

§ 131.40 Puerto Rico.

(a) *Use designations for marine waters.* In addition to the Commonwealth's adopted use designations, the following waterbodies

in Puerto Rico have the beneficial use designated in this paragraph (a) within the bays specified below, and within the Commonwealth's territorial seas, as defined in section 502(8) of the Clean

Water Act, and 33 CFR 2.05–5, except such waters classified by the Commonwealth as SB.

Waterbody segment	From	To	Designated use
Coastal Waters	500m offshore	3 miles offshore	Primary Contact. Recreation.
Guayanilla & Tallaboa Bays	Cayo Parguera	Punta Verraco	Primary Contact. Recreation.
Mayaguez Bay	Punta Guanajibo	Punta Algarrobo	Primary Contact. Recreation.
Ponce Port	Punta Carenero	Punta Cuchara	Primary Contact. Recreation.
San Juan Port	Mouth of Río Bayamón	Punta El Morro	Primary Contact. Recreation.
Yabucoa Port	N/A	N/A	Primary Contact. Recreation.

(b) *Criteria that apply to Puerto Rico's marine waters.* In addition to all other Commonwealth criteria, the following criteria for bacteria apply to the waterbodies in paragraph (a) of this section:

Bacteria: The fecal coliform geometric mean of a series of representative samples (at least five samples) of the waters taken sequentially shall not exceed 200 colonies/100 ml, and not more than 20 percent of the samples shall exceed 400 colonies/100 ml. The enterococci density in terms of geometric mean of at least five representative samples taken sequentially shall not exceed 35/100 ml. No single sample should exceed the upper confidence limit of 75% using 0.7 as the log standard deviation until sufficient site data exist to establish a site-specific log standard deviation.

(c) *Water quality standard variances.*

(1) The Regional Administrator, EPA Region 2, is authorized to grant variances from the water quality standards in paragraphs (a) and (b) of this section where the requirements of this paragraph (c) are met. A water quality standard variance applies only to the permittee requesting the variance and only to the pollutant or pollutants specified in the variance; the underlying water quality standard otherwise remains in effect.

(2) A water quality standard variance shall not be granted if:

(i) Standards will be attained by implementing effluent limitations required under sections 301(b) and 306 of the CWA and by the permittee implementing reasonable best management practices for nonpoint source control; or

(ii) The variance would likely jeopardize the continued existence of any threatened or endangered species listed under section 4 of the Endangered

Species Act or result in the destruction or adverse modification of such species' critical habitat.

(3) A water quality standards variance may be granted if the applicant demonstrates to EPA that attaining the water quality standard is not feasible because:

(i) Naturally occurring pollutant concentrations prevent the attainment of the use;

(ii) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating Commonwealth water conservation requirements to enable uses to be met;

(iii) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place;

(iv) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way which would result in the attainment of the use;

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

(vi) Controls more stringent than those required by sections 301(b) and 306 of the CWA would result in substantial and widespread economic and social impact.

(4) Procedures. An applicant for a water quality standards variance shall submit a request to the Regional Administrator of EPA Region 2. The

application shall include all relevant information showing that the requirements for a variance have been met. The applicant must demonstrate that the designated use is unattainable for one of the reasons specified in paragraph (c)(3) of this section. If the Regional Administrator preliminarily determines that grounds exist for granting a variance, he/she shall provide public notice of the proposed variance and provide an opportunity for public comment. Any activities required as a condition of the Regional Administrator's granting of a variance shall be included as conditions of the NPDES permit for the applicant. These terms and conditions shall be incorporated into the applicant's NPDES permit through the permit reissuance process or through a modification of the permit pursuant to the applicable permit modification provisions of Puerto Rico's NPDES program.

(5) A variance may not exceed five years or the term of the NPDES permit, whichever is less. A variance may be renewed if the applicant reapplies and demonstrates that the use in question is still not attainable. Renewal of the variance may be denied if the applicant did not comply with the conditions of the original variance, or otherwise does not meet the requirements of this section.

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