

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

1.4 **Subpart 1. Applicability.** A variance under this part is a temporary change in a
1.5 state water quality standard for a specified pollutant that reflects the highest attainable
1.6 conditions for a permittee during the term of the variance. This part applies to variance
1.7 requests from individual point source discharges to surface waters of the state for any
1.8 water quality-based effluent limit based on a water quality standard of this chapter that is
1.9 included in a permit. To be eligible for a water quality standards variance, the permittee
1.10 must demonstrate to the agency that the permittee has met the following conditions:

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

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

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

1.21 **Subp. 2. Listing.** The agency shall advise the United States Environmental
1.22 Protection Agency of variances granted by the agency under this part, together with
1.23 information as to the need for the variance. By October 1 each year, the commissioner
1.24 shall prepare a list of the variances currently in effect and approved by the United States
1.25 Environmental Protection Agency or granted by the agency under part 7053.0195. The
1.26 list must be available for public inspection and must be provided to the United States

2.1 Environmental Protection Agency. The list must identify the person that received the
2.2 variance, the rule from which the variance was granted, the water body affected, the
2.3 year approved by the United States Environmental Protection Agency or granted by the
2.4 agency under part 7053.0195, the date the variance expires, and any restrictions that apply
2.5 in lieu of the rule requirement.

2.6 Subp. 3. [See repealer.]

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

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

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

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

2.20 (3) human-caused conditions or sources of pollution prevent attainment of
2.21 water quality standards, and the conditions or sources cannot be remedied or would cause
2.22 more environmental damage to correct than to leave in place;

2.23 (4) dams, diversions, or other types of hydrologic modifications preclude
2.24 attainment of water quality standards, and it is not feasible to restore the water body to its

3.1 original condition or to operate the modification in a way that would result in attainment
3.2 of the water quality standard;

3.3 (5) physical conditions related to the natural features of the water body,
3.4 such as the lack of a proper substrate cover, flow, depth, pools, riffles, and the like,
3.5 unrelated to chemical water quality, preclude attainment of ~~water quality standards~~ aquatic
3.6 life protection uses; or

3.7 (6) controls more stringent than those required under sections 301(b) and
3.8 306 of the Clean Water Act, United States Code, title 33, sections 1311(b) and 1316,
3.9 would result in substantial and widespread negative economic and social impacts;

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

3.11 C. characterize the extent of any increased risk to human health and the
3.12 environment associated with granting the variance, such that the agency is able to
3.13 conclude that any increased risk is consistent with the protection of the public health,
3.14 safety, and welfare; and

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

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

3.21 **Subp. 6. Agency final decision; variance requirements.** The agency must make a
3.22 final decision regarding the variance request that conforms to the procedural requirements
3.23 in part 7000.7000. The agency must hold at least one meeting that meets the minimum
3.24 public participation requirements in Code of Federal Regulations, title 40, section 25.5,
3.25 before the agency makes a final decision on the variance request. If the agency grants the

4.1 variance and the variance is approved by the United States Environmental Protection
4.2 Agency, the permit issued by the agency must include and incorporate the following
4.3 variance terms and conditions:

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

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

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

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

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

4.16 **Subp. 8. Term and expiration.** The terms and conditions of a water quality
4.17 standards variance are included and incorporated in the permit issued by the agency. The
4.18 term of a variance must be as short as possible but must expire no later than ten years after
4.19 the United States Environmental Protection Agency approval date of the variance. only be
4.20 as long as necessary to achieve the highest attainable condition. For a variance with the
4.21 term greater than five years, only if requested in writing by the permittee, the agency shall
4.22 reevaluate the variance every five years in accordance with Code of Federal Regulations,
4.23 title 40, section 131.14 (b)(1)(v) and (vi), as provided by the Federal Register, volume
4.24 80, page 51048. If the permittee does not request a reevaluation, the variance expires at
4.25 the end of the five-year period.

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

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

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

5.11 **7052.0280 VARIANCES FROM WATER QUALITY STANDARDS.**

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

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

5.23 B. standards will not be attained by implementing effluent limitations required
5.24 under sections 301(b) and 306 of the Clean Water Act, United States Code, title 33,
5.25 sections 1311(b) and 1316, and by the permittee implementing cost-effective and

6.1 reasonable best management practices for nonpoint sources under the permittee's control
6.2 as established under state authority; and

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

6.4 Subp. 2. **Term.** A variance must not exceed five years or the term of the permit,
6.5 whichever is less.

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

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

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

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

6.20 (3) human-caused conditions or sources of pollution prevent the attainment
6.21 of water quality standards and cannot be remedied, or would cause more environmental
6.22 damage to correct than to leave in place;

6.23 (4) dams, diversions, or other types of hydrologic modifications preclude
6.24 the attainment of water quality standards, and it is not feasible to restore the water body

7.1 to its original condition or to operate the modification in a way that would result in
7.2 attainment of the water quality standard;

7.3 (5) physical conditions related to the natural features of the water body,
7.4 such as the lack of a proper substrate cover, flow, depth, pools, riffles, and the like,
7.5 unrelated to chemical water quality, preclude attainment of water quality standards; or

7.6 (6) controls more stringent than those required under sections 301(b) and
7.7 306 of the Clean Water Act, United States Code, title 33, sections 1311(b) and 1316, would
7.8 result in substantial and widespread economic and social impact;

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

7.10 C. characterize the extent of any increased risk to human health and the
7.11 environment associated with granting the variance, such that the agency is able to
7.12 conclude that any increased risk is consistent with the protection of the public health,
7.13 safety, and welfare; and

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

7.17 **Subp. 4. Submittal and notice requirements.** Variance application submittal,
7.18 public notice of the agency's preliminary determination to grant the variance, and notice
7.19 requirements must conform to part 7000.7000.

7.20 **Subp. 5. Agency final decision; variance requirements.** The agency must make a
7.21 final decision regarding the variance request that conforms to the procedural requirements
7.22 in part 7000.7000. The agency must hold at least one meeting that meets the minimum
7.23 public participation requirements in Code of Federal Regulations, title 40, section 25.5,
7.24 before the agency makes a final decision on the variance request. If the agency grants the
7.25 variance and the variance is approved by the United States Environmental Protection

8.1 Agency, the permit issued by the agency must include and incorporate the following
8.2 variance terms and conditions:

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

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

8.9 C. an effluent limitation sufficient to meet the underlying water quality standard;

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

8.12 E. for BCCs, a GLI pollutant minimization program consistent with part
8.13 7052.0250, subpart 4.

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

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

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

9.1 **7053.0195 VARIANCE FROM DISCHARGE EFFLUENT LIMITS OR**
9.2 **TREATMENT REQUIREMENTS.**

9.3 **Subpart 1. Applicability.** A variance under this part is a temporary change in a
9.4 discharge effluent limit or treatment requirement for a specified pollutant that reflects the
9.5 highest attainable conditions for a permittee during the term of the variance. This part
9.6 applies to variance requests from individual point source discharges to surface waters of
9.7 the state for any provision of this chapter that is included in a permit. To be eligible for
9.8 a variance from a discharge effluent limit or treatment requirement, the permittee must
9.9 demonstrate to the agency that the permittee has met the conditions specified in part
9.10 7050.0190, subpart 1, items A to C.

9.11 **Subp. 2. Listing.** The agency shall advise the United States Environmental
9.12 Protection Agency of variances granted by the agency under this part, together with
9.13 information as to the need for the variance. The agency must list all variances as required
9.14 in part 7050.0190, subpart 2.

9.15 **Subp. 3. [See repealer.]**

9.16 **Subp. 4. Conditions for approval.** To be eligible for a preliminary determination by
9.17 the agency to grant the variance, the permittee must meet the conditions specified in part
9.18 7050.0190, subpart 4, ~~except the requirement to submit the variance to the United States~~
9.19 ~~Environmental Protection Agency for approval does not apply to variances granted by~~
9.20 ~~the agency under this part items A to D.~~

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

9.24 **Subp. 6. Agency final decision; variance requirements.** The agency must make a
9.25 final decision regarding the variance request that conforms to the procedural requirements
9.26 in part 7000.7000. If the agency grants the variance, the permit issued by the agency

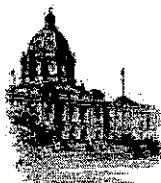
10.1 must include and incorporate the terms and conditions of the variance specified in part
10.2 7050.0190, subpart 6.

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

10.5 Subp. 8. **Term and expiration.** The terms and conditions of a variance from a
10.6 discharge effluent limit or treatment requirement are included and incorporated in the
10.7 permit issued by the agency. The term of a variance must ~~be as short as possible but~~
10.8 ~~must expire no later than ten years after the date the agency grants the variance. only be~~
10.9 ~~as long as necessary to achieve the highest attainable condition. For a variance with the~~
10.10 ~~term greater than five years, only if requested in writing by the permittee, the agency shall~~
10.11 ~~reevaluate the variance every five years in accordance with Code of Federal Regulations,~~
10.12 ~~title 40, section 131.14 (b)(1)(v) and (vi), as provided by the Federal Register, volume~~
10.13 ~~80, page 51048. If the permittee does not request a reevaluation, the variance expires at~~
10.14 ~~the end of the five-year period.~~

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

10.19 **REPEALER.** Minnesota Rules, parts 7050.0190, subpart 3; and 7053.0195, subpart
10.20 3, are repealed.



OFFICE OF THE REVISOR OF STATUTES

Minnesota Legislature

Cindy K. Maxwell, Senior Assistant Revisor

July 28, 2016

Mary Lynn
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155
RE: File No. 4136

Dear Mary:

Enclosed are three copies of your rule with the modifications you requested.

Please submit the rules to the Office of Administrative Hearings.

If you have any questions or need further modifications, please call me.

Please use the revisor file number on all rulemaking documents and all communications with the governor's office.

Sincerely,

Cindy K. Maxwell

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