

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
GUIDANCE FROM HOTLINE COMPENDIUM

WSG H23

Date Issued: August 1989

Revised: September 1998

Revised by: Joshua Joseph

SUBJECT: Variances and Administrative Orders

SOURCE: Betsy Devlin

Section 1415 of the Safe Drinking Water Act provides for issuing variances. Section 1415(A)(1)(A) states that "A variance may only be issued to a system after the system's application of the best technology, treatment techniques, or other means, which the Administrator finds are available (taking costs into consideration)." If a system operates in exceedance of an MCL and the State issues an Administrative Order (AO) requiring the system to comply with the MCL according to a compliance schedule, is it also necessary for the State to issue a variance? Or, may the State issue a variance after the system has applied the best available technology and still cannot meet the MCL?

Response:

The Agency has promulgated regulations to revise the existing regulations regarding SDWA variances and exemptions. The rule is effective September 14, 1998 and includes procedures and conditions under which a primacy State/Tribe or the EPA Administrator may issue small system variances or exemptions.

The Act provides for variances for two distinct situations:

- (1) General Variances—Given on the condition that systems install the best available technology (BAT) in spite of the fact that due to source water even BAT will not get full compliance.
- (2) Small Systems Variances—Available if EPA has listed a variance technology and if the state determines that the system cannot afford to comply through other means. It is required that the system install and operate the variance technology. Also, terms and conditions must be protective of human health.

As provided under the Act, under certain conditions, variances are available to public water systems that cannot (due to source water quality, or, in the case of small systems, affordability) comply with the national primary drinking water standards. Variances generally allow a system to provide drinking water that may be above the maximum contaminant level on the condition that the quality of the drinking water is still protective of public health. In the case of small system variances, the duration of the variance generally coincides with the life of the technology. An exemption, on the other hand, is intended to allow a system with compelling circumstances an extension of time before the system must comply with applicable Safe Drinking Water Act requirements. An exemption is limited to three years after the otherwise applicable compliance date, although extensions up to a total of six additional years may be available to small systems under certain conditions.