

Public Scoping Meeting

WATER QUALITY STANDARDS VARIANCE POLICY

January 23, 2017 – Sacramento

Purpose

- * Provide a forum to consult with the public on a proposal to include reference to the federal water quality standards variance, referred to as the Variance Policy
- * To seek input from public agencies and members of the public on the range of any project actions, alternatives, reasonably foreseeable methods of compliance, significant impacts to be analyzed, cumulative impacts in any, and mitigation measures.

History

- * A bacterial variance was initially presented as part of the overall REC-1 bacteria objectives project at scoping meetings on January 28, 2015 and February 10, 2015.
- * Now proposing to assert in a statewide water quality control plan that the Water Boards may adopt a water quality standards variance in accordance with existing federal regulation (40 C.F.R. sections 131.3(o) and 131.14).

Current status

- * With the exception of the Central Valley, the Regional Water Quality Control Boards (Regional Water Boards) in California have not adopted general variance policies.
- * There is a mechanism for establishing compliance exceptions for priority pollutants within the State Implementation Policy (SIP) but it is limited in scope and application.

Goal

- * To identify and define a consistent statewide mechanism for establishing a water quality standards variance within the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries (ISWEBE) and the California Ocean Plan.

Non-Regulatory

- * Simply would identify in a statewide plan that federal law authorizes states to adopt variances in accordance with the requirements contained in 40 CFR section 130.14.

Variance Policy

- * 40 CFR section 131.3(o) defines a water quality standards variance as “a time-limited designated use and criterion for a specific pollutant(s) or water quality parameter(s) that reflect the highest attainable conditions during the term of the water quality standard variance.”
- * A water quality variance is subject to the provisions of 40 C.F.R. Part 131.14.
- * The provisions note the applicability, requirements for submission to U.S. EPA, and how water quality standards variances are implemented within NPDES permits

40 CFR 131.14

Variance Applicability

- * Adopted for a specified permittee(s), and/or waterbody or waterbody segments
- * State must retain the underlying designated use and criterion addressed by the variance unless the State adopts and EPA approves a designated use and criterion revision.
- * Applicable to NPDES permits and 401 water quality certifications.
- * Standard must not be achievable by implementing technology based effluent limits.

40 CFR 131.14

Discharger Specific Variance

- * Reflects the highest attainable condition during the specified time period.
- * Technology-based limits and all other water quality standards apply
- * Pollutant Minimization Program is required
- * Must be adopted by the Water Boards and is subject to public review.
- * Must be reviewed and approved by U.S. EPA

40 CFR 131.14

Waterbody Specific Variance

- * The same as requirements for dischargers except:
- * Expression of the highest attainable condition as an interim use and criterion.
- * Identification and documentation of best management practices for nonpoint source control that could be implemented.

40 CFR 131.14

Supporting Documentation

- * Justification for adopting the variance
 - * For CWA 101(a)(2) uses, at least one of the six factors listed in 40 CFR 131.10(g), or to facilitate restoration or reconfiguration activities
 - * For non 101(a)(2) uses, demonstration that the use and value was considered.
- * Justification of the term
 - * Only as long as necessary to achieve highest attainable condition

Alternatives

Statewide Water Quality Standards Variance Policy

- * No Action (status quo). The Water Boards would continue to adopt variances in accordance with 40 C.F.R. section 131.14 but there would be no clear identification of this option within a statewide plan.
- * **Include the “variance policy” in a statewide plan which identifies that Water Boards may adopt a variance based on 40 C.F.R. 131.14.**

Reasonable Methods of Compliance

- * Individual variances would analyze project alternatives and reasonable methods of compliance as part of the environmental analysis conducted during development.
- * Subject to public participation consistent with State and Federal Law.
- * Requires Water Board adoption and U.S. EPA approval.

Impacts and Mitigation

- * Impacts are thought to be none because water quality standards variances maintain the highest attainable use and all standards would continue to apply while progress is made towards achieving the specific standard at issue.

Comments

- * Written comments will be accepted until Noon on February 3, 2017
- * Addressed to:
 - Jeanine Townsend, Clerk to the Board
 - State Water Resources Control Board
 - 1001 I Street, 24th Floor
 - Sacramento, CA 95814

Comments

- * Comments letters may be submitted by email to commentletters@waterboards.ca.gov
- * Must be less than 15 megabytes in total size
- * Or by fax at (916) 341-5620
- * Note in subject line “Comment Letter – Statewide Variance Provision – Scoping Comments”

Timeline

- * Initial Focus Group Outreach – April 2014 – July 2014
- * Variance Scoping Document & Meeting – January 2017
- * Draft Staff Report – April 2017
- * Public Comment Period – April - June 2017
- * Staff Public Workshop – April 2017
- * Public Hearing – May 2017
- * Comment Response – June - August 2017
- * Board Adoption – September 2017

Applicable Websites

State Water Board website:

<http://www.waterboards.ca.gov/bacterialobjectives/>

U.S.EPA 2012 criteria and other information:

<http://water.epa.gov/scitech/swguidance/standards/criteria/health/recreation/>

40 C.F.R. Section 131.14:

https://www.law.cornell.edu/cfr/text/40/131.14?qt-cfr_tabs=1

Contacts

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- * Fresh Waters

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