



# Draft Amended Rules for Water Quality Variances

## Background

The MPCA proposes amendments to its rules governing processing and consideration of water quality standard variance requests. A water quality variance is a temporary change in a state water quality standard for a specific pollutant. A variance allows a permittee discharging wastewater, such as a municipal wastewater treatment facility or industrial facility, additional time to meet the applicable standard. Implementation of a variance which includes timelines and interim effluent limits for demonstrating progress sets the permittee on a path toward achieving the standard. Federal rules allow states to grant and implement water quality standards variances, but require EPA to review and approve variances granted by the states.

Federal rules have specific requirements for the Great Lakes States for granting variances from water quality standards. These requirements apply to waters of the Great Lakes, including Minnesota and the Lake Superior Basin. The Great Lakes States which include EPA Region V states and Tribes must adopt variance provisions that are consistent with federal rules that apply to waters of the Great Lakes. These federal rules help ensure consistency and align Minnesota variance rules with other Great Lakes States. All EPA Region V states have authority to issue variances from water quality standards.

Minnesota's water quality rules have variance provisions in three different rule chapters. The procedures for granting a variance are different in each chapter. The chapter 7052 rules are based on federal rules and apply to the Lake Superior Basin; the chapter 7050 and 7053 rules apply to the rest of the state and differ from federal requirements. These differences are confusing to regulated parties, and make it difficult for the MPCA to maintain consistency in the variance process and compliance with applicable federal requirements. The proposed rules address these differences and provide procedural consistency in application of the state's variance rules with applicable federal requirements.

## Stakeholder involvement

In June 2012 the MPCA conducted a process improvement project for water quality variances with stakeholder input. A stakeholder group, including representatives from municipal and industrial wastewater treatment facilities, environmental interests, and EPA, was asked to identify obstacles to the variance process and needed improvements. Stakeholders determined that the water variance rules were not clear or consistent and needed to be amended.

The MPCA then began work on amending the variance rules. Multiple opportunities for public participation and input were provided during the rule development process, including two separate Requests for Comments on the planned amendments. MPCA staff met separately with two environmental organizations to discuss their comments.

MPCA staff shared preliminary draft rule language at a June 2013 stakeholder meeting. Informal written comments were submitted by the Minnesota Chamber of Commerce, Southern Minnesota Beet Sugar Cooperative, and Save Our Sky Blue Waters. EPA also submitted comments during the process. All comments were considered in amending the rules, and the proposed rules are based in part on many of the comments received.

## Proposed rules

The rules address inconsistencies among three different rule chapters and better align state rules with federal requirements for water quality variances. The MPCA grants variances to the water quality standards in chapters 7050 and 7052, and to effluent limits and discharge restrictions in chapter 7053. Permittees may request a variance if treatment technologies are not available to meet effluent limits, or if the implementation of a technology would result in substantial social and economic hardship. The variance may allow time for the permittee to investigate new or emerging treatment technologies and discover the best achievable effluent quality.

The proposed rules are only concerned with the procedural requirements for obtaining a variance and will not result in more or less restrictive water quality standards or change to a water quality standard of any kind. The rules will provide clearer variance procedures for regulated parties, and consistency in the state's variance rules and with applicable federal requirements for approving variances, resulting in improved efficiency in processing variance requests. The proposed rule changes for the three rule chapters are summarized below.

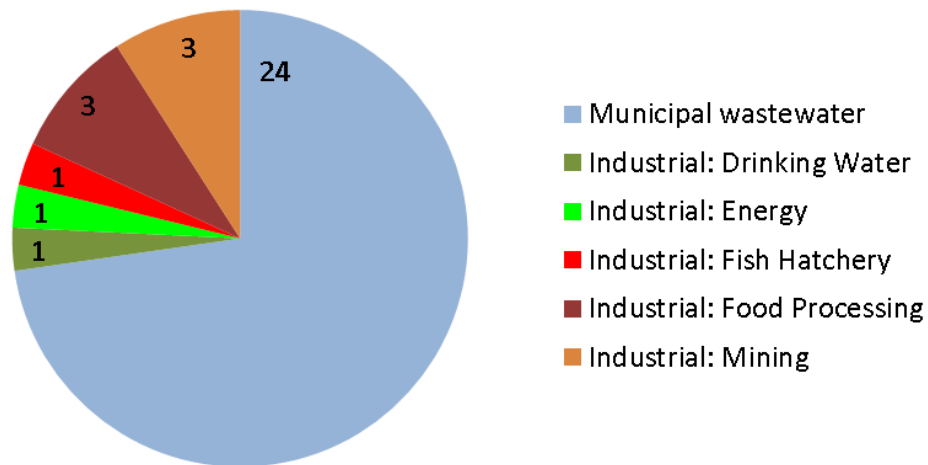
- Applicability – a permittee must meet certain conditions to be eligible for a variance.
- Conditions for approval – a water quality standards variance must be submitted to and approved by EPA before it can become effective; a permittee must demonstrate that attaining the water quality standard is not feasible based on certain conditions.
- Submittal and notice – a variance application submittal and public notice of the MPCA preliminary determination to grant a variance must conform to procedural rules for variances.
- Final decision – on a variance must conform to procedural rules for variances; certain variance terms and conditions must be included in permit.
- Renewal – of a variance has the same requirements as the initial variance request.
- Term and expiration – a variance may be granted for any period of time up to 10 years, but must expire in no more than 10 years; the equivalent of two permit terms.
- Public notice and review – of variances every three years consistent with triennial review of water quality standards. The notice must state the public may submit new information relevant to the variances on notice; the MPCA will consider the information in its review for renewal of the variance.

As noted above, a goal of this rulemaking is to have Minnesota's rules conform, where appropriate, to the federal requirements. On August 21, 2015, the EPA published final Water Quality Standard (WQS) Rules, which include requirements for WQS variances. These final federal rules for WQS variances are compatible with the proposed state rules in many areas; however, there are some differences and MPCA is currently working with EPA to better understand the final federal rules and to determine whether the proposed rules will need to be modified.

## Variance history

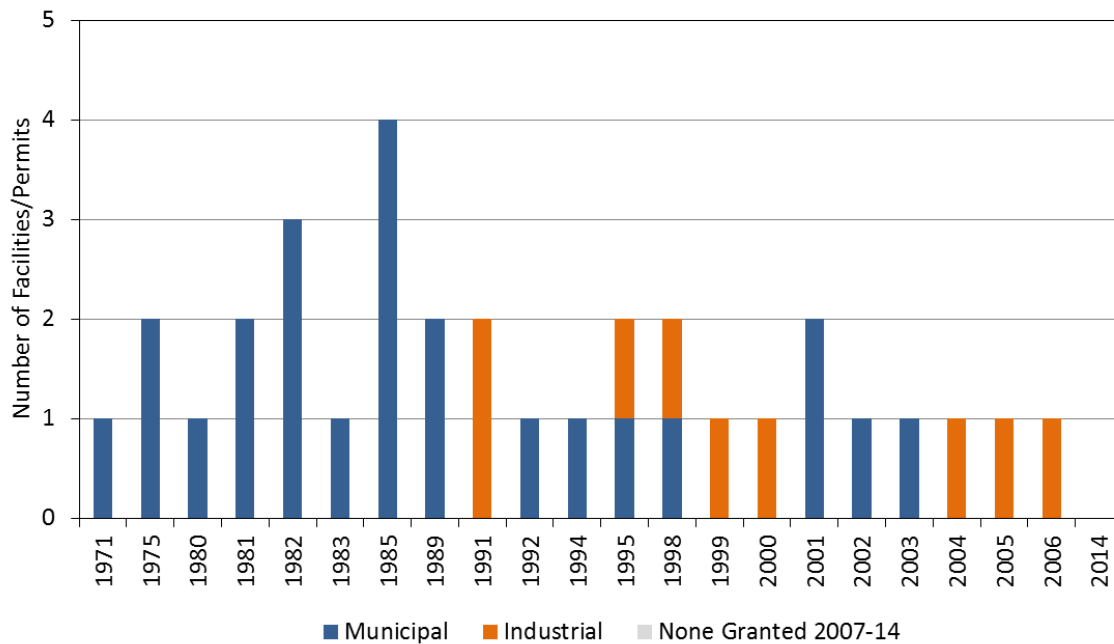
Under the Clean Water Act the MPCA implements water quality variances through its discharge permit program. Permittees discharging wastewater include municipal wastewater facilities such as publicly owned wastewater treatment facilities and facilities with industrial operations that use water and produce a wastewater. These include, but are not limited to, mining operations, cooling tower discharges, and food manufacturers. With new water quality standards developed by EPA and MPCA, an increase in municipal need for variances (e.g. chloride standard) is expected as limits in permits will be difficult for permittees to meet.

### Number of Facilities with Variances Granted\* (1971-2014)



\*Data are based on all variances granted, some of which later expired or were renewed.

### Variance Requests Granted\* (1971-2014)



\*Data are based on all variances granted, some of which later expired or were renewed.

### Variance Requests by Number Since 1971

Requests received from facilities	56
Requests denied by MPCA	5
Requests withdrawn by permittee	17
Requests granted by MPCA and approved by EPA	33
Expired variances	29
Total active variances (to date): Cliffs Erie-Dunka Mining, Maple Hill Estates, United Taconite LLC-Thunderbird Mine, Southern MN Beet Sugar-Renville	4