**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.

<table>
<thead>
<tr>
<th>Codes for Specific Parameters</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Q#”</td>
<td>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.</td>
</tr>
<tr>
<td>“R#”</td>
<td>Defines a result or conclusion (with “#” representing a number from 1-5) that provides suggested next steps or actions.</td>
</tr>
<tr>
<td>“C#”</td>
<td>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.</td>
</tr>
</tbody>
</table>

**Contact Information:**
If you have any questions about this tool, please contact Gary Russo at (202)-566-1335 or at Russo.Gary@epa.gov.
Q3) The regulations at 40 CFR Part 131.14(b)(1)(i) require WQS variances to identify the pollutant or water quality parameter to which the desired WQS variance will apply. WQS variances are generally applicable to one pollutant or water quality parameter, however EPA acknowledges that some pollutants (e.g., nitrogen and phosphorus) may be appropriate to cover under the same WQS variance.

What is/are the pollutant(s) or water quality parameter(s) to which the desired WQS variance will apply?

Please be as specific as possible when identifying the pollutant(s) or parameter(s).

Example: dissolved copper.

Q4) 40 CFR Part 131.11 requires that states adopt criteria that protect the designated use and that such criteria must be based on sound scientific rationale.

What is the currently applicable criterion that protects the currently applicable designated use for the pollutant(s) or water quality parameter(s) to which the desired WQS variance will apply?

Please be as specific as possible when identifying the applicable criterion. You may enter a numeric expression (e.g., a concentration or equation) or a citation to the section of the legally binding state or authorized tribal regulations where the criterion is written.

Examples include but are not limited to: 1) a chronic freshwater aquatic life criterion of 18.0 µg/L; 2) pH and temperature dependent: given a pH of 7 and water temperature of 20 °C, a chronic freshwater aquatic life criterion of 1.9 µg/L; OR 3) written in Table A within Surface Water Quality Standards §10-100.123.
Q5) Technology-based effluent limits (TBELs) represent the minimum level of control that must be imposed in a permit issued under Section 402 of the CWA. TBELs are required under Sections 301(b) and 306 of the CWA, and can be imposed using one of three methods described at 40 CFR Part 125.3(c).

Can the currently applicable designated use and associated criterion addressed by the desired WQS variance be achieved by implementing TBELs? (See 40 CFR Part 131.14(a)(4)).

NOTE: If the pollutant to which the desired WQS variance will apply does not require a TBEL, click “TBEL not required for this pollutant.”

R1) The regulation at 40 CFR Part 131.14(a)(4) prohibits a permittee from receiving a WQS variance when the designated use and associated criterion can be achieved by implementing technology-based effluent limits required under Sections 301(b) and 306 of the CWA. The permittee must comply with any applicable TBELs.

R2) The permittee must comply with the applicable WQBEL derived from the designated use and associated criterion. A WQS variance is not appropriate.

R3) Permit compliance schedules are a more appropriate tool for situations where an enforceable sequence of actions that will lead to compliance with the WQBEL can be identified. The state or authorized tribe should consider using a permit compliance schedule consistent with 40 CFR Part 122.47, and adopting a permit compliance schedule authorizing provision consistent with 40 CFR Part 131.15, if none exists, to provide dischargers time to comply with WQBEL.

Q6) Is/Are the permittee(s) able to meet the water quality-based effluent limit (WQBEL) derived from the designated use and associated criterion at the time of the National Pollutant Discharge Elimination System (NPDES) permit issuance?

Yes

R4) The state or authorized tribe should consider revising the designated use and associated criterion consistent with the regulations at 40 CFR Part 131.10 and 40 CFR Part 131.11.

No

Q7) Can the discharger/permitting authority identify a series of enforceable actions that will lead to compliance with the WQBEL?

Yes

Yes

Q8) WQS variances may be appropriate to address situations where it is known that the designated use and criterion are unattainable today (or for a limited period of time) but feasible progress could be made toward attaining the designated use and criterion in the future. Taking into account potential uncertainty, is it possible that feasible progress could be made toward attaining the designated use and criterion in the future?

No

Yes

Q9) Will the WQS variance apply to specific discharger(s) or will it apply to a waterbody or waterbody segment?

Specific Discharger(s)

Yes

Waterbody or waterbody segment

No

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Q18) The regulations at 40 CFR Part 131.14(b)(2)(i) require the state or authorized tribe to submit supporting documentation demonstrating the need for a WQS variance. The type of demonstration required depends on whether the designated use is a 101(a)(2) use¹ or a non-101(a)(2) use².

Which type of designated use is affected by this WQS variance?

1. 101(a)(2) uses are any uses specified in Section 101(a)(2) of the CWA, or subcategory of such a use. Examples include, but are not limited to: cold-water aquatic life use and primary contact recreation use.

2. Non-101(a)(2) uses are any uses unrelated to the water quality, preclude attainment of aquatic life protection and propagation of fish, shellfish, and wildlife or recreation in or on the water. Examples include, but are not limited to: navigational, agricultural, industrial, or public water supply uses.

Q20) Before adopting a WQS variance for a non-101(a)(2) use, federal regulations require a demonstration that consideration of the use and value of the water for those uses listed in 40 CFR Part 131.10(a) appropriately supports the WQS variance and its term as specified in 40 CFR Part 131.14(b)(2)(ii)(B). This requirement can also be satisfied by providing a demonstration showing that attaining the designated use and associated criterion is not feasible due to at least one of the regulatory factors specified in 40 CFR Part 131.14(b)(2)(ii)(A).

Which type of demonstration will the state or authorized tribe provide for this WQS variance?

Q21) The state or authorized tribe will need to demonstrate that the designated use and associated criterion are not feasible to attain throughout the term of the WQS variance using at least one of the factors specified in 40 CFR Part 131.14(b)(2)(ii)(A). Select the relevant factor(s) listed below. Describe in separate documentation how the selected factor(s) precludes attainment of the designated use and associated criterion during the term of the WQS variance. The state or authorized tribe must include this documentation with the WQS variance they submit to EPA for review and approval or disapproval.

- 1) Naturally occurring pollutant concentrations prevent the attainment of the use; or
- 2) Natural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or
- 3) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or
- 4) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the waterbody to its original condition or to operate such modification in a way that would result in the attainment of the use; or
- 5) Physical conditions related to the natural features of the waterbody, such as a lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to the water quality, preclude attainment of aquatic life protection uses; or
- 6) Controls more stringent than those required by sections 301(b) and 306 of the Clean Water Act would result in substantial and widespread economic and social impact (see EPA’s spreadsheet tools to evaluate economic impacts for help); or
- 7) Actions necessary to facilitate lake, wetland, or stream restoration through dam removal or other significant reconfiguration activities preclude attainment of the designated use and criterion while the actions are being implemented.

1) 101(a)(2) uses are any uses specified in Section 101(a)(2) of the CWA, or subcategory of such a use.

2) Non-101(a)(2) uses are any uses unrelated to the water quality.
Q22) 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)(A)). Examples of a quantifiable expression include one or more numeric pollutant concentrations in ambient water, numeric effluent conditions, 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):

- 1) The highest attainable interim criterion; or

- 2) The interim effluent condition that reflects the greatest pollutant reduction achievable; or

If no additional feasible pollutant control technology can be identified such that #1 and #2 are not possible, you may consider exploring HAC expression #3 as follows:

- 3) The interim criterion or interim effluent condition 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)**

Example: a weekly average discharge concentration of 24.0 µg/L for dissolved copper.

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.

Q23-1) You have indicated that the state or authorized tribe will express the HAC for this WQS variance as the highest attainable interim criterion.

NOTE: If you are drafting a multiple discharger variance and would like to include the HAC(s) in a table, leave the box below blank and click “Continue (multiple HACs)**.

Specify the quantifiable HAC expression you have selected.

Example: a weekly average ambient concentration of 20.0 µg/L for dissolved copper.

Q23-2) You have indicated that the state or authorized tribe will express the HAC for this WQS variance as the interim effluent condition that reflects the greatest pollutant reduction achievable.

NOTE: If you are drafting a multiple discharger variance and would like to include the HAC(s) in a table, leave the box below blank and click “Continue (multiple HACs)**.

Specify the quantifiable HAC expression you have selected.

Example: a weekly average discharge concentration of 24.0 µg/L for dissolved copper.

Q23-3) You have indicated that the state or authorized tribe will express the HAC for this WQS variance as the interim criterion or interim effluent condition 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)**.

Example: a weekly average dissolved copper discharge concentration of 24.0 µg/L using current pollution control technologies installed and implementation of the Pollutant Minimization Program described at Surface Water Quality Standards 1001.213.456.

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

Q24) It is possible the discharger may need time to come into compliance with the WQSBL 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 WQSBL 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 WQSBL derived from the highest attainable condition for this WQS variance, as soon as possible, consistent with 40 CFR Part 122.47.”

Q25) 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 E, 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”.
Q26) Does the WQS variance term exceed 5 years?

Yes

Q27) Federal regulations require a WQS variance with a term greater than five years to include:

- A specified frequency to reevaluate the highest attainable condition using all existing and readily available information. The reevaluation frequency must be at least once every 5 years from the date of EPA approval (see 40 CFR Part 131.14(b)(1)(v)).

Specify the frequency of reevaluation for this WQS variance.

Examples can include but are not limited to: 1) every 5 years from EPA approval OR 2) 1 year prior to the NPDES permit expiration OR 3) at each WQS triennial review throughout the duration of the WQS variance

- A legally binding provision specifying how the state or authorized tribe intends to obtain public input on each reevaluation (see 40 CFR Part 131.14(b)(1)(v)).

Specify how public input will be obtained for reevaluations of this WQS variance.

Examples can include but are not limited to: holding public meetings, opening public comment periods on relevant supporting documents for the WQS variance, obtaining public comment through the public process on a draft NPDES permit, etc.

- A legally binding provision specifying that the HAC will either be the HAC at the time of adoption or a higher attainable condition identified during any subsequent reevaluation, whichever is more stringent (see 40 CFR Part 131.14(b)(1)(iii)). (This provision is automatically built into the template).

R5) Use the information provided in this tool, as well as the draft regulatory language located below, to engage in discussions with EPA and stakeholders and to begin creating a legally binding WQS variance (see EPA’s website for relevant contact information). If necessary, 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. Then, adopt the final WQS variance and submit it, along with all necessary supporting documentation, to EPA for CWA 303(c) review.

If EPA approves the WQS variance, the WQS variance will become the applicable water quality standard when developing NPDES permit limits and requirements for the discharger(s) and the pollutant(s)/parameter(s) specified in the WQS variance. The approved WQS variance can also be used when issuing CWA Section 401 certifications. All other WQS not addressed by the WQS variance continue to apply.

If EPA disapproves the WQS variance, consult with your EPA regional office and consider any remedies EPA may provide. If the state or authorized tribe chooses to resubmit a revised WQS variance, the state or authorized tribe should coordinate with EPA as needed and resubmit the revised WQS variance for CWA 303(c) review.

C6) In order to adopt a WQS variance, the state or authorized tribe must hold one or more public hearings to meet the public participation requirements at 40 CFR Part 131.20(b). EPA’s regulations at 40 CFR Part 25.5 specify the requirements for conducting such hearings, including providing a well-publicized notice at least 45 days prior to the date of the hearing and supporting analyses/documentation to the public at least 30 days prior to the date of the hearing.

Throughout and following the public participation process, the state or authorized tribe should consider any public input received and make any necessary revisions to the WQS variance and/or supporting documentation.

C7) EPA recommends that the state or authorized tribe coordinate with its EPA regional office before adopting the WQS variance into state or authorized tribal regulations. Early and frequent communication with EPA will help ensure that the WQS variance submission will be consistent with federal regulations and CWA requirements. (See EPA’s website for relevant contact information.)

EPA recommends that the state or authorized tribe coordinate with its EPA regional office before adopting the WQS variance into state or authorized tribal regulations. Early and frequent communication with EPA will help ensure that the WQS variance submission will be consistent with federal regulations and CWA requirements. (See EPA’s website for relevant contact information.)
Q28 Identify the waterbody or waterbody segment to which the WQS variance will apply. Include identifying information such as the name and location of the waterbody or waterbody segment.

Example: Name of waterbody or waterbody segment (located between river mile markers 10 and 20).

Q29 The regulations at 40 CFR Part 131.14(b)(2)(i)(A),(B) require the state or authorized tribe to submit supporting documentation demonstrating the need for a WQS variance. The type of demonstration required depends on whether the designated use is a 101(a)(2) use or a non-101(a)(2) use.

Which type of designated use is affected by this WQS variance?

1. 101(a)(2) uses are any uses specified in Section 101(a)(2) of the CWA, or subcategory of such a use. Examples include but are not limited to: cold water aquatic life use and primary contact recreation use.

2. Non-101(a)(2) uses are any uses unrelated to the protection and propagation of fish, shellfish, and wildlife or recreation in or on the water. Examples include but are not limited to: navigation, agriculture, industrial, or public water supply uses.

Q30 A WQS variance for a use specified in section 101(a)(2) of the Act or sub-category of such a use, requires a demonstration that attaining the designated use is not feasible during the term of the WQS variance due to at least one of the factors specified in 40 CFR Part 131.14(b)(2)(i)(A). Select the relevant factor(s) listed below. Document how the selected factor(s) precludes attainment of the use during the term of the WQS variance and include such documentation in the supporting documentation submitted to EPA with the WQS variance.

☐ 1) Naturally occurring pollutant concentrations prevent the attainment of the use; or

☐ 2) Natural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or

☐ 3) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or

☐ 4) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the waterbody to its original condition or to operate such modification in a way that would result in the attainment of the use; or

☐ 5) Physical conditions related to the natural features of the waterbody, such as a lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to the water quality, preclude attainment of aquatic life protection uses; or

☐ 6) Controls more stringent than those required by sections 301(b) and 306 of the Clean Water Act would result in substantial and widespread economic and social impact (see EPA spreadsheet tools to evaluate economic impacts for help); or

☐ 7) Actions necessary to facilitate lake, wetland, or stream restoration through dam removal or other significant reconfiguration activities preclude attainment of the designated use and criterion while the actions are being implemented.

Q31 Before adopting a WQS variance for a non-101(a)(2) use, federal regulations require a demonstration that consideration of the use and value of the water for those uses listed in 40 CFR Part 131.10(a) appropriately supports the WQS variance and its term as specified in 40 CFR Part 131.14(b)(2)(i)(B). This requirement can also be satisfied by providing a demonstration showing that attaining the designated use and associated criterion is not feasible due to at least one of the regulatory factors specified in 40 CFR Part 131.14(b)(2)(i)(A).

Which type of demonstration will the state or authorized tribe provide for this WQS variance?

Q32 The state or authorized tribe will need to demonstrate that the designated use and associated criterion are not feasible to attain throughout the term of the WQS variance using at least one of the factors specified in 40 CFR Part 131.14(b)(2)(i)(A). Select the relevant factor(s) listed below. Describe in separate documentation how the selected factor(s) precludes attainment of the designated use and associated criterion during the term of the WQS variance. The state or authorized tribe must include this documentation with the WQS variance they submit to EPA for review and approval or disapproval.

☐ 1) Naturally occurring pollutant concentrations prevent the attainment of the use; or

☐ 2) Natural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or

☐ 3) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or

☐ 4) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the waterbody to its original condition or to operate such modification in a way that would result in the attainment of the use; or

☐ 5) Physical conditions related to the natural features of the waterbody, such as a lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to the water quality, preclude attainment of aquatic life protection uses; or

☐ 6) Controls more stringent than those required by sections 301(b) and 306 of the Clean Water Act would result in substantial and widespread economic and social impact (see EPA spreadsheet tools to evaluate economic impacts for help); or

☐ 7) Actions necessary to facilitate lake, wetland, or stream restoration through dam removal or other significant reconfiguration activities preclude attainment of the designated use and criterion while the actions are being implemented.
If you do not have a CWA-effective permit compliance schedule authorizing subsequent compliance schedule included by the permitting authority in an NPDES consistent with 40 CFR Part 131.15 before a compliance schedule is granted. Any schedule, the use of a compliance schedule must first be authorized by the state, could include a permit compliance schedule. As with any permit compliance schedule language to this 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):

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:

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).
   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.

Q34) 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

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

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.

Q34-2) 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 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.

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.
Q37) Does the WQS variance term exceed 5 years?

No

C6) In order to adopt a WQS variance, the state or authorized tribe must hold one or more public hearings to meet the public participation requirements at 40 CFR Part 131.20(b). EPA’s regulations at 40 CFR Part 25.5 specify the requirements for conducting such hearings, including providing a well-publicized notice at least 45 days prior to the date of the hearing and supporting analyses/documentation to the public at least 30 days prior to the date of the hearing.

Throughout and following the public participation process, the state or authorized tribe should consider any public input received and make any necessary revisions to the WQS variance and/or supporting documentation.

C7) EPA recommends that the state or authorized tribe coordinate with its EPA regional office before adopting the WQS variance into state or authorized tribal regulations. Early and frequent communication with EPA will help ensure that the WQS variance submission will be consistent with federal regulations and CWA requirements. (See EPA’s website for relevant contact information.)

Q38) Federal regulations require a WQS variance with a term greater than five years to include:

- A specified frequency to reevaluate the highest attainable condition using all existing and readily available information. The reevaluation frequency must be at least once every 5 years from the date of EPA approval (see 40 CFR Part 131.14(b)(1)(v)).

Specify the frequency of reevaluation for this WQS variance. Examples can include but are not limited to: 1) every 5 years from EPA approval OR 2) 1 year prior to the NPDES permit expiration OR 3) at each WQS triennial review throughout the duration of the WQS variance.

- A legally binding provision specifying how the state or authorized tribe intends to obtain public input on each reevaluation (see 40 CFR Part 131.14(b)(1)(v)).

Specify how public input will be obtained for reevaluations of this WQS variance. Examples can include but are not limited to: holding public meetings, opening public comment periods on relevant supporting documents for the WQS variance, obtaining public comment through the public process on a draft NPDES permit, etc.

- A legally binding provision specifying that the HAC will either be the HAC at the time of adoption or a higher attainable condition identified during any subsequent reevaluation, whichever is more stringent (see 40 CFR Part 131.14(b)(1)(iv)). (This provision is automatically built into the template.)

- A legally binding provision that if the state or authorized tribe does not complete a reevaluation on the schedule specified in the WQS variance and/or does not submit the results to EPA within 30 days of completion, the variance is no longer the applicable water quality standard for CWA purposes until they complete and/or submit the reevaluation (see 40 CFR Part 131.14(b)(1)(v)). (This provision is automatically built into the template.)

1. See EPA’s website for more information on nonpoint sources of pollution.

Use the information provided in this tool, as well as the draft regulatory language located below, to engage in discussions with EPA and stakeholders and to begin creating a legally binding WQS variance (see EPA’s website for relevant contact information). If necessary, tailor the draft regulatory language to include additional information that more accurately represents the unique facts of the individual WQS variance and fits a desired format as long as all federal requirements are met. Then, adopt the final WQS variance and submit it, along with all necessary supporting documentation, to EPA for CWA 303(c) review.

If EPA approves the WQS variance, the WQS variance will become the applicable water quality standard when developing NPDES permit limits and requirements for the discharger(s) and the pollutant(s)/parameter(s) specified in the WQS variance. The approved WQS variance can also be used when issuing CWA Section 401 certifications. All other WQS not addressed by the WQS variance continue to apply. The state or authorized tribe must retain the underlying designated use and associated criterion in their WQS. The underlying designated use and criteria will continue to apply for all other CWA purposes (e.g., total maximum daily loads and 303(d) listings).

If EPA disapproves the WQS variance, consult with your EPA regional office and consider any remedies EPA may provide. If the state or authorized tribe chooses to resubmit a revised WQS variance, the state or authorized tribe should coordinate with EPA as needed and resubmit the revised WQS variance for CWA 303(c) review.

Q3) The regulations at 40 CFR Part 131.14(b)(2)(i) specify two additional requirements for WQS variances applicable to a waterbody or waterbody segment including:

- Identification and documentation of any cost-effective and reasonable best management practices for nonpoint source controls related to the pollutant(s) or water quality parameter(s) and waterbody or waterbody segment(s) specified in the WQS variance that could be implemented to make progress towards attaining the underlying designated use and criterion. The state or authorized tribe must also provide public notice and comment for any such document.
- Any subsequent WQS variance for a waterbody or waterbody segment must include documentation of whether and to what extent best management practices for nonpoint source controls were implemented to address the pollutant(s) or water quality parameter(s) subject to the WQS variance and the water quality progress achieved.

The state or authorized tribe should prepare such documentation and submit it along with the WQS variance and all other required supporting documentation to EPA for CWA 303(c) review.

If EPA disapproves the WQS variance, consult with your EPA regional office and consider any remedies EPA may provide. If the state or authorized tribe chooses to resubmit a revised WQS variance for CWA 303(c) review.

If EPA approves the WQS variance, the WQS variance will become the applicable water quality standard when developing NPDES permit limits and requirements for the discharger(s) and the pollutant(s)/parameter(s) specified in the WQS variance. The approved WQS variance can also be used when issuing CWA Section 401 certifications. All other WQS not addressed by the WQS variance continue to apply. The state or authorized tribe must retain the underlying designated use and associated criterion in their WQS. The underlying designated use and criteria will continue to apply for all other CWA purposes (e.g., total maximum daily loads and 303(d) listings).

If EPA disapproves the WQS variance, consult with your EPA regional office and consider any remedies EPA may provide. If the state or authorized tribe chooses to resubmit a revised WQS variance, the state or authorized tribe should coordinate with EPA as needed and resubmit the revised WQS variance for CWA 303(c) review.

R3) Use the information provided in this tool, as well as the draft regulatory language located below, to engage in discussions with EPA and stakeholders and to begin creating a legally binding WQS variance (see EPA’s website for relevant contact information). If necessary, tailor the draft regulatory language to include additional information that more accurately represents the unique facts of the individual WQS variance and fits a desired format as long as all federal requirements are met. Then, adopt the final WQS variance and submit it, along with all necessary supporting documentation, to EPA for CWA 303(c) review. Be sure to copy and paste the draft regulatory language below into a separate document before clicking “start over”. Please also refer to the “Checklist for Water Quality Standards Variance Supporting Documentation Requirements” on the “Resources” tab to see what additional information must be documented and submitted to EPA to support this WQS variance.

If EPA approves the WQS variance, the WQS variance will become the applicable water quality standard when developing NPDES permit limits and requirements for the discharger(s) and the pollutant(s)/parameter(s) specified in the WQS variance. The approved WQS variance can also be used when issuing CWA Section 401 certifications. All other WQS not addressed by the WQS variance continue to apply. The state or authorized tribe must retain the underlying designated use and associated criterion in their WQS. The underlying designated use and criteria will continue to apply for all other CWA purposes (e.g., total maximum daily loads and 303(d) listings).

If EPA disapproves the WQS variance, consult with your EPA regional office and consider any remedies EPA may provide. If the state or authorized tribe chooses to resubmit a revised WQS variance, the state or authorized tribe should coordinate with EPA as needed and resubmit the revised WQS variance for CWA 303(c) review.