



WASHINGTON, D.C. 20460

OFFICE OF
WATER

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MEMORANDUM

SUBJECT: Variances in Water Quality Standards
TO: Water Division Directors

Numerous questions have been raised regarding the granting of variances to water quality standards. The Preamble to the water quality standards regulations discusses limiting the granting of a variance that "... based on a demonstration that meeting the standard would cause substantial and widespread economic and social impact, the same test as if the State were changing a use..."

A interpretation by our Office of General Counsel, provides a better determination on what factors can be considered in allowing variances from water quality standards. The OGC interpretation is that any of the factors recognized in the regulation for justifying a stream use downgrade, not just the substantial and widespread economic and social impact test, may be used to support a variance.

Our previous interpretation was somewhat illogical as it allowed more opportunity for a permanent change in standards than it did for a temporary, short-term change which could be granted by a variance. Under Section 510 of the Clean Water Act, States have the right to establish more stringent standards than suggested by EPA. Therefore, as long as any temporary water quality standards modification conforms to the requirements established in Section 131.10 (g) of the regulation for downgrading uses, such an approach is acceptable as it would lead to only a temporary change to a water quality standard rather than a downgrade, and thus would be more stringent than the Federal requirements.

This interpretation does not change the regulation which provides that States may have general policies affecting the application and implementation of standards. It does affect the discussion of variances contained in the Preamble to the regulation and the guidance included in the WQS Handbook, page 1-9. No other aspect of the variance policy and guidance is altered by this new interpretation. This memorandum should be kept as part of your permanent file for interpreting water quality standards.

Overall, we expect the impact of this change to be minimal as the discussion of variances appears to far outweigh its actual affects on the program. Often the confusion surrounding variances obscures the fact that what is really being discussed are specialized permit conditions, scheduling adjustments, site-specific criteria, or actual downgrading actions.

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