Implementation Tools

Variances

WAC 173-210A-420

What is a Variance?

A variance is a temporary change to the water quality standards for a single discharger, a group of dischargers, or a stretch of waters.

Because variances are changes to the water quality standards they must be adopted into state rule and receive the USEPA's Clean Water Act approval before they are effective. The Water Quality Standards currently contain language on variances that sets the maximum time frame for a variance at 5 years, with the possibility of renewal. Although the current standards allow variances, none have been granted in Washington. Variances:

- Establish a time-limited set of temporary requirements that apply instead of the otherwise applicable water quality standards and related water quality criteria.
- May be used where attaining the designated use and criteria is not feasible immediately, but might be, or will be, feasible in the longer term (compared to a compliance schedule where it has been determined that water quality standards can be met once specific implementation action occur).
- Can be targeted to specific pollutants, sources, and/or stretches of waters.

Why is Ecology proposing a change to the Variance language in this rule-making?

Washington is at a stage in its regulation of surface water pollution where most of the "easy fixes" are already made. The state is now working on many projects where it will take longer to meet state water quality standards. Examples of longer-term projects include:

- Controls on toxic pollutants that come from diffuse sources and enter waters in run-off;
- Substantial amounts of stream re-vegetation and restoration; and
- Working with local partners to control sources of pollution.

Variances could be a very useful tool to drive long- and short-term pollution reduction efforts and stream improvements and to keep dischargers in compliance over the long term as these efforts are carried out successfully. Newly proposed variance language clarifies the requirements and responsibilities that are part of a variance and make it a more usable tool.

Proposed rule language on Variances

- Provides accountability – must demonstrate that the discharger cannot feasibly meet the original criteria and that they continually strive to make reasonable progress to meet the original criteria during the life of the variance.
- Provides for enforceability – each variance will contain the requirements and will specify the permit requirements.
- Builds in checks and balances to ensure that variance information is reviewed on a regular basis, new technology and science is taken into account, and benchmarks are required to ensure that implementation of the variance is occurring and that the variance continues to be necessary.
- Extends the timeframe of a variance where necessary to allow time to deal with long term pollution problems, such as legacy pollutants or pollutants that come from sources outside of Clean Water Act jurisdiction, or such as allowing time to improve temperatures by waiting for trees to grow.
- Includes mandatory public reviews to ensure that the variance is still necessary.
- Provides a framework for renewing, shortening, and revoking a variance.
- Promotes efficiency of state resources. Where possible, this proposed language will reduce resource intensity of regulating agencies in issuing variances.

Does this rule-making result in a Variance?

No. The proposed rule-making enlarges on the brief variance language that is currently in the water quality standards. This rule-making proposes the "recipe" to get to a variance, but does not grant any variance.

In the future, if variances are granted in Washington it will be a formal public rule-making process subject to Administrative Procedures Act requirements and approval by EPA.

When would a variance be useful? Example 1

New requirements for toxics control will occur over time as new toxics criteria are implemented. A variance could be useful in these situations by requiring efforts to control sources of toxics and at the same time keeping dischargers who comply with the requirements of the variance in compliance with their permit requirements. For example, where technologies to treat a toxic pollutant common to a group of dischargers are unknown or unavailable, source control for the pollutant will require widespread efforts by multiple dischargers over a long period of time. In this scenario, a multi-discharger variance may be appropriate.

When would a variance be useful? Example 2

In some areas of Washington planting trees is the best long term solution to provide shade and cooling to waterbodies that are exceeding the temperature standards. In areas where shade trees are planted, but will need decades to grow to a height sufficient to cool a waterbody, variances can be used to keep dischargers in compliance with discharge limits while waiting for a waterbody to meet temperature standards.