


# Office of Drinking Water Policy

Title: Variance and Exemption	Number: J.28
References: WAC 246-290-060	
Contact: Rich Hoey	
Effective Date: December 3, 2003	
Supersedes:	
Approved:	 <i>Director, Office of Drinking Water</i>

Drinking water policies are written descriptions of the approach taken by the Program to implement a statute, regulation, court order, or other agency order, and may include the Program's current practice, procedure, or method of action based on that approach. Any generally applicable directives or criteria that provide the basis for imposing penalties or sanctions, or for granting or denying Program approvals, must either be in statute or established in a rule.

## **POLICY STATEMENT:**

The State Board of Health (SBOH) approves or denies Group A public water system (PWS) applications for variances or exemptions. The SBOH will only consider applications that meet all requirements and criteria as specified in WAC 246-290-060.

The Office of Drinking Water (ODW) provides testimony to the SBOH for consideration of applications. Since other avenues are available to address non-compliance, ODW would prefer to negotiate compliance agreements to ensure SDWA requirements are met.

In the event that a variance or exemption is granted by the SBOH, the PWS owner must notify system users in accordance with chapter 246-290 WAC Part 7 Subpart A.

In cases where a PWS owner has applied for but was not granted a variance or exemption, the ODW will proceed with compliance action to address the violation(s) as resources allow.

At the request of the SBOH, ODW staff will track the corrections schedule, required as part of the approval process, when a variance or an exemption is granted.

## **POLICY SCOPE:**

- Identifies criteria that any PWS owner must satisfy to request a *variance* from an applicable primary drinking water regulation.
- Identifies criteria that any PWS owner must satisfy to request an *exemption* from an applicable primary drinking water regulation.
- Identifies the approach ODW staff will use to obtain information to support testimony to the SBOH.

## **KEY DEFINITIONS AND BACKGROUND:**

**Feasible:** The best technology, treatment techniques, and other means which the Administrator (EPA) finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking costs into consideration).

**Feasible Technologies aka “treatment technology, treatment techniques or other means” and/or “compliance technologies”:** A list of technologies, treatment techniques, and other means as determined by the Administrator (EPA) to be feasible for the purposes of MEETING a MCL or treatment technique requirement. The EPA shall include in the list any technology that is affordable for small systems considering the size of the system and cost in the following categories

- Population of 10,000 or less but more than 3,300;
- Population of 3,300 or less but more than 500; and
- Population of 500 or less but more than 24;

to achieve compliance with the MCL including packaged or modular systems, point-of-entry or point-of-use treatment units.

**Variance Technologies:** Best feasible treatment technologies, treatment techniques, or other means identified by EPA, when no treatment (feasible) technology is listed, which may not achieve compliance with the MCL or treatment technique requirement but shall achieve the maximum reduction or inactivation efficiency that is affordable considering size category of system and quality of water. Variance technologies will only be identified by the Administrator for systems in the size categories listed in the definition of feasible technologies above and will not be identified unless the Administrator determines, considering quality of water to be treated and expected life of technology that the technology is protective of public health.

**General Variance:** A narrowly focused process that is available to public water systems in lieu of complying with a requirement respecting an applicable MCL or treatment technique. A general variance addresses those rare circumstances where some unusual characteristic of the source water reasonably available to a system will result in less effective performance of the “Feasible Technologies”. The process would be available when the public water system: \_

- 1) Has met all qualifying conditions
- 2) Has installed or agreed to install “feasible technologies” even though this action is or will be unable to reduce the contaminant in question to levels below the MCL
- 3) Has provided adequate information to facilitate the state finding that the variance will not result in an unreasonable risk to health, and
- 4) Is under an enforceable schedule for compliance with each contaminant level requirement with respect to which the variance was granted.

**Small System Variance (systems having 10,000 customers or less):** A process that is available to public water systems in lieu of complying with any requirement respecting an applicable MCL or treatment technique. The process would be available when:

- 1) EPA determines that there are no nationally available “Feasible Technologies” for that system size/water quality combination
- 2) EPA has identified “Variance Technologies” appropriate for that size of system

And when the public water system has:

- 1) Met qualifying conditions
- 2) Has installed or agreed to install appropriate “Variance Technology” in an enforceable compliance schedule
- 3) Has provided adequate information to facilitate the state finding that the variance will not result in an unreasonable risk to health

**Exemption:** A process designed to provide a system facing compelling circumstances, such as economic hardship, additional time to come into compliance with any requirement respecting an applicable MCL or treatment technique. The process would be available when the public water system has:

- 1) Met qualifying conditions and
- 2) Has entered into an enforceable schedule to gain compliance with each contaminant

**PROCEDURE:**

#	Action By	Action
1	PWS Owner	Requests, in writing, a variance or exemption from a maximum contaminant level, treatment technique violation, or both.
2	Regional Office (RO) Water Quality Lead	Determines if the request applies to a regulation that is eligible for a variance or exemption.
3	RO Water Quality Lead Or Regional Engineer	Informs RO Manager of request and sends a response letter to the PWS owner that indicates ODW's preference to negotiate a compliance agreement rather than pursue a formal variance or exemption, and whether or not the violation is eligible for a variance/exemption. The response letter requests the system to contact ODW with their decision on continuing the variance or exemption process.
4	RO Water Quality Lead Or Regional Engineer	If purveyor informs ODW (e.g., via phone call, email, letter, etc.) that they plan to continue pursuing a variance or exemption, sends a letter to the purveyor that includes the variance/exemption criteria, noted below (detailed in sections 1415 and 1416 of the Federal Safe Drinking Water Act), that must be met and submitted as part of a formal request. Informs PWS owner that the information can be sent to ODW for preliminary review.
5	PWS Owner	Elects to submit required documentation for preliminary review.
6	Field Operations Deputy Director, RO Manager and appropriate program staff	Reviews submittal, considering the requirements in CFR 142.20, to determine if requirements are satisfied. Informs PWS owner of 1) review results and 2) if applicable negotiate the draft schedule for compliance and implementation of control measures that end on the date of compliance.
7	PWS owner	Provides notice of and opportunity for a public meeting on a proposal to request a variance or exemption as applicable for system users (attended by ODW staff)
8	PWS owner and ODW staff	Prepares a summary of testimony shared at the public meeting
9	Field Operations Deputy Director, RO Manager and appropriate program staff	Reviews information with ODW Director, document findings and send results to the PWS Owner with the following explanations: 1) concurrence with information will result in testimony to the SBOH supporting the request, 2) non-concurrence will result in testimony recommending that the SBOH deny the request
10	SBOH	Schedules and hold a public hearing regarding the requested variance or exemption
11	ODW Director or designee	Testifies, as appropriate, before the SBOH
12	PWS Owner	Submits information that addresses public hearing comments and concerns for review

13	SBOH	Grants or denies request in accordance with time frames and EPA approvals as specified in sections 1415 and 1416 of the Federal Safe Drinking Water Act
14	Field Operations Deputy Director	Notifies Environmental Protection Agency of all granted variances and exemptions
15	PWS owner	Notifies system users in accordance with 246-290 WAC Part 7 Subpart A
16	RO Water Quality Lead	Tracks milestones on compliance schedule for granted variances and exemptions and refers failures to RO Compliance Manager for possible formal enforcement
17	RO Compliance Manager	Follows prescribed compliance process per the compliance matrix for requests denied by the SBOH or for PWSs not meeting compliance schedules submitted as part of the variance or exemption request

**General Variance, Small System Variance and Exemption Criteria**

PWS Owner may send the following information to the ODW for preliminary review. This information is specified in the Federal Safe Drinking Water Act, which must be met, documented and submitted as part of a formal request.

**General Variance:** In accordance with section 1415 of the Federal Safe Drinking Water Act, documentation that supports the need for a variance in lieu of complying with a requirement respecting an applicable MCL or treatment technique includes:

- 1) Proof of installation or agreement to install, in accordance with an enforceable compliance agreement, a feasible treatment technology, treatment techniques or other means available (considering cost);
- 2) Proof that the system cannot meet the MCL in spite of the installation;
- 3) An evaluation that indicates that alternative sources of water are not reasonably available;
- 4) Sufficient information that proves that granting the request will not result in an unreasonable risk to health;
- 5) A compliance schedule that requires compliance with the contaminant level as expeditiously as possible, within the time frames established in the Act, and implementation of any additional control measures during the period ending on the date of compliance.
- 6) Notice of and opportunity for a public hearing must be provided both before a compliance schedule may take effect and a variance proposed to be granted may take effect.

**Small System Variance (systems having 10,000 customers or less):** In accordance with section 1415 of the Federal Safe Drinking Water Act, documentation that supports the need for a small system variance in lieu of complying with a requirement respecting an applicable MCL or treatment technique includes:

- 1) Proof that variance technology has been identified that is applicable for the size and source water quality of the system in question;
- 2) The installation, operation, and maintenance of the appropriate variance technology, treatment techniques or other means available by the purveyor;
- 3) Proof that the purveyor cannot afford to comply through the installation of feasible treatment technologies;
- 4) Proof that the purveyor cannot afford to comply through an alternative source of water supply;

- 5) Proof that restructuring or consolidation that would result in compliance is not practicable;
- 6) Information that indicates that granting the request will ensure adequate protection of human health; and
- 7) A compliance schedule that requires compliance with the conditions of the variance within the time frames established in the Act.

**Exemption:** In accordance with section 1416 of the Federal Safe Drinking Water Act, documentation that supports the need for additional time to comply includes:

- 1) The compelling factors that will not allow the PWS to comply with the maximum contaminant level, treatment technique or implementation of measures to develop an alternative supply (including economic factors) within the regulatory time frame;
- 2) Proof that PWS began operation prior to the effective date of the contaminant or treatment technique;
- 3) Sufficient information that proves that granting the request will not result in an unreasonable risk to health;
- 4) Proof that management or restructuring (or both) that would result in compliance or at least water quality improvement cannot be reasonably made;
- 5) Proof that the PWS cannot meet the standard without capital improvements which cannot be completed within the regulatory time frame;
- 6) Proof that a system needing financial assistance has entered into an agreement to obtain such assistance and entered into an enforceable agreement to become a part of a regional public water system;
- 7) A compliance schedule that requires compliance with the contaminant level as expeditiously as possible, i.e. not later than 3 years after the otherwise applicable compliance date established by the Safe Drinking Water Act, and implementation of any additional control measures during the period ending on the date of compliance. (Compliance schedule extensions may be considered under criteria specified in section 416(b)(2) of the Federal Safe Drinking Water Act);
- 8) Notice of and opportunity for a public hearing must be provided before a compliance schedule may take effect; and
- 9) Proof that the PWS has not been granted a small system variance.