

Clean Water Act Variances

QUESTION

The following question was emailed to members of the NACWA Legal Affairs Committee on April 8, 2008:

“We are writing to you as a member of NACWA’s Legal Affairs Committee with a request for information from a NACWA public agency member, who requested assistance with the following questions regarding variances:

1. Does your state allow variances from water quality standards for individual permittees?
2. If so, could you please provide the citation of the applicable statutory/regulatory provision?
3. If so, who grants or approves variance requests?”

RESPONSES

The following responses were received from members of the Committee, organized by state:

Kentucky: Kentucky has a provision for case-by-case exceptions to water quality criteria at 401 KAR 5:031 Section 11.

Georgia: Georgia does allow variances as outlined in OCGA § 12-5-23 (a)(1)(i) and Ga. Rules and Regs. r. 391-3-6-.03 (f). The Director of the Environmental Protection Division within the Department of Natural Resources is in charge is reviewing variance requests.

North Carolina: North Carolina does allow variances from water quality standards for individual permittees, pursuant to N.C. Gen. Stats. 143-215.2 and 143-215.3. The variance, if the standard is included in an NPDES Permit, is issued by the NPDES Committee of the Environmental Management Commission, a citizen body within the North Carolina Department of Environment and Natural Resources.

Ohio: 1) Ohio’s provision on variances is located at State of Ohio Administrative Code, Rule 3745-33-07, Paragraph (D) at <http://www.epa.state.oh.us/dsw/rules/33-07.pdf>. According to this rule, the Ohio EPA Director issues and approves the variance.

Michigan: Michigan does permit variances in water quality standards. The authority for this is Rule 323.1103 of the Michigan Administrative Code. The variances are granted by the Michigan Department of Environmental Quality.

Washington State: Washington’s variance provision is governed by Washington Administrative Code 173-201A-410.

New York: Variances may be issued to individual permittees under the New York State regulations at 6 NYCRR 702.17(a). The specific applicable provisions are: 6 NYCRR 702.17 and 6 NYCRR 750-1.7(f). Variances are granted by the New York State Department of Environmental Conservation.

Indiana: Indiana's water quality standard rules allow for individual variances as outlined at <http://www.in.gov/legislative/iac/T03270/A00020.PDF>. The Indiana Department of Environmental Management processes variance requests that must be approved by the Indiana Water Pollution Control Board and then submitted to USEPA for federal approval as a change to the state's water quality standards.

Massachusetts: The Massachusetts Department of Environmental Protection (DEP) may issue a variance pursuant to the Massachusetts Surface Water Quality Standards at 314 CMR 4.00. The variance is issued by DEP, but must also be approved by EPA.

Missouri: Missouri allows variances from water quality standards for individual permittees. Variances are authorized under RSMo. 644.061.1. Variances are at the discretion of and granted by the Clean Water Commission. Typically the variance request by a permittee is presented to the Commission by the permit staff of the Missouri Department of Natural Resources.

Wisconsin: Water quality variances for NPDES direct discharge permits are available under section 283.15 of the Wisconsin Statutes. The Wisconsin Department of Natural Resources is the delegated permit authority under section 402 of the CWA and considers variance requests.

Virginia: Variance requests in Virginia are governed under the Virginia Administrative Code, sections 9VAC 25-260-140.E and 9 VAC 25-260-250. The statutory authority for these provisions is §62.1-44.15 of the Code of Virginia. The State Water Control Board or the Executive Director of the Department of Environmental Quality determine the variance requests per their authority.

Illinois: Permit variances in Illinois are governed by Illinois Administrative Code 309.184. The Illinois Pollution Control Board reviews all variance requests.