United States Environmental Protection Agency

Office of Water
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Water Quality Standards Variance Building Tool – Example Template

DISCLAIMER: This tool does not impose legally binding requirements on the United States Environmental Protection Agency (EPA), states, territories, authorized tribes, or the regulated community, nor does it confer legal rights or impose legal obligations upon any member of the public. The Clean Water Act (CWA) provisions and EPA regulations described in the tool contain legally binding requirements. This tool does not constitute a regulation, nor does it change or substitute for any CWA provision or EPA regulations. This tool is a living document and may be revised periodically without public notice.

This tool populates draft regulatory language that is intended for states, territories, and authorized tribes to use as a starting point to customize their own legally binding water quality standards (WQS) variance. It also provides a list of the additional information that must be documented and submitted to EPA to support the WQS variance. The supporting documentation required may change depending on the type of WQS variance identified. The use of this tool and resulting draft regulatory language does not guarantee EPA approval. EPA encourages early and frequent coordination between a state, territory, or authorized tribe and EPA to provide the best chance that the submission meets the requirements of the CWA and regulation.

About this template:

The following regulatory language template will be populated by the WQS Variance Building Tool if the state, territory, or authorized tribe indicates that the WQS variance will apply to a single discharger. EPA intends this template, as well as all templates populated by the WQS Variance Building Tool, to serve as a regulatory framework for the state, territory, or authorized tribe to use as a starting point when drafting a legally binding WQS variance. States, territories, 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 final regulatory language can then be adopted and submitted, along with all necessary supporting documentation, to EPA for CWA Section 303(c) review.

Page 2 of this document contains the regulatory language template populated with example language in **bold**. The WQS Variance Building Tool will record the responses provided by the state, territory, or authorized tribe and populate the template accordingly.

The **State** hereby adopts a Water Quality Standards (WQS) variance for **Company A (NP-6738619) discharging to Blue Lake**. This WQS variance is for the **dissolved copper** criterion, expressed as **a chronic freshwater aquatic life criterion of 18.0 µg/L**, and the associated **cold water aquatic life use**, and only applies to the specified discharger and waterbody/waterbody segment in this WQS variance. The **State** adopts this WQS variance based on its findings, justifying the need for a WQS variance consistent with the requirements of 40 CFR Part 131.14. [*When submitting your WQS variance, be sure to provide supporting documentation to justify the need for the WQS variance consistent with 40 CFR Part 131.14(b)(2)(i)*]. This WQS variance expires **on March 1, 2025**. [*When submitting your WQS variance, be sure to provide supporting documentation to describe the actions that will occur during this timeframe to justify the duration of the WQS variance consistent with 40 CFR Part 131.14(b)(2)(ii)*].

A WQS variance is a time-limited designated use and criterion that reflects the highest attainable condition during the term specified in this WQS variance. This WQS variance will be the applicable water quality standard in effect for the purposes of developing CWA Section 301(b)(1)(C) National Pollutant Discharge Elimination System (NPDES) permit limits. The WQS variance may also be used for purposes of CWA Section 401 certifications. The underlying designated use and associated criterion remain applicable for all other CWA purposes, and all other uses and associated criteria not specified in this WQS remain applicable for all CWA purposes.

The interim requirements applicable throughout the term of this WQS variance represent the **interim effluent condition that reflects the greatest pollutant reduction achievable with optimization (i.e., well operated and maintained) of the pollutant control technologies installed at the time the state or authorized tribe adopts the WQS variance, and the adoption and implementation of a Pollutant Minimization Program (PMP)**. These interim requirements are expressed as **a weekly average dissolved copper discharge concentration of 24.0 µg/L using current pollutant control technologies installed and implementation of the Pollutant Minimization Program described at Surface Water Quality Standards §100.123.456**. **In addition to requiring that the discharger meet the permit limits for copper, the permit requires that the facility make reasonable progress toward achieving the underlying copper WQS by implementing a PMP to identify and eliminate sources of copper. The facility plans to do the following actions during the next permit term: 1) conduct copper sampling, including methodically conducting testing starting at Outfall 005 and working backward, 2) develop copper reduction alternatives, including considering alternative raw materials, continued improvements in operation practices, and alternative processes (e.g. boiler makeup and wastewater recycling), and 3) monitor and assess implementation of copper reduction alternatives.** The applicable interim requirements of this WQS variance are either the highest attainable condition adopted in this WQS variance or the highest attainable condition later identified during any reevaluation of this WQS variance conducted as specified in the paragraph below, whichever is more stringent.

The **State** shall reevaluate the highest attainable condition of this WQS variance, using all existing and readily available information, **every 5 years from EPA approval**, and will submit the results of the reevaluation to the EPA within 30 days of completion of the reevaluation.

If the **State** does not complete a reevaluation at the frequency specified in this rule, or does not submit to the EPA the results of the reevaluation within 30 days of completion of the reevaluation, the WQS variance will no longer be the applicable water quality standard until the **State** completes and submits the reevaluation to the EPA. The **State** intends to obtain public input on the reevaluation by **holding public meetings, opening a public comment period no less than 30 days prior to the date of the hearing, and providing access to all relevant documentation and analyses to the public throughout the full public comment period**.