

US EPA ARCHIVE DOCUMENT



In-Depth Presentation: Water Quality Standards Variances

*Water Quality Standards Regulatory
Revisions Final Rule*

Prepared by EPA Office of Water
Office of Science and Technology
October 5, 2015

Logistics

- **Access the audio portion of today's webinar by:**
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- **To ask a question about the final rule:**
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Purpose and Disclaimer

- Provide in-depth information about the WQS Variance requirements in EPA's Water Quality Standards Regulatory Revisions final rule.
- Provide an opportunity to ask clarifying questions about the WQS Variance requirements in the final rule.
- This webinar does not:
 - Impose any binding requirements
 - Determine the obligations of the regulated community
 - Change or substitute for any statutory provision or regulation requirement
 - Represent, change or substitute for any Agency policy or guidance
 - Control in any case of conflict between this discussion and statute, regulation, policy or guidance

Objectives of today's webinar

- Briefly review key elements of the WQS variance regulations
- Discuss EPA's view of WQS variance implementation
- Clarify specific issues of which EPA is currently aware
- Take questions to discuss during a follow-up webinar



➤ **Before revisions (40 CFR 131.13)**

- States and tribes may adopt WQS variances and variance policies

➤ **Issues**

- Uncertainty about appropriate use
- Public skepticism of role in making environmental progress

➤ **After revisions (40 CFR 131.14)**

- Explicit authorization and regulatory requirements to reduce uncertainty
- Facilitate appropriate, consistent, and effective implementation
- Transparent to both the regulated community and the public

Key subject areas addressed by 40 CFR 131.14

- Definition and applicability
- Variance requirements
- Supporting documentation
- Implementation in NPDES permits

Definition and applicability

- A time-limited designated use and criterion
- Reflects the highest attainable condition during the specified time period
- Only applies to NPDES permits and 401 certifications.
- Technology-based limits and all other water quality standards apply
- Does not lower currently attained water quality
- Is a WQS that must be reviewed and approved by EPA

Variance requirements

- Permittee(s) and/or waterbody or waterbody segment(s)
- Pollutant(s) or parameter(s)
- Quantifiable expression of the highest attainable condition
 - interim criterion
 - interim effluent condition
 - optimization of current treatment and a pollutant minimization program if additional controls are not feasible
- Term

Requirements for variances longer than 5 years

- Must reevaluate at least every 5 years with public input
- Submit reevaluation results to EPA within 30 days
- Must adopt a provision stating that if the reevaluation identifies an any more stringent highest attainable condition, it becomes the applicable highest attainable condition
- Must adopt a provision stating that the variance is no longer the applicable standard if a reevaluation is not conducted on schedule or submitted to EPA within 30 days

Supporting documentation

- Justification for adopting the variance
 - For CWA 101(a)(2) uses, at least one of the six factors listed in 40 CFR 131.10(g), or to facilitate restoration or reconfiguration activities
 - For non-101(a)(2) uses, demonstration the use and value was considered

- Justification of the term
 - Only as long as necessary to achieve highest attainable condition
 - Describe pollutant control activities to achieve highest attainable condition

Implementation in NPDES Permits

- A variance serves as the basis for water quality based effluent limits in a NPDES permit
- Any limitations and requirements necessary to implement in the variance must be included as enforceable conditions in the NPDES permit

Questions?

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- **Reminder:** Following today’s webinar, you may continue to submit your questions by emailing them to WQSRegulatoryClarifications@epa.gov and we will address as many as time allows during Wednesday’s question and answer session webinar.

WQS Variances Question and Answer Session Webinar

Wednesday, **October 7, 2015**, 1:00–2:00 PM Eastern

Requirements for waterbody variances are the same EXCEPT:

- Quantifiable expression of the highest attainable condition as an interim use and criterion (rather than a criterion or effluent condition)
- Identification and documentation of best management practices for nonpoint source control that could be implemented

Variance term and “renewals”

- Regulation does not limit the term of a WQS variance

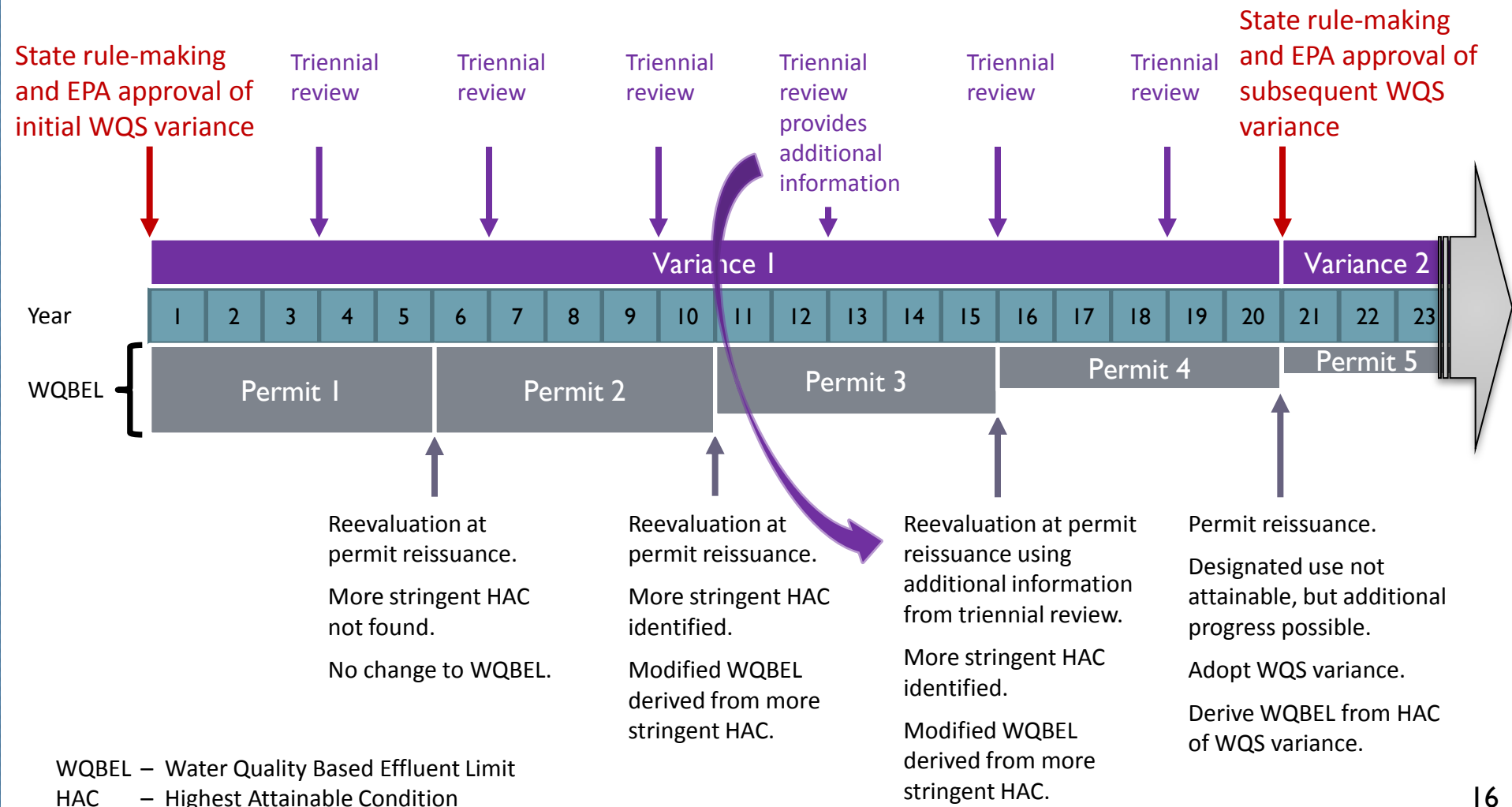
- BUT -

- Must only be as long as necessary to achieve the highest attainable condition
- Must submit documentation justifying the term as part of the review and approval process
- May adopt subsequent variance if it meets all the requirements of 131.14.
- Must reevaluate variances longer than 5 years

Flexibility in reevaluation requirements

- Regulation does not limit the term of a WQS variance
- Reevaluations no less frequently every 5 years.
 - Can coordinate with permit reissuance
 - Can coordinate with triennial reviews

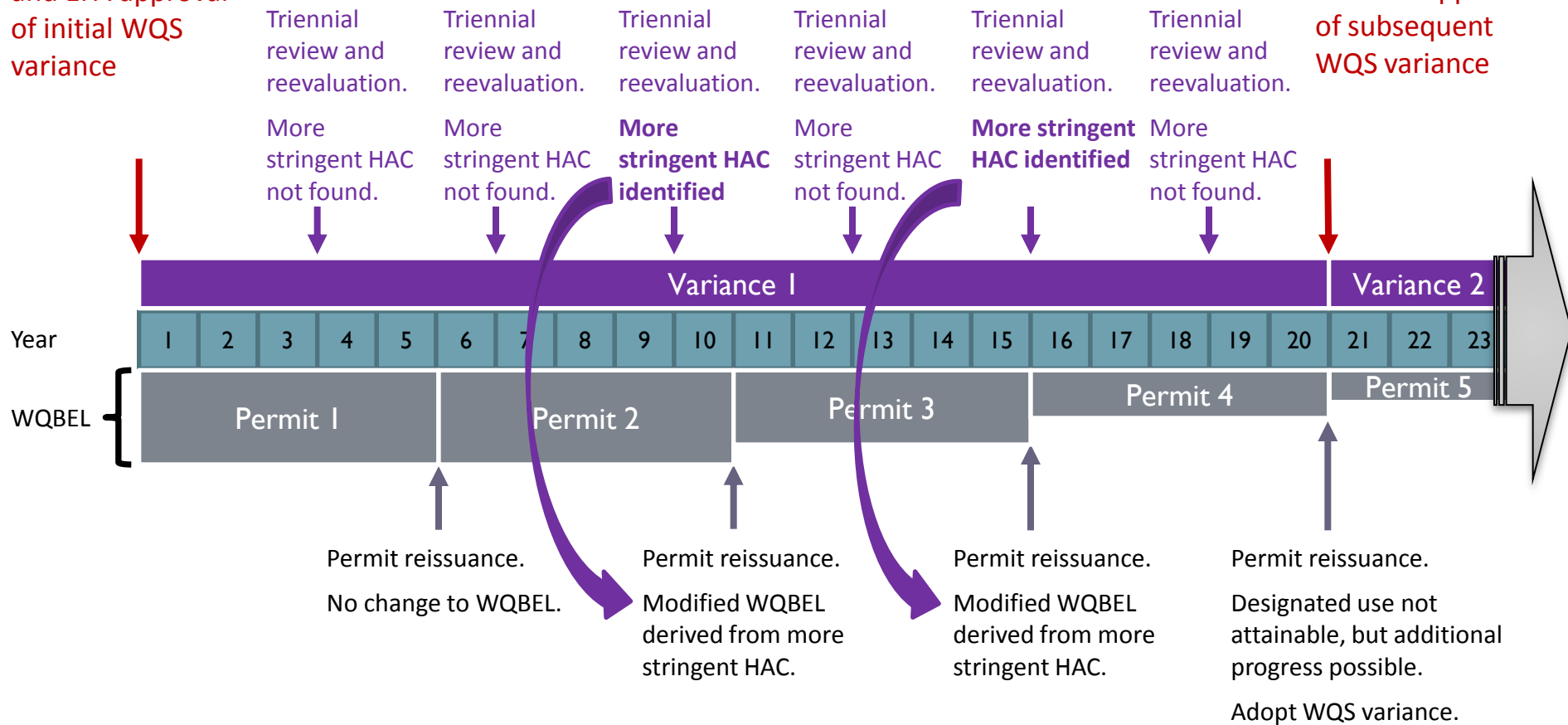
Reevaluation at permit reissuance



Reevaluation at triennial review

State rule-making and EPA approval of initial WQS variance

State rule-making and EPA approval of subsequent WQS variance



WQBEL – Water Quality Based Effluent Limit
 HAC – Highest Attainable Condition

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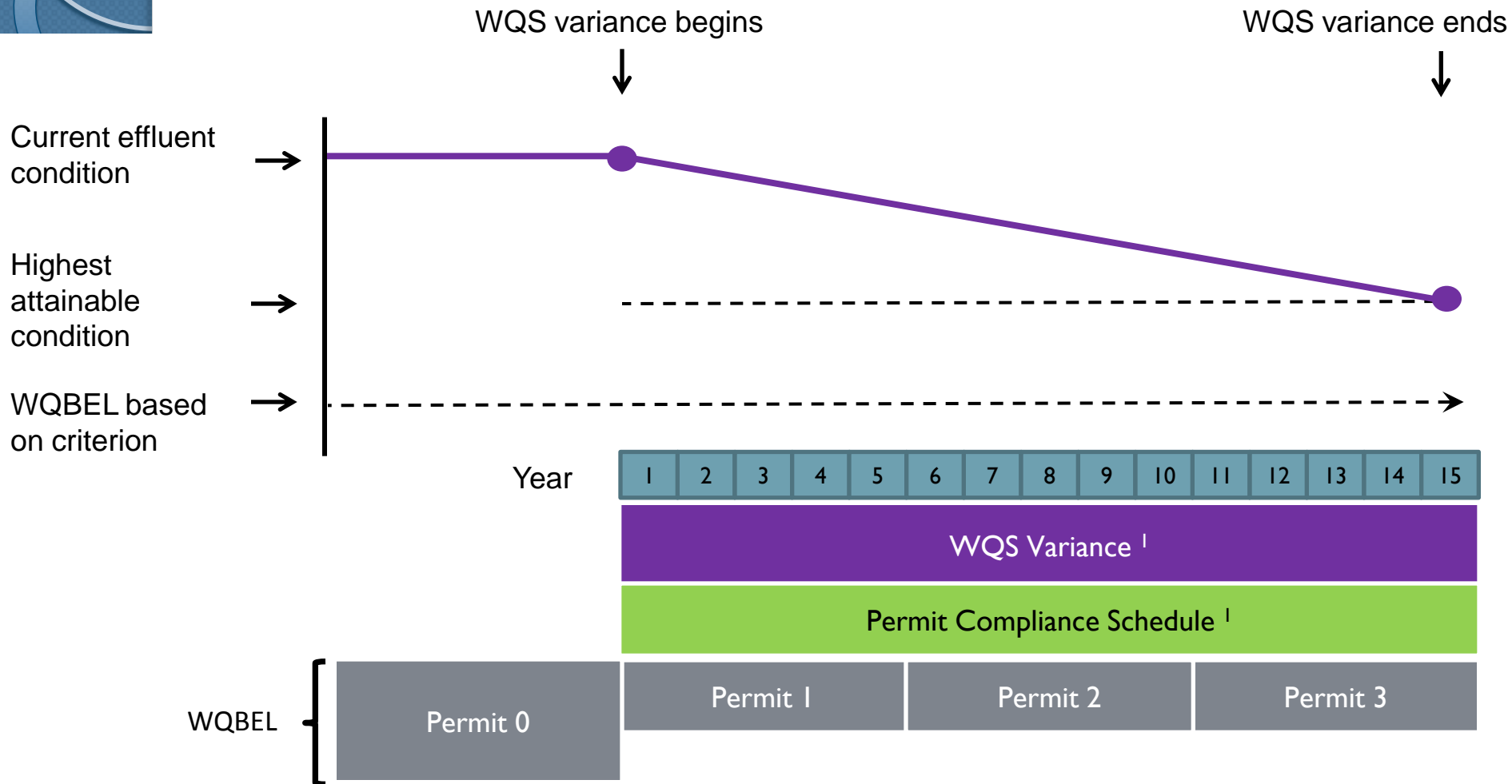
WQS variances and NPDES permit compliance schedules are different

Permit Compliance Schedules	WQS Variances
The permit requires compliance with final WQBELs (based on WQS) “as soon as possible”	The WQS is temporarily modified and WQBELs are adjusted to make incremental progress toward attaining the standard
Actions and time needed to comply with the WQBEL are known	Actions and time needed to comply with the WQBEL are uncertain
A condition of the permit	A change to WQS

Using a NPDES permit compliance schedule with WQS variance

- Highest attainable condition (the interim WQS)
 - highest attainable by the end of the variance term
 - applicable throughout the variance term
- A permitting authority could grant a compliance schedule if a permittee needs time to meet more stringent permit requirements under the variance

Hypothetical example of using a permit compliance schedule with a WQS variance



¹ Meets all statutory and regulatory requirements.

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Using a multiple discharger WQS variance

- Meet the same requirements in 40 CFR 131.14 as single dischargers.
- Account for as much individual permittee information as possible.
 - Should apply only to permittees experiencing the same issues
 - Group permittees on similar characteristics or technical and economic conditions
- A subsequent variance must again evaluate the justification and the permittees that will be covered under it.

WQS variances and variance policies adopted before the regulation was revised

- Review variances adopted before the effective date at next triennial review
- Review and revise if necessary variance policies and/or procedures to be consistent with 131.14

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