

where numerical criteria cannot be determined or to supplement numeric criteria (*see* 40 CFR 131.11(b)). EPA does not have specific guidance for States and authorized Tribes on developing site-specific criteria for the protection of recreation uses, but this does not preclude the Commonwealth from developing its own scientifically defensible methods. Today's proposed rule does not limit Puerto Rico's ability to modify the criteria applicable to the Federal swimmable use.

C. Variances

Water quality standards variances are another alternative that can give a facility a limited period of time to comply with water quality standards. Puerto Rico has an EPA-approved variance procedure in the PRWQSR (Article 9). As discussed above, the proposed rule contains a Federal variance procedure.

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

For example, if the Commonwealth or a permittee demonstrates that the primary contact recreation use can not be attained pursuant to 40 CFR 131.10(g) because of high levels of fecal coliforms from a wastewater treatment facility, but where an upgraded treatment technology might allow the designated use to be attained, a temporary variance may be appropriate. The variance would allow the discharger's permit to include limits based on relaxed criteria for fecal coliform until the new technology is put in place and it is determined if the underlying designated use is attainable. The practical effect of such a variance is to allow a 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 ensuring compliance with sections

301(b)(1)(C) and 402(a)(1) of the CWA while also granting temporary relief to point source dischargers.

While 40 CFR 131.13 allows States to adopt variance procedures for State-adopted water quality standards, such State procedures may not be used to grant variances from Federally promulgated standards. EPA believes that it is appropriate to provide comparable Federal procedures to address new information that may become available. Therefore, under EPA's proposal, the Region 2 Regional Administrator may grant water quality standard variances where a permittee submits data indicating that the primary contact recreation designated use is not attainable for any of the reasons in 40 CFR 131.10(g). This variance procedure will apply to the primary contact recreation use for the Subject Waterbodies.

Today's proposed rule spells out the process for applying for and granting such variances. EPA is proposing to use informal adjudication processes in reviewing and granting variance requests. That process is contained in 40 CFR 131.40(c)(4) of today's proposed rule. Because water quality standards variances are revisions to water quality standards, the proposal provides that the Regional Administrator will provide public notice of the proposed variance and an opportunity for public comment. EPA understands that variance related issues may arise in the context of permit issuance.

The proposed variance procedures require an applicant for a water quality standards variance to submit a request and supporting information to the Regional Administrator (or his/her delegatee). The applicant must demonstrate that the designated use is unattainable for one of the reasons specified in 40 CFR 131.10(g). A variance may not be granted if the use could be attained, at a minimum, by implementing effluent limitations required under sections 301(b) and 306 of the CWA and reasonable best management practices for nonpoint source control.

Under the proposal, a variance may not exceed five years or the term of the NPDES permit, whichever is less. A variance may be renewed if the permittee 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 or if the permittee did not comply with the conditions of the original variance.

EPA is soliciting comment on the need for a variance process for EPA-promulgated use designations, the

appropriateness of the particular procedures proposed today, and whether the proposed variance procedures are sufficiently detailed.

V. Economic Analysis

This proposed rule will have no direct impact on any entity because the rule simply establishes water quality standards (*e.g.*, use designations) which by themselves do not directly impose any costs. These standards, however, may serve as a basis for development of NPDES permit limits. In Puerto Rico, EPA Region 2 is the NPDES permitting authority and retains considerable discretion in implementing standards. Thus, until EPA Region 2 implements these water quality standards, there will be no effect on any entity. Nonetheless, EPA prepared a preliminary analysis to evaluate potential costs to NPDES dischargers in Puerto Rico associated with future implementation of EPA's Federal standards.

Any NPDES-permitted facility that discharges to water bodies affected by this proposed rule could potentially incur costs to comply with the rule's provisions. The types of affected facilities may include industrial facilities and publicly owned treatment works (POTWs). EPA did not consider the potential costs for nonpoint sources, such as agricultural and forestry-related nonpoint sources, although EPA recognizes that the Commonwealth may decide to impose controls on these sources to achieve water quality standards. As a technical matter, nonpoint source discharges are difficult to model and evaluate for potential costs because they are intermittent, highly variable, and occur under different hydrologic or climatic conditions than continuous discharges from industrial and municipal facilities, which are evaluated under critical low flow or drought conditions. Thus, the evaluation of nonpoint sources and their effects on the environment is highly site-specific and data-sensitive. In addition, EPA did not address the potential monetary benefits of this proposed rule for Puerto Rico.

A. Identifying Affected Facilities

According to EPA's Permit Compliance System (PCS), there are 593 NPDES-permitted facilities in Puerto Rico. Eighty-four of the facilities are classified as major dischargers, and 509 are minor or general permit dischargers. However, EPA did not include general permit facilities in its analysis because data for such facilities are extremely limited and flows are usually negligible. Furthermore, EPA could not determine if any of these facilities actually