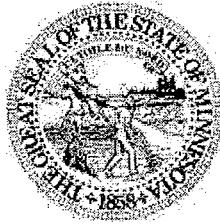


Office of the Revisor of Statutes

Administrative Rules



TITLE: Proposed Permanent Rules Relating to Existing Water Quality Variance Procedures

AGENCY: Pollution Control Agency

MINNESOTA RULES: Chapters 7050, 7052, and 7053

The attached rules are approved for publication in the State Register

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1.1 **Pollution Control Agency**1.2 **Proposed Permanent Rules Relating to Existing Water Quality Variance Procedures**1.3 **7050.0190 VARIANCE FROM STANDARDS.**

1.4 Subpart 1. **Variancee Applicability.** In any case where, upon application of
1.5 the responsible person or persons, the agency finds that by reason of exceptional
1.6 circumstances the strict enforcement of any provision of these standards would cause
1.7 undue hardship, that disposal of the sewage, industrial waste, or other waste is necessary
1.8 for the public health, safety, or welfare; and that strict conformity with the standards
1.9 would be unreasonable, impractical, or not feasible under the circumstances; the agency in
1.10 its discretion may grant a variance therefrom upon such conditions as it may prescribe for
1.11 prevention, control, or abatement of pollution in harmony with the general purposes of
1.12 these classifications and standards and the intent of the applicable state and federal laws.
1.13 A variance under this part is a temporary change in a state water quality standard for a
1.14 specified pollutant that reflects the highest attainable conditions for a permittee during the
1.15 term of the variance. This part applies to variance requests from individual point source
1.16 discharges to surface waters of the state for any water quality-based effluent limit based on
1.17 a water quality standard of this chapter that is included in a permit. The United States
1.18 Environmental Protection Agency shall be advised of any varianees that may be issued
1.19 under this part together with information as to the need therefor. To be eligible for a
1.20 water quality standards variance, the permittee must demonstrate to the agency that the
1.21 permittee has met the following conditions:

1.22 A. the variance would not jeopardize the continued existence of an endangered
1.23 or threatened species listed under chapter 6134 or section 4 of the Endangered Species
1.24 Act, United States Code, title 16, section 1533, or result in destruction or adverse
1.25 modification of the species' critical habitat;

2.1 B. standards will not be attained by implementing effluent limitations required
2.2 under sections 301(b) and 306 of the Clean Water Act, United States Code, title 33,
2.3 sections 1311(b) and 1316, and by the permittee implementing cost-effective and
2.4 reasonable best management practices for nonpoint sources under the permittee's control
2.5 as established under state authority; and

2.6 C. the variance would not remove an existing use.

2.7 Subp. 2. Listing. The agency shall advise the United States Environmental
2.8 Protection Agency of variances granted by the agency under this part, together with
2.9 information as to the need for the variance. By October 1 each year, the commissioner
2.10 shall prepare a list of the variances currently in effect granted and approved by the
2.11 United States Environmental Protection Agency or granted by the agency under this
2.12 part 7053.0195. The list must be available for public inspection and must be provided
2.13 to the United States Environmental Protection Agency. The list must identify the person
2.14 granted that received the variance, the rule from which the variance was granted, the water
2.15 body affected, the year granted approved by the United States Environmental Protection
2.16 Agency or granted by the agency under part 7053.0195, the date the variance expires, and
2.17 any restrictions that apply in lieu of the rule requirement.

2.18 Subp. 3. [See repealer.]

2.19 Subp. 4. Conditions for approval. Before a variance can become effective,
2.20 the variance must be submitted to and approved by the United States Environmental
2.21 Protection Agency in accordance with section 303(c) of the Clean Water Act and Code of
2.22 Federal Regulations, title 40, sections 131.20 and 131.21. To be eligible for a preliminary
2.23 determination by the agency to grant the variance, the permittee must:

2.24 A. demonstrate to the agency that attaining the water quality standard is not
2.25 feasible because:

(1) naturally occurring pollutant concentrations prevent attainment of the water quality standard;

(2) natural, ephemeral, intermittent, or low-flow conditions or water levels prevent 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 attainment of water quality standards, and the conditions or sources 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 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 negative economic and social impacts;

3.29 B. show that the variance conforms with parts 7050.0180 and 7050.0185;

3.21 C. characterize the extent of any increased risk to human health and the
3.22 environment associated with granting the variance, such that the agency is able to
3.23 conclude that any increased risk is consistent with the protection of the public health,
3.24 safety, and welfare; and

4.1 D. show sufficient information to allow the agency to determine the water
4.2 quality currently attained and the interim numeric effluent conditions that reflect the
4.3 highest attainable conditions for a permittee during the term of the variance.

4.4 **Subp. 5. Submittal and notice requirements.** Variance application submittal,
4.5 public notice of the agency's preliminary determination to grant the variance, and notice
4.6 requirements must conform to part 7000.7000.

4.7 **Subp. 6. Agency final decision; variance requirements.** The agency must make a
4.8 final decision regarding the variance request that conforms to the procedural requirements
4.9 in part 7000.7000. If the agency grants the variance and the variance is approved by the
4.10 United States Environmental Protection Agency, the permit issued by the agency must
4.11 include and incorporate the following variance terms and conditions:

4.12 A. an effluent limitation representing currently achievable treatment conditions
4.13 based on discharge monitoring or projected effluent quality that is no less stringent than
4.14 that achieved under the previous permit;

4.15 B. a schedule of compliance activities to improve water quality and move
4.16 toward attainment of the underlying water quality standard;

4.17 C. an effluent limitation sufficient to meet the underlying water quality standard,
4.18 upon the expiration of the variance, when the duration of the variance is shorter than
4.19 the duration of the permit; and

4.20 D. a provision allowing the agency to reopen and modify the permit based on
4.21 agency triennial water quality standards revisions applicable to the variance.

4.22 **Subp. 7. Renewal.** To be eligible for renewal of a variance, the permittee is subject
4.23 to the requirements of subparts 1 to 6.

4.24 **Subp. 8. Term and expiration.** The terms and conditions of a water quality
4.25 standards variance are included and incorporated in the permit issued by the agency. The

5.1 term of a variance must be as short as possible but must expire no later than ten years after
5.2 the United States Environmental Protection Agency approval date of the variance.

5.3 **Subp. 9. Public notice and review.**

5.4 A. Every three years, the agency shall provide public notice of a list of variances
5.5 currently in effect at the time of public notice, consistent with the triennial review of water
5.6 quality standards required under Code of Federal Regulations, title 40, section 131.20.
5.7 The public notice shall include a statement that a person may submit to the agency new
5.8 information that has become available relevant to the list of variances.

5.9 B. If a permittee requests a renewal of a variance according to subpart 7, the
5.10 agency shall consider information submitted under item A in its review for renewal of the
5.11 variance. Variances from discharge effluent limits and treatment requirements are granted
5.12 by the agency under parts 7000.7000 and 7053.0195.

5.13 **7052.0280 VARIANCES FROM WATER QUALITY STANDARDS OR CRITERIA.**

5.14 **Subpart 1. Applicability.** This part applies to GLI pollutant-specific variance
5.15 requests from individual point source dischargers to surface waters of the state in the Lake
5.16 Superior Basin for WQBELs which are included in a permit. This part does not apply
5.17 to new dischargers, unless the proposed discharge is necessary to alleviate an imminent
5.18 and substantial danger to public health and welfare. A water quality standards or criteria
5.19 variance must not be granted if any of the following conditions exist To be eligible for a
5.20 water quality standards variance, the permittee must demonstrate to the agency that the
5.21 permittee has met the following conditions:

5.22 A. if it the variance would not jeopardize the continued existence of any
5.23 endangered or threatened species listed under chapter 6134 or section 4 of the Endangered
5.24 Species Act, United States Code, title 16, section 1533, or result in destruction or adverse
5.25 modification of such species' critical habitat; or

6.1 B. if standards or criteria will not be attained by implementing effluent
6.2 limitations required under sections 301(b) and 306 of the Clean Water Act, United
6.3 States Code, title 33, sections 1311(b) and 1316, and by the permittee implementing
6.4 cost-effective and reasonable best management practices for nonpoint ~~source~~ sources
6.5 under the permittee's control, as established under state authority; and

6.6 C. the variance would not remove an existing use.

6.7 Subp. 2. **Maximum time frame Term.** A variance must not exceed five years or
6.8 the term of the permit, whichever is less.

6.9 Subp. 3. **Conditions to grant a variance for approval.** The agency must grant a
6.10 variance if the following conditions are met Before a variance can become effective,
6.11 the variance must be submitted to and approved by the United States Environmental
6.12 Protection Agency in accordance with section 303(c) of the Clean Water Act and Code of
6.13 Federal Regulations, title 40, sections 131.20 and 131.21. To be eligible for a preliminary
6.14 determination by the agency to grant the variance, the permittee must:

6.15 A. the permittee demonstrates demonstrate to the agency that attaining the
6.16 water quality standard or criterion is not feasible because:

6.17 (1) naturally occurring GLI pollutant concentrations prevent attainment
6.18 of the water quality standard or criterion;

6.19 (2) natural, ephemeral, intermittent, or low-flow conditions or water levels
6.20 prevent the attainment of water quality standards or criteria, unless these conditions may
6.21 be compensated for by discharging sufficient volume of effluent to enable water quality
6.22 standards or criteria to be met without violating the water conservation requirements of
6.23 Minnesota Statutes, chapter 103G;

(3) human-caused conditions or sources of pollution prevent the attainment of water quality standards ~~or criteria~~ 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 ~~or criteria~~, and it is not feasible to restore the ~~waterbody~~ 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 waterbody 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 criteria; 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. the permittee shows show that the variance conforms with agency nondegradation procedures parts 7050.0180 and 7050.0185; and

C. the permittee characterizes 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. Variance application Submittal, public notice of preliminary determination, and notice requirements. Variance application submittal, public notice

8.1 of the agency's preliminary determination to grant the variance, and notice requirements
8.2 must conform to part 7000.7000.

8.3 **Subp. 5. Agency final decision; variance requirements.** The agency must issue
8.4 make a final decision regarding the variance request that conforms to the procedural
8.5 requirements in part 7000.7000. If a variance is granted, it the agency grants the variance
8.6 and the variance is approved by the United States Environmental Protection Agency, the
8.7 permit issued by the agency must include and incorporate into the permit the following
8.8 variance terms and conditions:

8.9 A. an effluent limitation representing currently achievable treatment conditions
8.10 based on discharge monitoring which is or projected effluent quality. If the variance is
8.11 being considered for renewal, the effluent limitation must be no less stringent than that
8.12 achieved under the previous permit;

8.13 B. a schedule of compliance activities for attaining water quality standards or
8.14 criteria to improve water quality and move toward attainment of the underlying water
8.15 quality standard;

8.16 C. an effluent limitation sufficient to meet the underlying water quality standard
8.17 or criterion, upon the expiration of the variance, when the duration of the variance is
8.18 shorter than the duration of the permit;

8.19 D. a provision allowing the agency to reopen and modify the permit based on
8.20 agency triennial water quality standards revisions applicable to the variance; and

8.21 E. for BCCs, a GLI pollutant minimization program consistent with part
8.22 7052.0250, subpart 4.

8.23 **Subp. 6. Renewal of variance.** The To be eligible for renewal of a variance, the
8.24 permittee is subject to the requirements of subparts 1 to 5.

9.1 Subp. 7. **Notice of variances Listing.** The agency shall advise the United States
9.2 Environmental Protection Agency of variances granted by the agency under this part,
9.3 together with information as to the need for the variance. The agency must list all
9.4 variances to state water quality standards as required in part 7050.0190, subpart 2.

9.5 Subp. 8. **Public notice and review.** The agency shall provide public notice and
9.6 review all variances currently in effect as required in part 7050.0190, subpart 9. Variances
9.7 from discharge effluent limits and treatment requirements are granted by the agency under
9.8 parts 7000.7000 and 7053.0195.

9.9 **7053.0195 VARIANCE FROM DISCHARGE EFFLUENT LIMITS OR**
9.10 **TREATMENT REQUIREMENTS.**

9.11 Subpart 1. **Variance Applicability.** In any case when, upon application of
9.12 the responsible person or persons, the agency finds that by reason of exceptional
9.13 circumstances the strict enforcement of any provision of this chapter would cause undue
9.14 hardship; that disposal of the sewage, industrial waste, or other waste is necessary for the
9.15 public health, safety, or welfare; and that strict conformity with the effluent limits would
9.16 be unreasonable, impractical, or not feasible under the circumstances, the agency in its
9.17 discretion may grant a variance upon conditions it prescribes for prevention, control, or
9.18 abatement of pollution in harmony with the general purposes of this chapter and the intent
9.19 of the applicable state and federal laws. The United States Environmental Protection
9.20 Agency shall be advised of any permits that may be issued under this subpart, together
9.21 with information as to the need for the variance. A variance under this part is a temporary
9.22 change in a discharge effluent limit or treatment requirement for a specified pollutant that
9.23 reflects the highest attainable conditions for a permittee during the term of the variance.
9.24 This part applies to variance requests from individual point source discharges to surface
9.25 waters of the state for any provision of this chapter that is included in a permit. To be
9.26 eligible for a variance from a discharge effluent limit or treatment requirement, the

10.1 permittee must demonstrate to the agency that the permittee has met the conditions
10.2 specified in part 7050.0190, subpart 1, items A to C.

10.3 Subp. 2. **Listing.** By October 1 each year, the commissioner shall prepare a list of
10.4 the variances in effect granted by the agency under this part. The list must be available for
10.5 public inspection and must be provided to the United States Environmental Protection
10.6 Agency. The list must identify the person granted the variance, the rule from which the
10.7 variance was granted, the water affected, the year granted, and any restrictions that apply
10.8 in lieu of the rule requirement. The agency shall advise the United States Environmental
10.9 Protection Agency of variances granted by the agency under this part, together with
10.10 information as to the need for the variance. The agency must list all variances as required
10.11 in part 7050.0190, subpart 2.

10.12 Subp. 3. [See repealer.]

10.13 Subp. 4. **Conditions for approval.** To be eligible for a preliminary determination by
10.14 the agency to grant the variance, the permittee must meet the conditions specified in part
10.15 7050.0190, subpart 4, except the requirement to submit the variance to the United States
10.16 Environmental Protection Agency for approval does not apply to variances granted by
10.17 the agency under this part.

10.18 Subp. 5. **Submittal and notice requirements.** Variance application submittal,
10.19 public notice of the agency's preliminary determination to grant the variance, and notice
10.20 requirements must conform to part 7000.7000.

10.21 Subp. 6. **Agency final decision; variance requirements.** The agency must make a
10.22 final decision regarding the variance request that conforms to the procedural requirements
10.23 in part 7000.7000. If the agency grants the variance, the permit issued by the agency
10.24 must include and incorporate the terms and conditions of the variance specified in part
10.25 7050.0190, subpart 6.

11.1 Subp. 7. **Renewal.** To be eligible for renewal of a variance, the permittee is subject
11.2 to the requirements of subparts 1 to 6.

11.3 Subp. 8. **Term and expiration.** The terms and conditions of a variance from a
11.4 discharge effluent limit or treatment requirement are included and incorporated in the
11.5 permit issued by the agency. The term of a variance must be as short as possible but must
11.6 expire no later than ten years after the date the agency grants the variance.

11.7 Subp. 9. **Public notice and review.** The agency shall provide public notice and
11.8 review all variances currently in effect as required in part 7050.0190, subpart 9. Variances
11.9 from water quality standards are granted by the agency under parts 7000.7000, 7050.0190,
11.10 and 7052.0280.

11.11 **REPEALER.** Minnesota Rules, parts 7050.0190, subpart 3; and 7053.0195, subpart
11.12 3, are repealed.