

INFORMATIONAL DOCUMENT

Public Scoping Meeting for the Proposed Statewide Water Quality
Standards Variance Policy

January 23, 2017

DIVISION OF WATER QUALITY
STATE WATER RESOURCES CONTROL BOARD
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

Introduction

The State Water Resources Control Board (State Water Board) is proposing to establish a statewide water quality standards variance policy (Variance Policy). The Variance Policy will be included in a proposal to establish statewide numeric bacteria objectives for the water contact recreation (REC-1) beneficial use and implementing provisions (Bacteria Provisions). The combined proposals will be included in a statewide water quality control plan titled, "Part 3 of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California—Establishing Bacteria Provisions and a Variance Policy." State Water Board staff held two scoping meetings for the Bacteria Objectives in 2015.

On August 21, 2015, U.S. Environmental Protection Agency's (U.S. EPA) water quality standards regulation was published in the Federal Register (80 FR 51010). The final rule is contained in 40 Code of Federal Regulations (40 C.F.R.) part 131. One element of the final rule addresses water quality standards variances, at 40 C.F.R. section 131.14. The rule related to the water quality standards variances establishes an explicit regulatory framework for the adoption of water quality standards variances that states may use. The rule explicitly authorizes the use of water quality standards variances, provides requirements to ensure variances are used appropriately, and provides a mechanism for states to work with stakeholders and assure the public that the variances facilitate progress toward attaining designated uses.

The Variance Policy would authorize the State Water Board and the Regional Water Quality Control Boards (Regional Water Boards) to adopt a water quality standards variance consistent with federal regulation.

This document presents the purpose and initial scope of the proposed Variance Policy to seek input on the scope and content of the environmental information that should be included in the draft substitute environmental documentation (SED) being prepared to support the Variance Policy.

Background

The Clean Water Act directs states, with oversight by the U.S. EPA, to adopt water quality standards to protect the public health and welfare, enhance the quality of water, and serve the purposes of the Clean Water Act. States' water quality standards consist of: (1) designated uses for all water bodies within their jurisdictions, (2) water quality criteria (referred to as water quality objectives under California law) sufficient to protect designated uses, and (3) an antidegradation policy. States are also required to review their water quality standards once every three years and, as appropriate, modify and adopt new water quality standards. The results of a state's triennial review must be submitted to U.S. EPA for approval. Clean Water Act section 303(c) directs U.S. EPA to promulgate water quality standards if it disapproves a state-submitted water quality standard, or if it has determined that a new or revised water quality standard is needed.

40 C.F.R. 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 establish an explicit regulatory framework for the adoption of water quality standards variances, including the applicability, requirements for submission to U.S. EPA, and how water quality standards variances are implemented within NPDES permits.

Issue Description

There is a need to identify and define the consistent statewide mechanism for establishing a water quality standards variance. With the exception of the Central Valley, the Regional Water Boards have not adopted general variance policies. The Variance Policy would be contained in the Statewide Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California (the ISWEBE Plan) and would authorize the Regional Water Boards to adopt water quality standards variances in accordance with requirements outlined in 40 C.F.R. section 131.14. The Variance Policy would establish a consistent procedure for adopting variances across the Regional Water Boards and alleviate the need of each board from having to amend their respective water quality control plan to provide such rulemaking authority.

Proposed Variance Policy

F. Water Quality Standards Variances

The WATER BOARDS may adopt a water quality standards VARIANCE, as defined by 40 Code of Federal Regulations section 131.3(o). A VARIANCE is subject to public participation requirements applicable to the revision of a water quality standard, and is subject to U.S. EPA review and approval. A VARIANCE may be adopted on a case-by-case basis in accordance with the requirements of 40 Code of Federal Regulations section 131.14.

A VARIANCE may be adopted for a permittee(s) or water body/waterbody segment(s), but only applies to the permittee(s) or water body/waterbody segment specified in the VARIANCE.

A VARIANCE from applicable water quality standards may be allowed in certain cases where the appropriateness of the specific water quality objective is questionable. A VARIANCE from a water quality objective will be allowed for anticipated non-attainment of water quality standards due to one or more of the reasons listed in 40 Code of Federal Regulations section 131.10(g) (use-attainability factors).

A VARIANCE, from a water quality objective shall be for the specific pollutant(s) and time-limited. VARIANCES are to be adopted instead of removing a designated beneficial use for a water body where such use is not now attainable but can be expected to be attainable with reasonable progress towards improving water quality. Accordingly, the underlying beneficial use and water quality objective addressed by the VARIANCE shall be retained unless the WATER BOARDS adopt and U.S. EPA approves a revision to the underlying water quality standard. All other applicable water quality standards not specifically addressed by the VARIANCE remain applicable.

A VARIANCE once adopted by the WATER BOARDS and approved by U.S. EPA, shall be the applicable water quality standard for the limited purpose of developing NPDES permit limits and requirements under section 301(b)(1)(C) of the Clean Water Act and for certifications issued under section 401 of the Clean Water Act. A VARIANCE may not be adopted if the beneficial use and water quality objective addressed in the VARIANCE can be achieved by implementing technology-based effluent limits required under section 301(b) and 306 of the Clean Water Act.

Proposed definition to be added to the ISWEBE Plan Glossary

VARIANCE: A water quality standards variance as defined by 40 Code of Federal Regulations section 131.3(o), is a time-limited designated use and criterion for a specific pollutant(s) or water quality parameter(s) that reflect the highest attainable condition during the term of the water quality standards variance.