



February 3, 2017

State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
Attn: Jeanine Townsend, Clerk to the Board
Sent by email: commentletters@waterboards.ca.gov

Subject: Comment Letter – Variance Policy – Scoping Comments

Thank you for the opportunity to comment on the scoping document for the Variance Policy. This Policy will help explain and publicize the applicability of the EPA variance regulations. The usefulness of the Policy would be significantly increased if the Policy or supporting documents explain the appropriateness of the EPA regulations for specific categories of discharges and waterways. In addition, a variance guidance document including hypothetical examples would be beneficial for permittees.

Explanation or additional clarification for the following topics would be helpful.

- *Substitute Environmental Documentation (SED)* - The State Water Board must analyze any potential adverse environmental effects associated with the proposed Policy and will include this information in the SED. It would also be useful to assess adverse impacts if variances are not available or are otherwise blocked. For example, in some situations a pollutant may present no risk to beneficial uses and the lack of a variance will divert permittee resources from addressing other pollutants which are adversely impacting waterway.
- *Statewide or Region-wide variances* – In some cases a regulated parameter may be inappropriate within a Region or even statewide. Addressing this problem discharge-by-discharge would be inefficient. The potential use of statewide or regional variances should be discussed. This approach has been taken by other states. For example, under [40 CFR 132](#), the State of Ohio adopted, and EPA approved, a statewide variance specifically for mercury.¹ Montana has apparently adopted a statewide variance for some nutrients – “the standards are essentially unachievable at this time because of limits of technology and/or because they would create substantial and widespread economic impacts.”²
- *Status of existing exceptions* – State water quality plan exceptions (Ocean Plan) and existing exceptions in NPDES permits should be integrated into the new Policy.
- *Relationship to State Implementation Policy (SIP) exceptions* – SIP Section 5 includes an exception approach for priority pollutants (and toxicity?). The relationship to the Variance Policy should be explained. Will a permittee need to comply with both the SIP provisions and the Variance Policy requirements?
- *De minimus variances* - MS4s permits require controls for any pollutant “causing or contributing” to an exceedance of WQS. However, in some cases the total mass of pollutant

¹ “Ohio determined a cost of \$10 million per pound for mercury removal from NPDES permitted discharges.” (Posted [here](#))

² Reference to nutrient variance posted [here](#).

may be inconsequential compared with the volume of the receiving water or background levels of the pollutant. A de minimus approach could be beneficial in some of these cases.

- *Prohibitions* – Several Basin Plans include prohibitions for certain types of discharges or discharges into specified waterways or sections of the Coast³. These prohibitions are typically included in the implementation sections of the permits. Will variances be available for these prohibitions? This is a critical issue because some prohibitions impact stormwater such as the requirement in Regional Board 2 that all discharges receive 10:1 dilution.
- *Application to TMDLs* - Can a variance be used to address a TMDL requirement for which the permittee needs additional time to achieve compliance?
- *Relationship to alternative approaches for adjusting standards* - Other options for adjusting beneficial uses or objectives include seasonal suspension, modified beneficial uses such as “limited REC1”, and removal of beneficial uses. To the extent possible, it would be useful to explain the situations where each approach is preferable.
- *Enforcement exposure during the approval process* - Permittees preparing and submitting variance petitions may need to be shielded from enforcement during the variance preparation and approval process. Is it possible to provide this protection as part of the Policy?
- *Application support* – The Minnesota Pollution Control Agency, for example, has a useful Variance Request Form. Something similar could facilitate variance applications in California. Guidance or examples for the expected supporting materials and demonstrations would be helpful.
- *Applicability to Numeric Action Levels* – Some NALs appear to be accidental carry-overs from previous guidance and provide no environmental benefit but will be costly to address. Will a variance be available?

Thank you for the opportunity to comment.

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³ See the Central Coast Board prohibition on discharges into various coastal segments.