



Draft Amended Rules for Water Quality Variances – Frequently Asked Questions

Why are the rules being revised?

The rules are being revised to address inconsistencies in the state water quality variance rules and to better align the rules that govern variances with applicable federal requirements for variances. This will reduce delay in the US Environmental Protection Agency (EPA) approval of variances and subsequent Minnesota Pollution Control Agency (MPCA) permit issuance, saving the permittee time and money.

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. The proposed rule amendments address these differences and provide 1) clearer variance procedures for regulated parties, 2) consistent application of the state water quality variance rules and applicable federal requirements, and 3) improved efficiencies in the MPCA's processing of variance requests.

What is EPA's role in variances?

Federal rules allow states to adopt variance provisions in their water quality standards and grant variances based on those provisions. The EPA must approve state's water quality standards variances and variance rules. Variance rules allow states to maintain the water quality standards as goals and assure compliance with the Clean Water Act, while granting temporary relief to the permittee under appropriate circumstances.

What is MPCA's role in variances?

The MPCA has the authority to make the final decision on water quality standard variance applications and to approve or deny each variance application (See *Minnesota Rules* chapter 7000). If the MPCA makes the final decision to grant the variance, the variance must then be approved by EPA.

Water quality standards variances are granted by the MPCA under chapters 7050 and 7052; these variances must be submitted to and approved by EPA. Variances from state discharge restrictions are granted by the MPCA under chapter 7053 and do not require EPA approval.

What are the opportunities for public participation?

There is an extensive process for inviting public comment during rulemaking. For these rules, the MPCA public noticed two separate Requests for Comments, met with commenters to discuss their comments, held a stakeholder meeting and invited public comment on the preliminary draft rules, and communicated with interested parties during rule development. The preliminary draft rules were revised based in part on comments received.

There is additional opportunity for public comment when the proposed rule amendments are placed on public notice. If a hearing on the proposed rules is held, the public will have an opportunity to participate and can present their views on the proposed rules either orally at the hearing or in writing.

This rulemaking is largely the result of the MPCA process improvement project that was conducted for water quality variances. The project team of internal and external stakeholders identified that the existing water quality variance rules were not clear or consistent and needed to be amended.

Are the proposed rules more stringent than the existing variance rules?

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 water quality variance rules and with applicable federal requirements for approving variances.

When will variances be reviewed?

The MPCA will place a list of variances currently in effect on public notice every three years; this is consistent with the triennial review of water quality standards. The public may submit new information relevant to the variances on notice. This is important because the conditions under which a variance has been approved can change over time, and the public may become aware of such changes sooner than the MPCA. Receiving new information it may not have otherwise obtained assists the MPCA in its review of variances.

The variance process and permitting process are related. The request for a variance to a water quality standard is associated with a particular discharge and the National Pollutant Discharge Elimination System (NPDES) permit for the discharge. For this reason, the review of variances is tied to the permit cycle. A variance is not automatically reissued when the term of the variance expires. The permittee must reapply for the variance and meet the same requirements as an initial variance request. The MPCA will review the variance if the permittee requests a renewal of the variance, including any new information submitted by the public.

Will a variance expire on a given date or with the permit?

The variance expiration date will align with the date the variance is approved by EPA. This date will be placed in the permit and become a permit requirement.

What if a variance extends for more than one permit term?

Because variances are temporary, the proposed rules specify a finite period during which a variance may be implemented. Variances may be granted for up to five years under the chapter 7052 rules for the Lake Superior Basin, and up to 10 years under the chapter 7050 and 7053 rules that apply to the rest of the state. Variances must expire no later than 10 years.

The EPA proposed new federal rules for variances in September 2013, and proposed that a variance term not exceed 10 years. NPDES permits expire after five years, so the proposed rule would allow the permittee two permit terms, if needed, during which a variance would apply.

When a permit is being reviewed for reissuance, the MPCA also reviews any variance associated with the permit. These two reviews go hand in hand because the status of the variance will impact the permit limits. Variances are implemented through the variance terms and conditions included in the permit. The term of the variance should align with permit timelines to provide continuity in the permit reissuance and variance review process.

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 Rules, which include requirements for water quality standards variances. These final federal rules for water quality standards variances are compatible with the proposed state rules in many areas; however, there are some differences. 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.