

Water Quality Standards Variance Building Tool – Flow Chart

What is the purpose of this tool?

The purpose of a WQS variance is to facilitate progress toward attaining designated uses. This WQS Variance Building Tool is an implementation support tool designed to help states, territories, and authorized tribes 1) determine if a WQS variance is the appropriate tool for their situation, and 2) adopt WQS variances that are consistent with the regulatory requirements at 40 CFR Part 131.14.

States, territories, and authorized tribes are not required to use this tool when adopting WQS variances. However, using this tool may help states, territories, and authorized tribes initiate the process of developing a WQS variance that can serve as the starting point for stakeholder and EPA engagement.

How does this tool work?

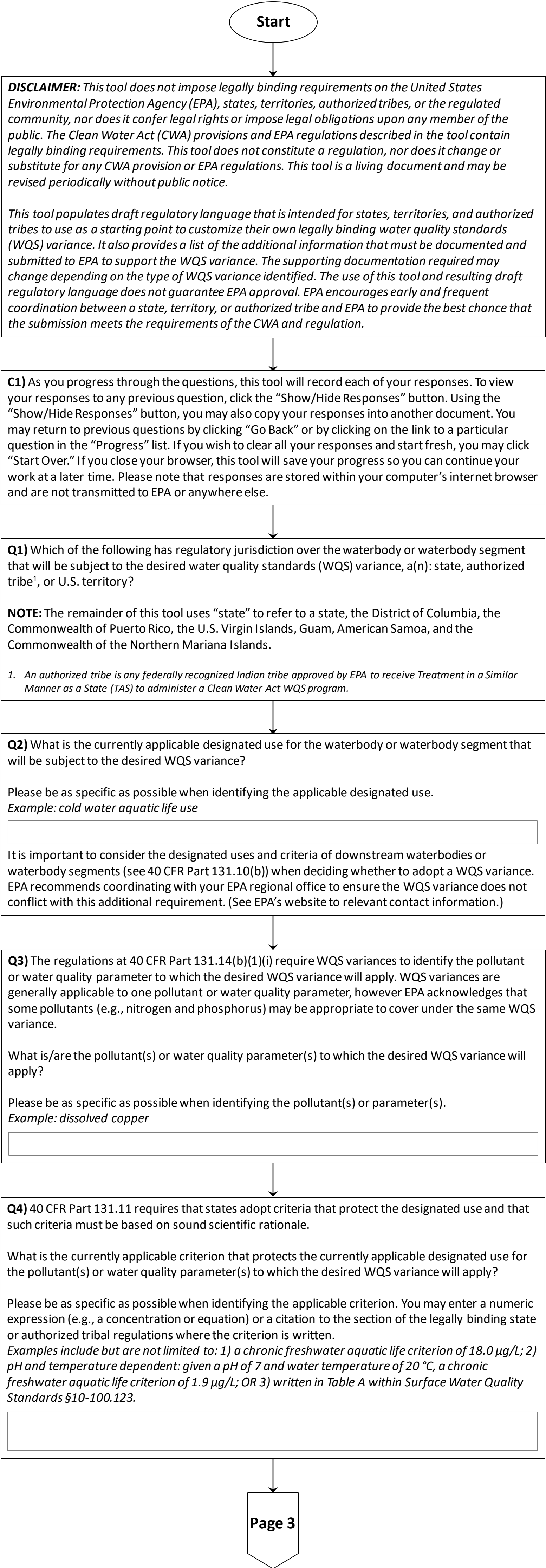
This flow chart serves as the structural layout for EPA’s online version of the WQS Variance Building Tool. The online version follows the flow chart and asks a series of questions to identify the information that must be included in a WQS variance submission. As the user progresses, the tool records all of the answers provided and uses them to populate draft regulatory language. The tool does this by assigning each input parameter with a specific code (see the chart below for more information). States, territories, and authorized tribes may tailor the draft regulatory language to include additional information that more accurately captures the case-specific facts of the individual WQS variance or fits a desired format as long as all federal requirements are met. The final regulatory language can then be adopted and submitted, along with all necessary supporting documentation, to EPA for CWA Section 303(c) review.

Codes for Specific Parameters	Description
“Q#”	Defines a question (with “#” representing a number from 1-38) that requires the user to input a value or select an option. The response to these questions is recorded by the tool and used to populate the regulatory language.
“R#”	Defines a result or conclusion (with “#” representing a number from 1-5) that provides suggested next steps or actions.
“C#”	Defines additional content (with “#” representing a number from 1-9) that does not require input by the user but is provided for context or supplemental information.

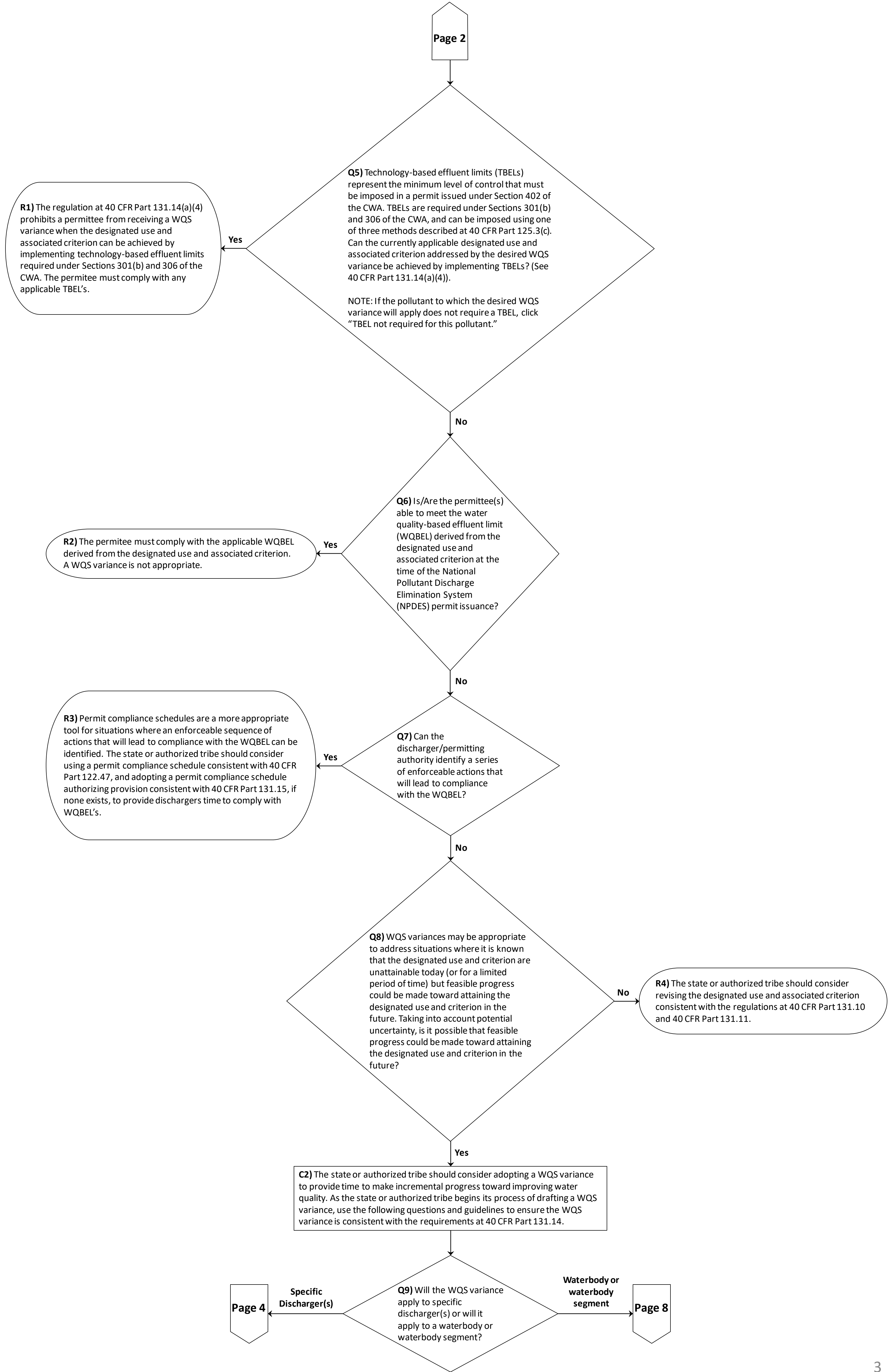
Contact Information:

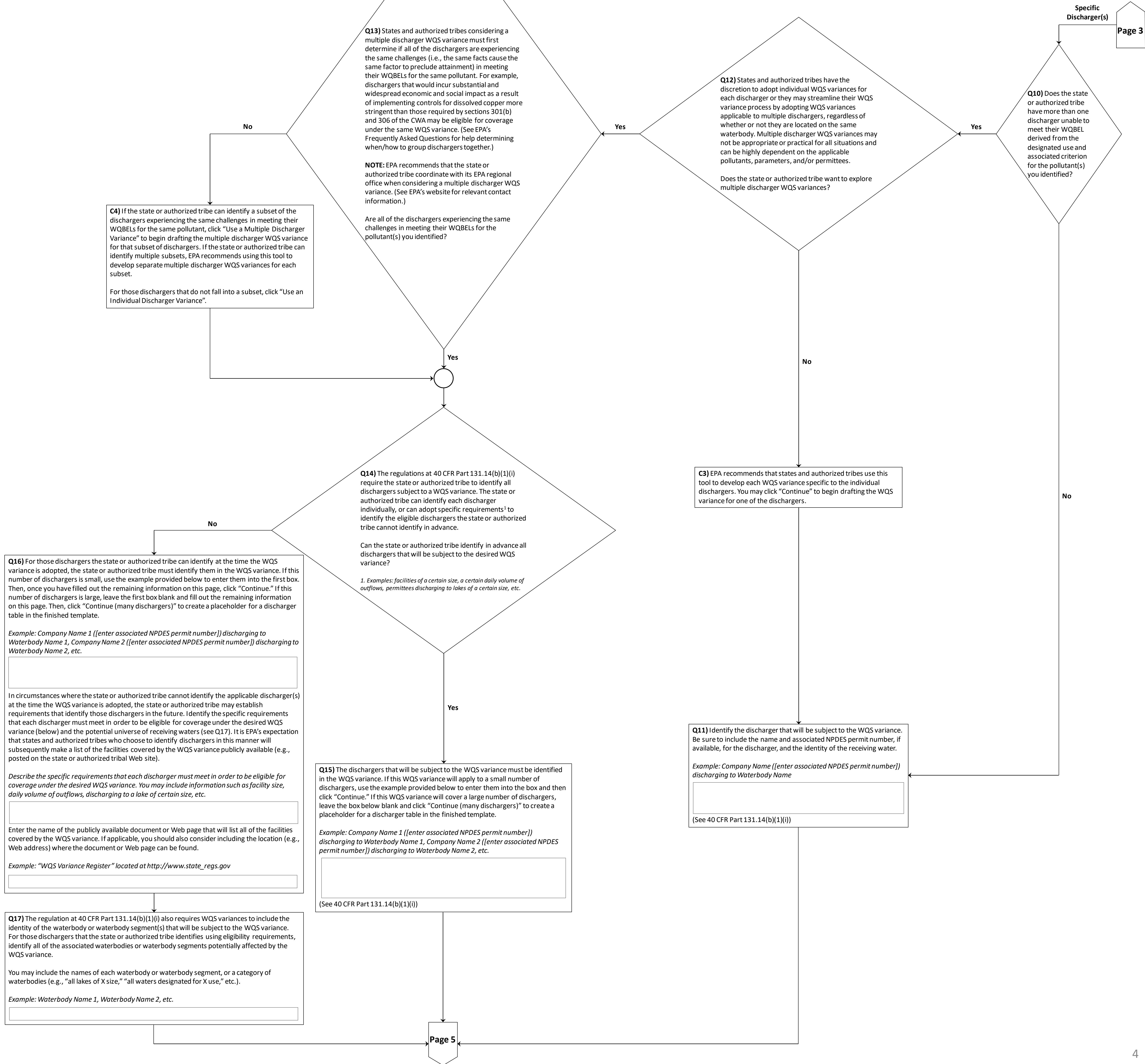
If you have any questions about this tool, please contact Gary Russo at (202)-566-1335 or at Russo.Gary@epa.gov.

WQS Variance Building Tool Flow Chart – Questions 1-4

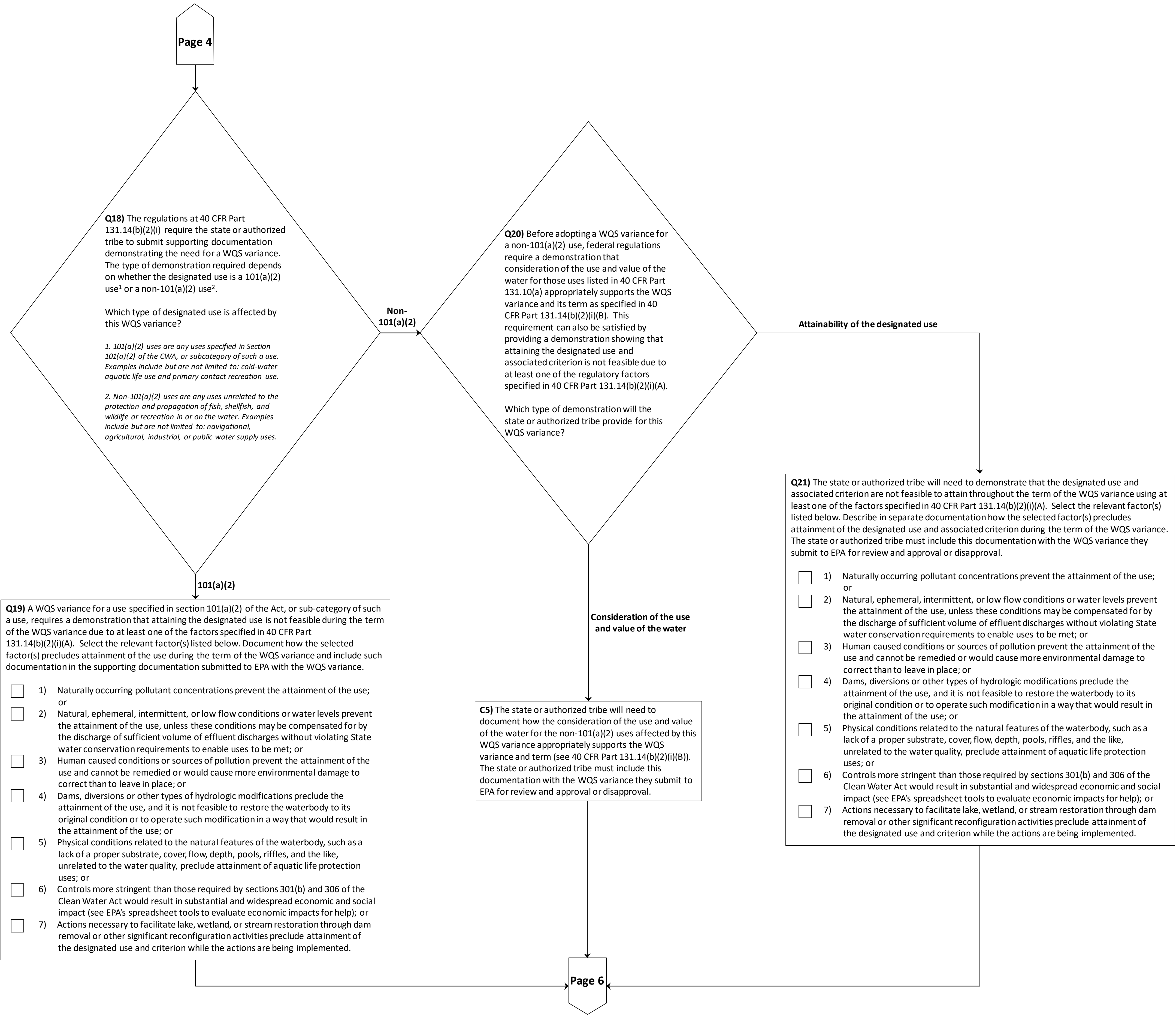


WQS Variance Building Tool Flow Chart – Questions 5-9

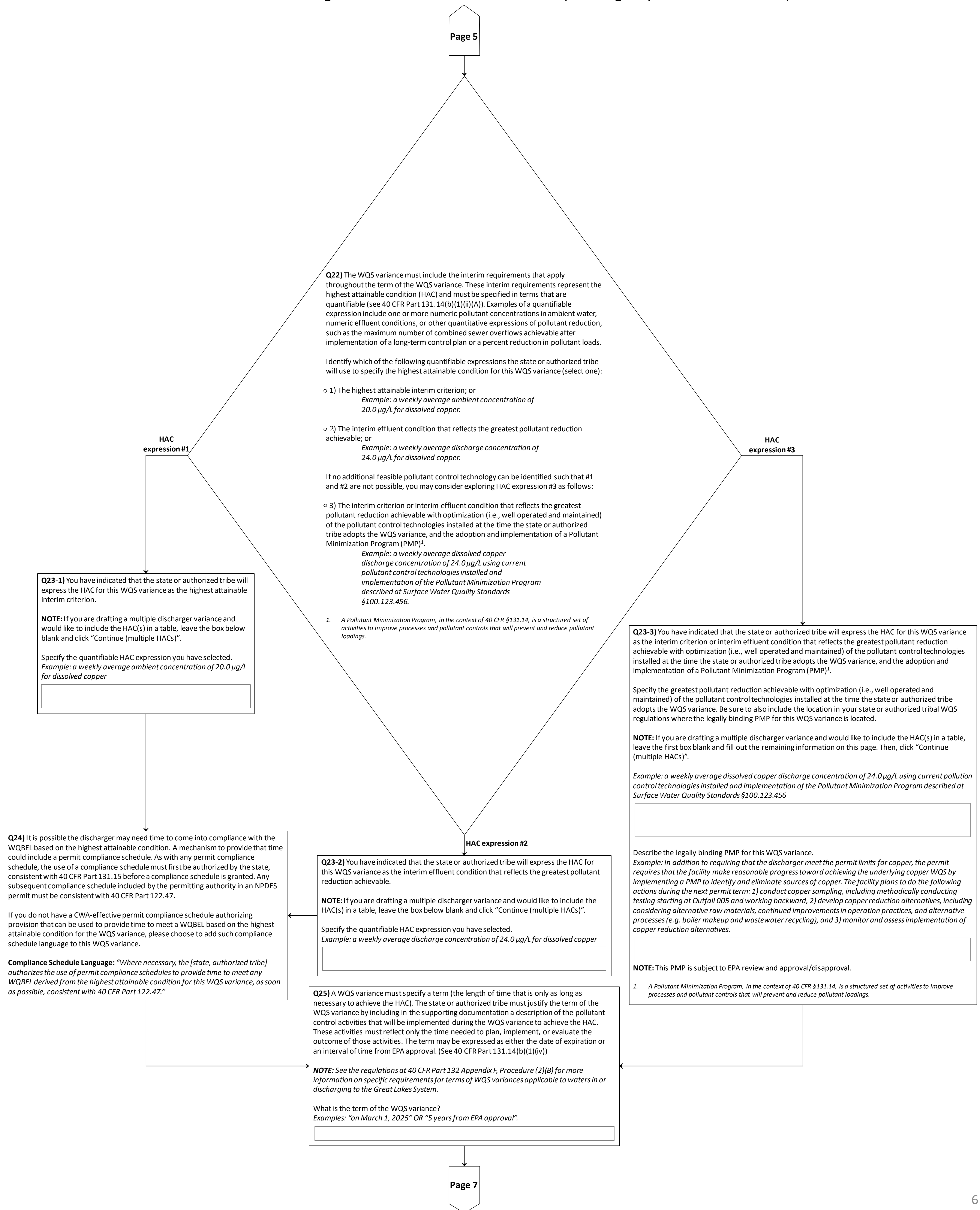




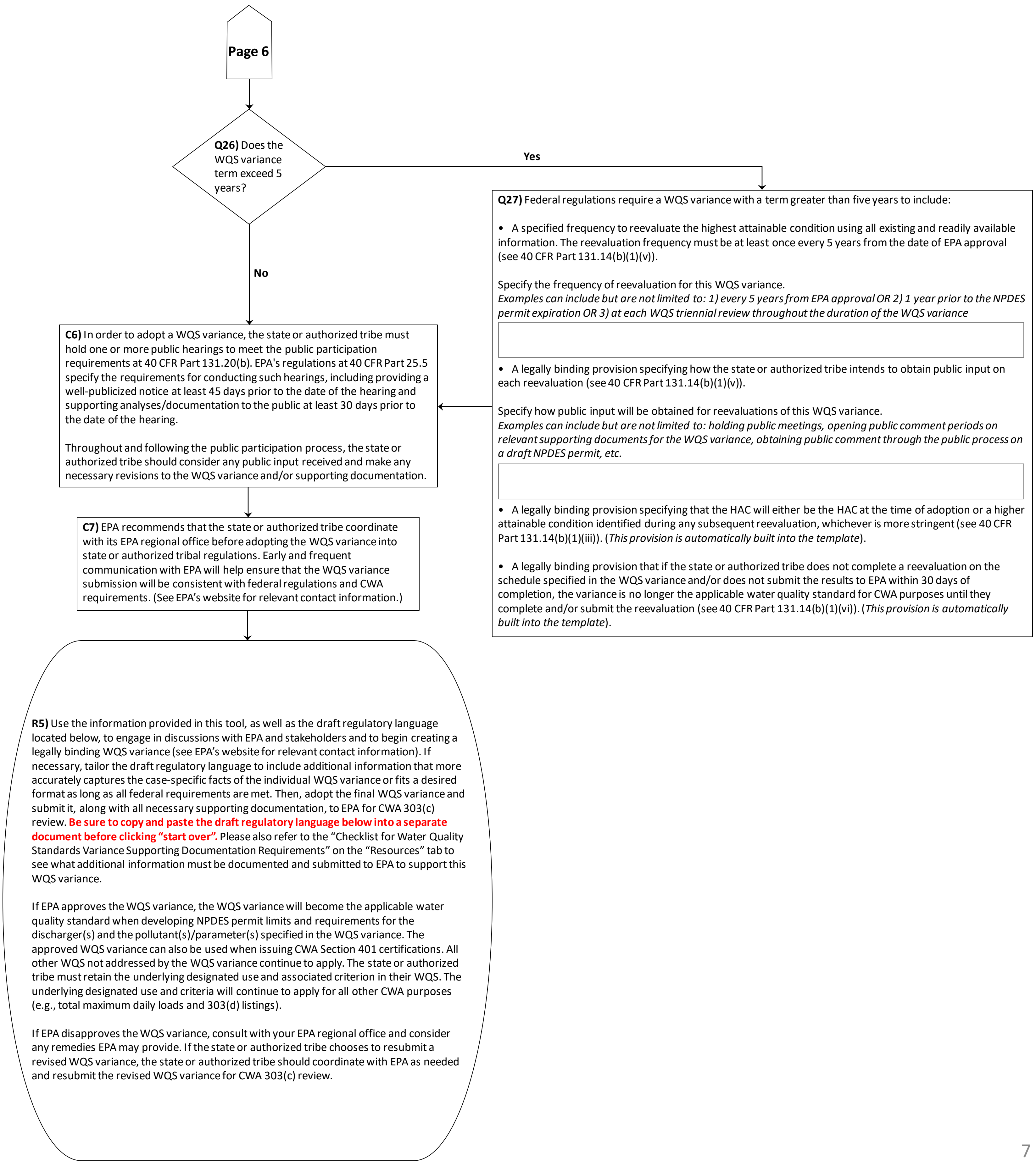
WQS Variance Building Tool Flow Chart – Questions 18-21 (Discharger-Specific WQS Variance)



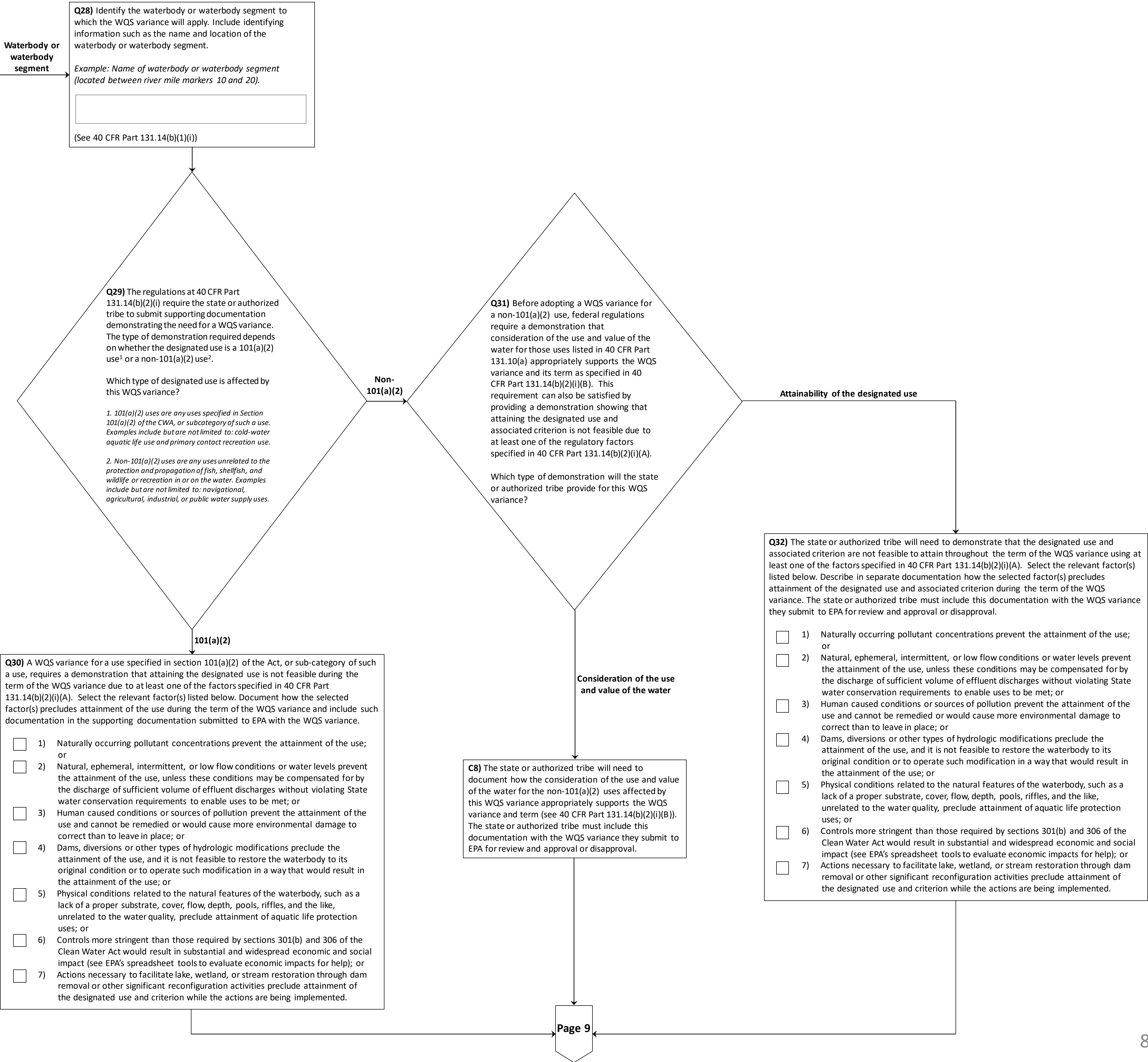
WQS Variance Building Tool Flow Chart – Questions 22-25 (Discharger-Specific WQS Variance)



WQS Variance Building Tool Flow Chart – Questions 26-27 (Discharger-Specific WQS Variance)



WQS Variance Building Tool Flow Chart – Questions 28-32 (Waterbody/Waterbody Segment WQS Variance)



Q33) The WQS variance must include the interim requirements that apply throughout the term of the WQS variance. These interim requirements represent the highest attainable condition (HAC) and must be specified in terms that are quantifiable (see 40 CFR Part 131.14(b)(1)(ii)(B)). Examples of a quantifiable expression include one or more numeric pollutant concentrations in ambient water, or other quantitative expressions of pollutant reduction, such as the maximum number of combined sewer overflows achievable after implementation of a long-term control plan or a percent reduction in pollutant loads.

Identify which of the following quantifiable expressions the state or authorized tribe will use to specify the highest attainable condition for this WQS variance (select one):

o 1) The highest attainable interim use and interim criterion; or
Example: a cold, freshwater habitat use with a weekly average ambient concentration of 20.0 µg/L for dissolved copper.

If no additional feasible pollutant control technology can be identified such that #1 is not possible, you may consider exploring HAC expression #2 as follows:

o 2) The interim use and interim criterion that reflects the greatest pollutant reduction achievable with optimization (i.e., well operated and maintained) of the pollutant control technologies installed at the time the state or authorized tribe adopts the WQS variance, and the adoption and implementation of a Pollutant Minimization Program (PMP)¹.

Example: a cold, freshwater habitat use with a weekly average dissolved copper discharge concentration of 24.0 µg/L using current pollutant control technologies installed and implementation of the Pollutant Minimization Program described at Surface Water Quality Standards §100.123.456.

1. A Pollutant Minimization Program, in the context of 40 CFR §131.14, is a structured set of activities to improve processes and pollutant controls that will prevent and reduce pollutant loadings.

HAC expression #1

Q34-1) You have indicated that the state or authorized tribe will express the HAC for this WQS variance as the highest attainable interim use and interim criterion.

Specify the quantifiable HAC expression you have selected.
Example: a cold, freshwater habitat use with a weekly average ambient concentration of 20.0 µg/L for dissolved copper

HAC expression #2

Q34-2) You have indicated that the state or authorized tribe will express the HAC for this WQS variance as the interim use and interim criterion that reflects the greatest pollutant reduction achievable with optimization (i.e., well operated and maintained) of the pollutant control technologies installed at the time the state or authorized tribe adopts the WQS variance, and the adoption and implementation of a Pollutant Minimization Program (PMP)¹.

Specify the interim use and the greatest pollutant reduction achievable with optimization (i.e., well operated and maintained) of the pollutant control technologies installed at the time the state or authorized tribe adopts the WQS variance. Be sure to also include the location in your state or authorized tribal WQS regulations where the legally binding PMP for this WQS variance is located.

Example: a cold, freshwater habitat use with a weekly average dissolved copper discharge concentration of 24.0 µg/L using current pollution control technologies installed and implementation of a Pollutant Minimization Program described at Surface Water Quality Standards §100.123.456

Describe the legally binding PMP for this WQS variance.
Example: In addition to requiring that the discharger meet the permit limits for copper, the permit requires that the facility make reasonable progress toward achieving the underlying copper WQS by implementing a PMP to identify and eliminate sources of copper. The facility plans to do the following actions during the next permit term: 1) conduct copper sampling, including methodically conducting testing starting at Outfall 005 and working backward, 2) develop copper reduction alternatives, including considering alternative raw materials, continued improvements in operation practices, and alternative processes (e.g. boiler makeup and wastewater recycling), and 3) monitor and assess implementation of copper reduction alternatives.

NOTE: This PMP is subject to EPA review and approval/disapproval.

1. A Pollutant Minimization Program, in the context of 40 CFR §131.14, is a structured set of activities to improve processes and pollutant controls that will prevent and reduce pollutant loadings.

Q35) It is possible the discharger may need time to come into compliance with the WQBEL based on the highest attainable condition. A mechanism to provide that time could include a permit compliance schedule. As with any permit compliance schedule, the use of a compliance schedule must first be authorized by the state, consistent with 40 CFR Part 131.15 before a compliance schedule is granted. Any subsequent compliance schedule included by the permitting authority in an NPDES permit must be consistent with 40 CFR Part 122.47.

If you do not have a CWA-effective permit compliance schedule authorizing provision that can be used to provide time to meet a WQBEL based on the highest attainable condition for the WQS variance, please choose to add such compliance schedule language to this WQS variance.

Compliance Schedule Language: “Where necessary, the [state, authorized tribe] authorizes the use of permit compliance schedules to provide time to meet any WQBEL derived from the highest attainable condition for this WQS variance, as soon as possible, consistent with 40 CFR Part 122.47.”

Q36) A WQS variance must specify a term (the length of time that is only as long as necessary to achieve the HAC). The state or authorized tribe must justify the term of the WQS variance by including in the supporting documentation a description of the pollutant control activities that will be implemented during the WQS variance to achieve the HAC. These activities must reflect only the time needed to plan, implement, or evaluate the outcome of those activities. The term may be expressed as either the date of expiration or an interval of time from EPA approval. (See 40 CFR Part 131.14(b)(1)(iv))

NOTE: See the regulations at 40 CFR Part 132 Appendix F, Procedure 2)(B) for more information on specific requirements for terms of WQS variances applicable to waters in or discharging to the Great Lakes System.

What is the term of the WQS variance?
Examples: “on March 1, 2025” OR “5 years from EPA approval”.

WQS Variance Building Tool Flow Chart – Questions 37-38 (Waterbody/Waterbody Segment WQS Variance)

