

factors at 40 CFR 131.10(g) may serve as the basis for removing a designated use as long as it is demonstrated that it is not feasible to attain the use. As discussed above, EPA is proposing to include specific provisions in this rule related to the condition regarding dams in 40 CFR 131.10(g)(4) to address Federally-owned or operated dams in recognition of the specific congressional authorization for the construction and operation of such dams. It was recognized that the tight deadlines under which EPA must propose and promulgate water quality standards for temperature in Oregon waters may not provide adequate time for the other Federal agencies to gather information related to the possible effects of Federally-owned or operated dams on the attainability of EPA's water quality standards or for EPA to fully evaluate any information that may be generated. Therefore, EPA is proposing to set out a process, as previously described, by which the submission of such information by another Federal agency and consideration by EPA would take place.

C. Variances

Water quality standards variances are a mechanism that can temporarily modify water quality standards. Today's rule contains a Federal variance procedure for the designated uses being proposed today. However, the procedures described later in this section can also be used by the State to develop variances for State-adopted water quality standards.

EPA believes variances are particularly suitable when the cause of nonattainment is discharger-specific and it appears that the designated use in question will eventually be attained or demonstrated to be unattainable. EPA has approved the granting of water quality standards variances to NPDES permitted entities by States in circumstances that would otherwise justify changing a use designation on the grounds of unattainability (*i.e.*, one or more of the six circumstances contained in 40 CFR 131.10(g) is met). In contrast to a change in standards that removes a use designation for a water body, a water quality standards variance applies only to the NPDES permitted discharger to whom it is granted and only to the pollutant parameter(s) upon which the finding of unattainability is based, and only for a limited period of time. The underlying standard remains in effect for all other CWA purposes.

The practical effect of such a variance is to allow an NPDES permit to be written using less stringent criteria, while encouraging ultimate attainment

of the underlying standard. A water quality standards variance provides a mechanism for assuring compliance with sections 301(b)(1)(C) and 402(a)(1) of the CWA, while granting temporary relief to point source dischargers.

While 40 CFR 131.13 allows States to adopt variance procedures for State-adopted water quality standards, because States cannot amend Federal law, such State procedures may not be used to grant variances for Federally-adopted standards. EPA believes that it is appropriate to provide comparable Federal procedures here. Through today's proposed rule, the Region 10 Regional Administrator may grant water quality standards variances where a person submits data indicating that an EPA-designated use proposed at 40 CFR 131.39(b) is not attainable for any of the reasons at 40 CFR 131.10(g).

Today's proposed rule spells out the process for applying for and granting such variances. Authorizing the Regional Administrator to grant variances should expedite the processing of variance requests. That process is contained in proposed 40 CFR 131.39(h) of today's rule. EPA also proposes that the Regional Administrator provide public notice of the proposed variance and provide an opportunity for public comment. EPA understands that variance-related issues can often arise in the context of permit issuance. EPA Region 10 will seek to work closely with the State permitting authorities to ensure that variance requests will be considered in tandem with the State NPDES permitting process.

The variance procedures proposed today requires an applicant for a water quality standards variance to submit a request to the Regional Administrator (or his/her delegatee) with supporting information. Under this rule, as in the national program, the burden is on the applicant to demonstrate to EPA's satisfaction that the designated use is unattainable for one of the reasons specified in 40 CFR 131.10(g). EPA believes that because a variance results in a temporary change to the designated use, the demonstrations needed to justify a variance should be analogous to those needed to justify removing the use entirely. A variance may not be granted if the use can be attained, at a minimum, by all dischargers implementing effluent limitations required under sections 301(b) and 306 of the CWA and the nonpoint sources implementing reasonable best management practices for nonpoint source control as required by the State. In addition, a variance may not be granted if it would likely jeopardize the

continued existence of any threatened or endangered species listed under section 4 of the ESA or result in the destruction or adverse modification of such species' critical habitat.

Under this rule, a variance may not exceed three years or the term of the NPDES permit, whichever is less. A variance may be renewed if the permittee again demonstrates that the use in question is still not attainable. Renewal of the variance may be denied if EPA finds that the conditions of 40 CFR 131.10(g) are not met.

D. Heat Load and Thermal Plume Provisions

1. Heat Load Limit

Questions often arise regarding how to interpret water quality standards when implementing the standards under the CWA. EPA believes that with respect to this proposed rule, questions may arise during NPDES permitting or TMDL establishment as to whether the water quality temperature criteria proposed here would be attained in impaired waters by authorizing effluent limitations or establishing waste load allocations or load allocations that allow an insignificant addition of heat to impaired waters. In today's proposal, EPA is including a provision that would allow for insignificant additions of heat by anthropogenic sources to water bodies or segments that exceed the applicable temperature criterion. While this provision is not a water quality standard under CWA section 303(c), this provision will assist regulatory authorities in carrying out their responsibilities under sections 303(d) and 402 of the CWA. Specifically, EPA proposes that the addition of heat from anthropogenic sources will be determined to be insignificant if all such additions cumulatively, at the point of maximum impact, cause an instream temperature increase of 0.3°C/0.5°F or less above the otherwise applicable criterion. In addition, no single point source may cause, by itself, an instream temperature increase of 0.3°C/0.5°F or more above the otherwise applicable criterion assuming complete mixing with 25 percent of the river flow.

There are several approaches that the State may take to assure that these conditions are met. For example, to calculate the impact of single sources, the State may use a simple energy balance equation to calculate a point source effluent limitation that would meet the heat load limit, assuming the upstream temperature is at the otherwise applicable criterion, and calculating an end-of-pipe effluent limit that would result in an 0.3°C/0.5°F