

*Presented below are water quality standards that are in effect for Clean Water Act purposes.*

*EPA is posting these standards as a convenience to users and has made a reasonable effort to assure their accuracy. Additionally, EPA has made a reasonable effort to identify parts of the standards that are not approved, disapproved, or are otherwise not in effect for Clean Water Act purposes.*

with effluent limitations cannot be completed within the prescribed time period due to events over which the permittee has little or no control unless the modification is prohibited under par. (d).

(c) The modification of the time limitations mentioned under par. (a) shall be granted if the department determines that the construction of treatment works necessary to achieve compliance with effluent limitations cannot be completed within the prescribed time period due to the unavailability of federal or state funds unless the modification is prohibited under the federal water pollution control act, as amended, 33 USC 1251 to 1376.

(d) Except as provided under par. (c), no modification of the time limitations under par. (a) may extend beyond December 31, 1985.

**History:** 1973 c. 74; 1975 c. 206; 1979 c. 34, 221; 1981 c. 282; 1981 c. 314 s. 146; 1981 c. 393; 1987 a. 27; 1989 a. 56; 1993 a. 16; 1995 a. 227 s. 860; Stats. 1995 s. 283.13; 1997 a. 35; 1999 a. 150 s. 672.

**283.15 Variances to water quality standard.** (1) DEFINITION. In this section, “variance” means a variance to a water quality standard adopted under s. 281.15.

(2) REQUEST FOR VARIANCE. (a) 1. When the department issues, reissues or modifies a permit to include a water quality based effluent limitation under s. 283.13 (5), the permittee may apply to the department for a variance from the water quality standard used to derive the limitation.

2. After an application for a variance is submitted to the department, and until the last day for seeking review of the secretary’s final decision on the application or a later date fixed by order of the reviewing court, the water quality based effluent limitation under s. 283.13 (5) and the corresponding compliance schedule are not effective. All other provisions of the permit continue in effect except those for which a petition for review has been submitted under s. 283.63. For those provisions for which an application for variance has been submitted under this section, the corresponding or similar provisions of the prior permit continue in effect until the last day for seeking review of the department’s final decision or a later date fixed by order of the reviewing court.

(b) 1. The department shall specify by rule the information to be included in the application. The permittee shall submit an application for a variance within 60 days after the department issues, reissues or modifies the permit.

2. If a permittee applies for a variance before the promulgation of rules under subd. 1., the permittee shall submit an application for a variance within 30 days after the department issues, reissues or modifies the permit. Within 30 days after receipt of the application, the department shall specify the information which the permittee must include in the application. The permittee shall provide the information within 60 days after receipt of the department’s request.

3. In addition to the information required under subd. 1. or 2., the permittee may, within the time limits specified in subd. 1. or 2., submit to the department any other information to support the request for a variance.

(c) The department may request additional information from the permittee within 30 days after receiving either the application under par. (b) 1. or the information under par. (b) 2. The permittee shall provide the additional information within 30 days after receipt of the department’s request. An application is not complete until the additional information is provided to the department.

(d) If the permittee does not provide information as required under par. (b) or (c), the department shall deny the application.

(e) Within 30 days after the department receives a complete application for a variance, the department shall circulate to the parties in s. 283.53 (2) (c) a public notice of receipt of the application for a variance and of any deadlines for submission of written arguments on facts and law by interested parties. In the public notice, the department shall establish a deadline for submitting written comments on the application.

(3) TENTATIVE DECISION. The secretary shall issue a tentative decision on the variance within 120 days after receipt of a completed application. The department shall circulate the tentative decision to the parties in s. 283.53 (2) (c). If the tentative decision is to grant a variance based upon one or more of the conditions specified in sub. (4) (a) 1. a. to e., the department shall include in the notice under this subsection a statement on the effect of the variance, if granted, on the designated use of the water body during the term of the underlying permit. The department shall provide a 30–day period for written comments on the tentative decision.

(4) FINAL DECISION ON VARIANCE. (a) 1. Within 90 days after expiration of the comment period under sub. (3), the secretary shall approve all or part of a requested variance, or modify and approve a requested variance if the permittee demonstrates, by the greater weight of the credible evidence, that attaining the water quality standard is not feasible because:

a. Naturally occurring pollutant concentrations prevent the attainment of the standard;

b. Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the standard, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating water conservation requirements;

c. Human caused conditions or sources of pollution prevent the attainment of the standard and cannot be remedied or would cause more environmental damage to correct than to leave in place;

d. Dams, diversions or other types of hydrologic modifications preclude the attainment of the standard, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the standard;

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

f. The standard, as applied to the permittee, will cause substantial and widespread adverse social and economic impacts in the area where the permittee is located.

2. Within 90 days after the expiration of the comment period under sub. (3), the secretary shall deny a requested variance if the permittee fails to make the demonstration required under subd. 1.

3. The failure of the secretary to issue a final decision under subd. 1. or 2. within the time required under this paragraph shall constitute a denial of the application for the variance.

(b) If the secretary issues a decision under par. (a) 1., the secretary shall, as part of the decision, establish all permit conditions needed to implement the variance.

(c) Within 30 days after the date of the decision under par. (a) 1., the department shall issue the notice required under s. 283.53 (2) (b) and (c) of its intent to modify the permit to incorporate the decision to approve all or part of a variance or to modify and approve the variance. Section 283.53 (2) (d) does not apply to the proposed permit modification.

(d) The decision under this subsection is reviewable under subch. III of ch. 227, except that ss. 227.40 to 227.46, 227.485 to 227.51 and 227.60 do not apply to the decision under this subsection.

(5) CONDITIONS ON VARIANCES. (a) A variance applies only to the permittee requesting the variance and to the pollutant specified in the variance. A variance does not affect or require the department to modify the corresponding water quality standard adopted under s. 281.15.

(b) A variance applies for the term established by the secretary, but not to exceed 3 years. The term of the initial variance and any renewals thereof may not exceed the time that the secretary determines is necessary to achieve the water quality based effluent limitation. Initial and interim effluent limitations established under

## 283.15 POLLUTION DISCHARGE ELIMINATION

par. (c) 1. apply, as appropriate, for the term of the underlying permit as issued, reissued or modified to implement the decision under sub. (4) (b) or as extended by operation of s. 227.51 (2). Notwithstanding sub. (4) (d), s. 227.51 (2) shall apply for the purposes of continuing the provisions of a permit pending the issuance or reissuance of a permit. Upon the issuance or reissuance of the new permit, sub. (2) (a) 2. and s. 283.63 (1) (am) apply.

(c) The permit modified pursuant to sub. (4) (c) to implement a variance shall require:

1. Compliance with an initial effluent limitation which at the time the variance is approved represents the level currently achievable by the permittee. At the time a variance is approved a compliance schedule and an interim effluent limitation that is achievable by the permittee during the term of the variance may be specified. The initial and the interim effluent limitations may not be less stringent than a categorical effluent limitation that applies to the permittee under s. 283.13 (2) or (4) or 283.19 or a toxic effluent standard that applies to the permittee under s. 283.21.

2. Investigation of treatment technologies, process changes, wastewater reuse or other techniques that may result in compliance by the permittee with the water quality standard adopted under s. 281.15, and submission of reports on the investigations at such times as required by the department. The secretary shall modify or waive the requirements specified in this subdivision if the secretary determines, based upon comments received on the tentative decision under sub. (3), that the requirements of this subdivision are:

a. Reasonably beyond the technical or financial capability of the permittee; or

b. Unreasonable in light of the conditions specified in sub. (4) (a) 1. a. to e.

(d) The department may impose conditions in the permit as necessary to administer the variance including, but not limited to, additional monitoring requirements.

(6) RENEWAL. A variance may be renewed using the procedures in and subject to subs. (2) to (5). A variance may not be renewed if the permittee did not submit the reports required under sub. (5) (c) 2. or substantially comply with all other conditions of the variance.

(7) DELEGATION OF SECRETARY'S AUTHORITY. The secretary may designate an officer or employee of the department to make any decision that the secretary is required to make under this section.

(8) NO RIGHT TO A HEARING. Notwithstanding s. 227.42, there is no right to a hearing under this section.

(9) RELATION TO PERMIT REVIEW. If the secretary approves part or all of a variance or modifies and approves the variance under this section and the department issues a modified water quality based effluent limitation under s. 283.63 for the same substance, the permittee shall comply with the least stringent of the 2 effluent limitations.

(10) APPLICABILITY. (a) Subsections (2) to (5) do not apply if the water quality based effluent limitation results from the decision of the department under s. 283.63 to make the water quality based effluent limitation less stringent than the effluent limitation in the permit as issued, reissued or modified.

(b) Subsections (2) to (5) apply if the water quality based effluent limitation results from the decision of the department under s. 283.63 to make the water quality based effluent limitation more stringent than the effluent limitation in the permit as issued, reissued or modified.

(c) This section does not apply to the issuance, reissuance or modification of a permit to incorporate a toxic effluent standard or prohibition promulgated by rule under s. 283.11 (4) or 283.21.

**History:** 1973 c. 74; 1979 c. 221 s. 2202 (39); 1985 a. 29; 1987 a. 27, 60; 1995 a. 227 s. 861; Stats. 1995 s. 283.15.

**283.17 Thermal effluent limitations.** (1) Any thermal effluent limitation proposed by the department may be modified by it in accordance with s. 283.63, if the owner or operator of the point source which is the subject of the proposed limitation demonstrates to the satisfaction of the department that the proposed limitation is more stringent than necessary to assure the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in and on the body of water into which the discharge is made.

(2) Any point source of a discharge having a thermal component, the modification of which is commenced after October 18, 1972, and which, as modified, meets the most stringent effluent limitation established under s. 283.13 or sub. (1) and this subsection, where the limitation assures protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in and on the water into which the discharge is made, shall not be subject to any more stringent effluent limitation with respect to the thermal component during either the 10-year period beginning on the date of completion of the modification or the period of depreciation or amortization of the facility for the purpose of section 167 or 169 of the internal revenue code, whichever ends first.

**History:** 1987 a. 27 ss. 1846mg, 1846ms; Stats. 1987 s. 147.055; 1991 a. 39; 1995 a. 227 s. 862; Stats. 1995 s. 283.17.

**283.19 Standards of performance.** (1) The department shall, by rule, promulgate standards of performance, for each class or category of sources referred to under s. 283.13 (1) that is required to be covered by permits issued under s. 283.31, which shall reflect the greatest degree of effluent reduction achievable through the application of the best available demonstrated control technology, processes, operating methods, or other alternatives. Where practicable, a standard of performance permitting no discharge of pollutants shall be adopted.

(2) (a) Standards of performance adopted under this section shall apply to all new sources within each class or category of sources for which a standard of performance has been adopted under this section.

(b) The term "new source" means any source, the construction of which commenced after the adoption of the standard of performance applicable to the category of sources of which it is a member.

(3) The department shall revise such standards to reflect changes in control technology, processes, operating methods or other alternatives. When establishing or revising standards of performance under this section, the department shall consider the cost of achieving such effluent reductions and the nonwater quality environmental impact and energy requirements of such reductions.

(4) The department may distinguish among classes, types and sizes within categories of sources for the purpose of establishing or revising standards of performance under this section.

(5) After the effective date of any standard of performance promulgated by the department under this section, no owner or operator of any new source may operate such source in violation of any standard of performance applicable to such a source.

**History:** 1973 c. 74; 1993 a. 16.; 1995 a. 227 s. 863; Stats. 1995 s. 283.19

**283.21 Toxic and pretreatment effluent standards.**

(1) TOXIC EFFLUENT LIMITATIONS AND STANDARDS. (a) *List.* The department shall promulgate by rule a list of toxic pollutants or combinations of pollutants subject to this chapter which consists of those toxic pollutants referred to in table 1 of committee print number 95-30 of the committee on public works and transportation of the U.S. house of representatives. After promulgation of this list, the department may revise by rule the list periodically and may add to or remove from the list any pollutant. In revising this list the department shall consider the toxicity of the pollutant, its persistence, degradability, the usual or potential presence in any waters of any organisms affected by the discharge of the toxic pollutant or combination of pollutants, the importance of the affected