

Water Quality Standards Variance Building Tool – Frequently Asked Questions

What is this tool?

The Water Quality Standards (WQS) Variance Building Tool is an implementation support tool intended to facilitate the use of WQS variances. A WQS variance is a time-limited designated use and criterion for a specific pollutant(s) or water quality parameter(s) that reflects the highest attainable condition during the term of the variance. State, territorial, or authorized tribal (hereafter referred to as “state or authorized tribe”) adoption and United States Environmental Protection Agency (EPA) approval of a WQS variance provides a regulatory mechanism to allow progress toward attaining a designated use and criterion that is not currently attainable. The WQS Variance Building Tool guides the user through a series of questions that result in the creation of draft regulatory language a state or authorized tribe can use as a starting point to develop and adopt a WQS variance consistent with [40 CFR Part 131.14](#).

What information do I need to use this tool?

The WQS Variance Building Tool guides the user through the necessary steps to develop the type of WQS variance that is appropriate for their particular water quality challenge. Below is a list of questions to help the user assemble the information they will need to use the WQS Variance Building Tool:

- **Currently Applicable Designated Uses** - What is the currently applicable designated use for the waterbody/waterbody segment to which the WQS variance will apply?
- **Pollutant(s) or Parameter(s)** - What is(are) the pollutant(s) or water quality parameter(s) to which WQS variance will apply?
- **Currently Applicable Criterion** - What is the currently applicable criterion for the pollutant(s) or water quality parameter(s)?
- **Location** - Where are the waterbodies or waterbody segments that will be subject to the WQS variance? Can the state or authorized tribe identify all of the waterbodies or waterbody segments at the time the WQS variance is adopted?
- **NPDES Discharger Information** - Does the state or authorized tribe expect the WQS variance to apply to one or more than one specific discharger? What is/are the National Pollutant Discharge Elimination System (NPDES) permit number(s) for the discharger(s)? Can the state or authorized tribe identify all of the dischargers at the time the WQS variance is adopted?
- **Attainability Challenges** - Why is the designated use not attainable? Does it differ depending on the discharger, or if there are multiple dischargers involved?
- **What is the Best Condition That Can Be Attained** - What is the highest attainable condition (i.e., the condition of the waterbody or effluent that is both feasible to attain and is closest to the protection afforded by the underlying designated use and criteria)? How long might it take to achieve that highest attainable condition?

- **Authorization to Use Permit Compliance Schedules** - Does the state or authorized tribe have an EPA-approved permit compliance schedule authorizing provision in their regulations in the event a permittee may need a permit compliance schedule?

Am I required to use this tool to create a WQS variance?

No. EPA developed this WQS Variance Building Tool to help states and authorized tribes develop and adopt WQS variances that meet the requirements of federal regulations. Use of this WQS Variance Building Tool is optional, but it is important to note that using it does not guarantee EPA approval of the WQS variance.

Will this tool change the requirements for a WQS variance submission?

No. EPA designed this WQS Variance Building Tool consistent with the federal requirements to show states and authorized tribes, in a user-friendly format, what they must include in a WQS variance submission to EPA. It does not add to, substitute for, or alter the requirements in 40 CFR Part 131.14 or any other federal requirements.

Is the draft regulatory language created by this tool the only thing that must be submitted to EPA?

No. The draft regulatory language created by this tool is intended as a starting point for the state or authorized tribe to engage in discussions with EPA and stakeholders before adopting the WQS variance into state or authorized tribal regulations. States and authorized tribes may tailor the draft regulatory language to include additional information that more accurately captures the case-specific facts of the individual WQS variance or fits a desired format as long as all federal requirements are met. The state or authorized tribe can then adopt the WQS variance and submit it, along with all necessary supporting documentation, to EPA for Clean Water Act (CWA) Section 303(c) review. EPA recommends using the [“Checklist for Water Quality Standards Variance Supporting Documentation Requirements”](#) to determine what supporting documentation is required for each WQS variance.

When should I engage in discussions with EPA about a WQS variance?

EPA strongly recommends that a state or authorized coordinate with its EPA Regional office early and often throughout the WQS variance process. Coordination with EPA will provide the best chance that the WQS variance submission meets the requirements of the CWA and EPA’s regulations

Do I need to consider downstream WQS when adopting a WQS variance?

Yes. By design, a WQS variance reflects the highest attainable condition and associated criteria. EPA recognizes that the water quality associated with the highest attainable condition and associated criteria may still cause or contribute to an impact downstream during the time period of the WQS variance. However, since a WQS variance establishes a timing mechanism to ensure feasible progress is made to improve water quality towards meeting the underlying designated use and criteria, a WQS variance is expected to only result in improving water quality over time and lessening any adverse impact to downstream WQS. EPA recommends coordinating with your EPA regional office to ensure the WQS variance does not conflict with downstream WQS.

Are other implementation support materials available or under development for WQS variances?

Yes. EPA has posted the [“Checklist For Evaluating State Submission Of Discharger-Specific Water Quality Standards Variances”](#) and the FAQ [“Discharger-specific Variances on a Broader Scale: Developing Credible Rationales for Variances that Apply to Multiple Dischargers.”](#) EPA will also update its WQS Handbook to include a chapter on WQS variances.