in 17.30.661 which are specific to upstream anthropogenic sources (adopted and approved by EPA in 2018)

# New Rule: Temporary Water Quality Standards Variances

- Section 1 and 11: Dept will issue variance rules in conformance with 40CFR131.14
- Section 2: Describes what the permittee must provide in an application to the dept
- Section 3 and 4: Describe instances where an alternative to a variance may be applicable and eliminate need for a variance
- Section 5: Describes the department's review and approval process and the requirement for an optimization study
- Section 6: Submittal requirements to EPA
- Section 7: Ties the variance standard to MPDES permit limits for that pollutant
- Section 8 and 9: Re-evaluation requirements
- Section 10: Identifies option for individual or multiple dischargers.

# Rulemaking Timeline for Variances

- Providing WPCAC opportunity to comment and provide input (meeting June 3) and NWG opportunity to comment (meeting June 22)
- 45-day public comment period starts July 8, 2022
- Hearing: around August 22, 2022
- Response to comments
- Department Head signs rule no later than September 27, 2022, rule filed no later than September 27, 2022
- Publishes by October 7, 2022



# Questions?

Contact:

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To submit comments or questions

» Submit Comments or Questions

<https://deq.mt.gov/water/Councils>

