Ohio Administrative Code

Rule 3745-1-38 Variances from water quality standards for point sources.

Effective: December 2, 2025

[Comment: For dates of non-regulatory governmentpublications, publications of recognized organizations and associations,federal rules and federal statutory provisions referenced in this rule, seerule 3745-1-03 of the Administrative Code.]

(A) Applicability.

(1) The director may grant a water quality standards (WQS) variance for a specific criterion or value adopted in or developed under this chapter that is the basis of a water quality-based effluent limit (WQBEL) included in any existing, draft, or proposed control document, as defined in paragraph (A) of rule 3745-1-05 of the Administrative Code in accordance with the following:

(a) A variance may be adopted for a permittee or water bodyor water body segment but only applies to the permittee, authorized discharges,or water body or water body segment specified in the variance.

(b) A variance does not affect, nor does the director needto modify, the underlying designated use and criterion for the waterbody.

(c) Any limitations and requirements necessary to implementthe WQS variance will be included as enforceable conditions for the controldocument subject to the WQS variance.

(2) This rule does not apply to any of the following:

(a) Any discharge of pollutants, as defined in 40 C.F.R.122.2, approved in any control document from any building, structure, facility,or installation the construction of which commenced after March 23, 1997,unless:

(i) Such a discharge occurs as a result of a response or remedial action taken pursuant to the

Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, or the Ohio EPA voluntary action program (VAP).

(ii) WQS or method detection limit is issued, modified, or adopted after the national pollutant discharge elimination system (NPDES) permit for the discharge is issued.

(iii) The discharge results from rerouting all or a portion of an existing permitted discharge to a new discharge point that discharges to the same body of water, and there is a pollutant reduction included in the control document for the discharge being rerouted.

(iv) A new or expanded discharge of bioaccumulative chemicals of concern (BCC) from a publicly owned treatment works or sewerage system is necessary to prevent or mitigate a public health threat to the community.

(v) The discharge occurs as a result of an overall reduction in emissions of a pollutant from a facility existing as of March 23, 1997 to air, waters of the state, or other media to which people or aquatic life are exposed.

(vi) The variance is a multi-discharger ammonia variance issued under paragraph (M) of this rule.

(b) Any source for which a control document was revoked ornot renewed and for which a new control document has been subsequently issued,except that such a source may be eligible to receive a variance if a waterquality criterion or value, or method detection limit, is issued, modified, or adopted after the source's new control document is issued.

(c) If the variance would likely jeopardize the continuedexistence of any threatened or endangered species as defined in rule 3745-1-02of the Administrative Code or result in the destruction or adverse modificationof such species' critical habitat.

(d) If WQS will be attained by implementing effluent limitsrequired under sections 301(b) and 306 of the act as defined in rule 3745-33-01of the Administrative Code and by the permittee implementing cost-effective andreasonable best management practices for nonpoint source control over which thepermittee has control.

(B) Conditions to grant a variance and application requirements.

(1) A variance may be granted if the director determines, based on data and information provided by the permittee or data and information independently available to the director, that attainment of the WQS is not feasible because of any of the following:

(a) Lake, wetland, or stream restoration through damremoval or other significant reconfiguration activities preclude attainment ofthe designated use and criterion while the actions are being implemented.

(b) Naturally occurring pollutant concentrations preventthe attainment of the WQS.

(c) Natural, ephemeral, intermittent, or low flowconditions or water levels prevent the attainment of the WQS, unless theseconditions may be compensated for by the discharge of sufficient volume of effluent to enable WQS to be met.

(d) Human-caused conditions or sources of pollution preventthe attainment of the WQS and cannot be remedied, or would cause moreenvironmental damage to correct than to leave in place.

(e) Dams, diversions, or other types of hydrologicmodifications preclude the attainment of the WQS, and it is not feasible torestore the water body to its original condition or to operate suchmodification in a way that would result in the attainment of theWQS.

(f) Physical conditions related to the natural features ofthe water body, such as the lack of a proper substrate, cover, flow, depth,pools, riffles, and the like, unrelated to chemical water quality, preclude attainment of WQS related to aquatic life use designations.

(g) Controls more stringent than those described insections 301(b) and 306 of the act would result in substantial and widespreadeconomic and social impact.

(2) Submittal of variance application. The permittee shall submit an application for a variance to Ohio EPA. The variance application is a separate application from the control document application.

The variance application shall include the following:

(a) The pollutant or water quality parameters, the waterbody or water body segment for which the WQS variance applies, and, ifdischarger-specific, the permittee subject to the WQS variance.

(b) An alternatives analysis that, at a minimum, addressesthe following alternatives:

(i) Alternative locations for the discharge.

(ii) Consolidation with other wastewater treatment facilities.

(iii) Reduction in scale of the discharge.

(iv) Water recycling measures within the facility.

(v) Reclaimed water use.

(vi) Process changes.

(vii) Alternative or advanced treatment.

(viii) Improved operation and maintenance.

(ix) Seasonal or controlled discharge.

(x) Watershed trading.

(xi) Land application of wastewater.

(xii) Total containment.

(c) The highest attainable condition of the water body orwater body segment as a quantifiable expression that is one of thefollowing:

(i) For a water body or water body segment WQS variance, either of the following:

(a) The highest attainable interim use and criterion.

(b) The interim use and criterion that reflects the greatest pollutant reduction achievable with installed pollutant control technologies if no additional feasible pollutant control technology can be identified, and the adoption and implementation of a pollutant minimization program (PMP).

(ii) For a discharger-specific WQS variance, any of the following:

(a) The highest attainable interim criterion.

(b) The interim effluent condition that reflects the greatest pollutant reduction achievable.

(c) The interim criterion or the interim effluent condition that reflects the greatest pollutant reduction achievable with installed pollutant control technologies if no additional feasible pollutant control technology can be identified, and the adoption and implementation of a PMP.

(d) The proposed term of the WQS variance. The term of thevariance may only be as long as necessary to achieve the highest attainablecondition.

(e) All pollutant control activities necessary to achievethe highest attainable condition, including activities identified through aPMP.

(f) A PMP if the variance is from a WQS for a BCC in thelake Erie drainage basin and not otherwise required by paragraph (C)(i)(b) or(C)(ii)(c) of this rule. The PMP shall include the following, at a minimum, inaddition to the requirements in rule 3745-33-07 of the AdministrativeCode:

(i) Data documenting the facility's current influent and effluent concentrations for the BCC.

(ii) A preliminary identification of potential sources.

(iii) A proposed schedule for evaluating those sources.

(iv) A proposed schedule for identifying and evaluating potential reduction, elimination, and prevention methods.

(g) For a WQS variance that applies to a water body orwater body segment, all of the requirements of paragraph (B)(2) of this ruleand the identification of any cost effective and reasonable best managementpractices for nonpoint source controls related to the pollutant or waterquality parameter and water body or water body segment specified that could beimplemented to make progress towards attaining the underlying designated useand criterion.

(h) An attachment to the application that includes thefollowing information, at a minimum, if the applicant is requesting a varianceunder paragraph (B)(1)(g) of this rule:

(i) For municipal dischargers:

(a) A general plan including a brief description of existing facilities; a brief description of lowest cost improvements to attain WQS; capital cost of improvements; and total annual operation and maintenance cost of facility after improvements.

(b) Existing rate structure with a copy of the authorizing ordinance.

(c) Audited annual financial reports for the facility for the previous five years.

(d) Average daily flow for the following: total, residential, commercial, industrial, institutional/other, inflow and infiltration.

(e) Number of residential customers and non-residential customers served by the facility.

(f) Any information that may indicate conditions in paragraph (B)(1)(g) of this rule for granting a variance.

(ii) For industrial dischargers:

(a) A general plan including a brief description of existing facilities; a brief description of lowest cost improvements to attain WQS; capital cost of improvements; and total operation and maintenance cost of facility after improvements.

(b) Audited annual financial reports for the facility for the most recent five years.

(c) Standard industrial classification for facility.

(d) Total number of employees and total annual salary, wage, and overhead costs.

(e) Any additional information that may indicate conditions in paragraph (B)(1)(g) of this rule for granting a variance.

(i) In addition to the requirements of paragraphs (B)(1)and (B)(2) of this rule, the permittee shall do the following:

(i) Show that the variance requested complies with the antidegradation requirements of rule 3745-1-05 of the Administrative Code.

(ii) Characterize the extent of any increased risk to human health and the environment associated with granting the variance compared with compliance with the WQS absent the variance, such that the director is able to conclude that any such increased risk is consistent with the protection of the public health, safety, and welfare.

(C) Review of variance application. Upon receipt of a complete application for a variance, the director shall consider, at a minimum, the following factors when evaluating substantial and widespread economic and social impact:

(1) The costs, cost-effectiveness, measured in dollars per pound equivalent, and affordability of pollutant removal that would result from implementing measures capable of attaining the WQS.

(2) The reduction in concentrations and loadings attainable by using measures capable of attaining

WQS.

(3) The financial effects on the permittee of implementing measures capable of attaining the WQS.

(4) The type and magnitude of adverse or beneficial environmental impacts resulting from implementing measures capable of attaining the WQS.

(5) The overall impact on employment at the facility and on the economy of the area in which the discharger is located resulting from implementing measures capable of attaining the WQS.

(D) Multiple discharger determinations. Where necessary to address widespread WQS nonattainment issues, the director may make determinations about the factors listed in paragraph (B)(1) of this rule for a category of dischargers where the director has enough information to determine that variances are necessary for that category according to one or more of the conditions in paragraph (B)(1) of this rule, and where the director is able to identify a common set of highest attainable condition (HAC) requirements, or a common method of establishing HAC requirements, for the category of discharges. The determination also identifies the term during which the determination is effective. These determinations and specific application requirements are made by rule. Dischargers applying for a variance based on multiple discharger determinations shall submit information demonstrating that the determinations of the director are applicable to the individual discharger.

(E) Public notice of preliminary decision.

(1) Upon making a preliminary decision regarding the variance, the director shall public notice:

(a) The variance application, and the draft controldocument if the variance is sent to public notice as part of a draft NPDESpermit or control document.

(b) The availability of the public record.

(c) The availability of the PMP, ifapplicable.

(d) The preliminary decision on the variance request forpublic comment.

(e) The date, time, and location of a public hearing atleast forty-five days prior to the scheduled hearing in accordance with rule3745-49-04 of the Administrative Code.

(2) For discharges in the lake Erie drainage basin, the other Great Lakes states and tribes shall be notified of the director's preliminary decision. These public notice requirements may be satisfied by including the supporting information for the variance and preliminary decision in the public notice of a draft NPDES permit or Clean Water Act section 401 certification.

(3) The director will also submit the variance or the draft control document containing the variance to U.S. EPA for review.

(F) Final decision on variance request.

(1) The director shall issue a variance or propose to deny a variance in accordance with Chapter 119. of the Revised Code. If all or part of the variance is approved by the director, the decision includes all control document conditions needed to implement those parts of the variance so approved. Such control document conditions shall, at a minimum, require all of the following:

(a) Compliance with an initial effluent limitation that, at thetime the variance is granted, represents the level currently achievable by thepermittee, and that is no less stringent than that achieved under the previouscontrol document.

(b) That reasonable progress be made toward attaining the WQS forthe water body through appropriate control document conditions which mayinclude actions identified in the PMP.

(c) When the duration of a variance is shorter than the durationof a control document, compliance with an effluent limitation sufficient tomeet the underlying WQS upon the expiration of said variance.

(d) A provision that allows the director to reopen and modify thecontrol document based on any Ohio EPA WQS revisions to thevariance.

(e) Such monitoring or analyses as are necessary in order toassess the impact of the variance on public health, safety, and welfare, thatmay include tests of the amount of the variance parameter in thedischarger's influent and effluent, in fish tissue of resident species inthe receiving water, or in the sediments in the vicinity of thedischarge.

(f) Any limits or other conditions necessary to attain ormaintain the highest attainable condition identified at the start of thevariance, or the highest attainable condition identified during a reevaluationperformed under paragraph (I) of this rule, whichever is morestringent.

(g) Provisions regarding the frequency for the director toreview the variance in accordance with paragraph (I) of this rule.

(2) The director will deny a variance request in accordance with Chapter 119. of the Revised Code if the permittee fails to meet the applicability requirements and make the demonstrations required under paragraphs (A) and (B) of this rule. Control document issuance is not affected if the variance is denied. If all, or part, of the variance is denied by the director, the decision may include, if necessary, an interim effluent limitation as specified under paragraph (F)(1)(a) of this rule and a compliance schedule to meet final limits, at a minimum.

(3) For proposed variances, the director shall submit the following items to U.S. EPA for review and approval:

(a) The variance application and PMP, ifapplicable.

(b) The director's preliminary decision.

(c) Public comments received during the public noticecomment period.

(d) The director's final determination.

(e) The final control document.

(f) A certification from the Ohio attorney general that thevariance from WQS was duly approved pursuant to state law.

(G) Incorporating variance into a control document. If the director and U.S. EPA have approved the variance, the director will establish and incorporate into the control document all conditions needed to implement the variance as determined under paragraph (F)(1) of this rule. If an NPDES permit is administratively continued in accordance with Chapter 119. of the Revised Code and paragraph (C) of rule 3745-33-04 of the Administrative Code, the NPDES permit and the limits and conditions contained within it remain in effect until the director issues a final action on the NPDES permit renewal application unless the application for renewal of the variance is not substantially complete or not submitted within one hundred and eighty days prior to the date of expiration of the permit or unless the permittee did not substantially comply with the conditions of the existing variance.

(H) Length of a variance.

(1) A WQS variance shall not exceed five years for water bodies in the lake Erie basin, nor for any control document issued in the lake Erie basin, except that a variance may be issued for longer than five years in the lake Erie basin for pollutants listed in table 33-2 of rule 3745-1-33 of the Administrative Code.

(2) In the Ohio river basin, a variance may be issued for a period of greater than five years if necessary to attain the highest attainable condition. WQS variances in the Ohio river basin shall be reviewed every five years by the director.

(3) The director reviews and modifies as necessary WQS variances as part of each WQS review pursuant to section 303(c) of the act.

(I) Review of a variance.

(1) The director shall review existing WQS variances with terms greater than five years, at least every five years or every cycle of a control document to re-evaluate the highest attainable condition using all existing and readily available information. This review may result in a more stringent highest attainable condition.

(2) The director will solicit public comments on the results of the variance review along with the renewal of the associated control document or separately, if necessary.

(3) The results of the review shall be submitted to U.S. EPA within thirty days of the completion of the review.

(4) The WQS variance will no longer be the applicable water quality standard for the discharger or water body or water body segment if the director does not re-evaluate the highest attainable condition within five years or every cycle of a control document, or other timeframe specified in the variance, or if the results of the review are not submitted to U.S. EPA.

(J) Renewal of a variance.

(1) A variance may be renewed, subject to the requirements of paragraphs (A) to (I) of this rule.

(2) As part of any renewal application, the permittee shall again demonstrate that attaining WQS is not feasible based on the requirements of paragraph (B)(1) of this rule, unless the variance being renewed was approved under paragraphs (L) and (M) of this rule.

(3) For variances approved under paragraphs (L) and (M) of this rule, the permittee shall, as part of any renewal application, resubmit the applicable information described in paragraphs (L)(1), (L)(2), (M)(1), and (M)(2) of this rule, the certification described in paragraph (L)(4)(e) of this rule, and the permit, as well as a status report on the progress being made in the PMP. The permittee's application also shall contain information concerning its compliance with the conditions incorporated into its permit as part of the previous variance. Reasonable progress shall have been made in implementing the pollutant minimization program under the existing permit prior to renewing variances approved under paragraph (L) or (M) of this rule. The director may deny any variance renewal if the permittee did not comply with the conditions of the previous variance.

(K) WQS revisions. All variances shall be distributed with this chapter and are made available upon request to all interested parties. The distributed information includes at a minimum: the discharger receiving the variance; the term (beginning and ending dates) of the variance; the water body or

water bodies affected by the variance; the pollutants affected by the variance; and the modified allowable ambient concentration values for those pollutants.

(L) Multiple discharger mercury variance. The director has reviewed the available information on mercury removal and the cost. The director has determined that requiring removal of mercury by construction of end-of-pipe controls to attain mercury WQS that apply in the lake Erie basin, requiring controls more stringent than those required by sections 301(b) and 306 of the act would result in substantial and widespread social and economic impact. The director may determine whether there are other means by which the permittee could comply with the WQBEL without constructing end-of-pipe treatment based on the information provided by the permittee in the application submitted in accordance with this paragraph. The director has also determined that the increased risk to human health and the environment associated with granting the variance compared with compliance with the WQS absent the variance, is consistent with the protection of the public health, safety, and welfare. This variance is effective for five years from date of U.S. EPA approval. Before the end of the term, the variance may be updated and resubmitted to U.S. EPA. If U.S. EPA approves the variance, the effective date may be extended based on the updated term of the variance.

(1) The director may grant a variance under paragraph (L) of this rule without giving any additional consideration to the factors specified in paragraphs (B)(1) and (B)(2)(i)(ii) of this rule where the director determines all of the following:

(a) That an average mercury WQBEL based on the human health orwildlife criteria adopted in this chapter would be necessary for a particularpermittee to comply with water quality standards in the absence of avariance.

(b) That the permittee is not currently complying with the WQBELand information available from the application described in paragraph (L)(2) ofthis rule indicates that there is no readily apparent means of complying withthe WQBEL without constructing end-of-pipe controls more stringent than thoserequired by sections 301 (b) and 306 of the act.

(c) That the discharger is currently able to achieve an annualaverage mercury effluent concentration of twelve ng/l on the date that thevariance is granted. For the purpose of determining eligibility under paragraph(L) of this rule, the annual average mercury effluent concentration is theaverage of the

most recent twelve months of effluent data.

(2) In lieu of complying with the requirements of paragraph (B) of this rule, a discharger seeking a variance under paragraph (L) of this rule may submit to the director an application containing the following information in writing:

(a) A certification that the discharger intends to be subject tothe terms of paragraph (L) of this rule.

(b) A description of measures taken to date for mercury reductionor elimination projects.

(c) A PMP for the identification and evaluation of potentialmercury sources and potential methods for reducing or eliminating mercury fromthe discharger's effluent. The PMP shall include the following, at aminimum: data documenting the facility's current influent and effluentmercury concentrations; identification of all known mercury sources; adescription of current plans to reduce or eliminate known sources of mercury; apreliminary identification of other potential mercury sources; a proposedschedule for evaluating the mercury sources; and a proposed schedule for identifying and evaluating potential reduction, elimination, and preventionmethods.

(d) An explanation of the discharger's basis for concludingthat there are no readily available means of complying with the WQBEL withoutconstruction of end-of-pipe controls.

(e) A demonstration of compliance with the conditions inparagraph (B)(2)(i)(i) of this rule.

(3) The director will deny the applicability of paragraph (L)(1) of this rule to a discharger if the discharger fails to fulfill the requirements specified in paragraphs (L)(1) and (L)(2) of this rule.

(4) If the conditions of paragraphs (L)(1) and (L)(2) of this rule are met, the director issues the variance and incorporate the following requirements, at a minimum, into the discharger's NPDES permit:

(a) All conditions required under paragraph (F)(1) of thisrule.

(b) A requirement that the discharger's average mercuryeffluent concentration as defined in

paragraph (L)(1) of this rule remains lessthan or equal to twelve ng/l. The requirements of paragraph (L)(6) of this ruleshall be included in the permit.

(c) Permit conditions needed to implement the PMP submitted underparagraph (L)(2)(c) of this rule.

(d) A requirement that the discharger use an approved U.S. EPAanalytical method that is capable of quantifying the applicable water qualitystandard.

(e) A requirement that upon completion of the actions identifiedin the PMP described in paragraph (F)(1)(b) of this rule, the permittee shallsubmit to the director a certification that all permit conditions imposed toimplement the PMP have been satisfied, including in this certification a statement as to whether compliance with the WQBEL has been achieved and can bemaintained. This certification shall be accompanied by thefollowing:

(i) All available data documenting the discharger's current influent and effluent mercury concentrations.

(ii) Data documenting all known significant sources of mercury and the steps that have been taken to reduce or eliminate those sources.

(iii) A determination of the lowest mercury concentration that currently available data indicate can be reliably achieved through implementation of the PMP.

(5) Upon receipt of the certification required by paragraph (L)(4)(e) of this rule, the director will take either of the following actions:

(a) If the permittee certifies that it has achieved and canmaintain compliance with the WQBEL, the director incorporates the WQBEL intothe permit in lieu of the variance either via a permit modification if thepermit has not yet expired or as a part of any renewal of the permit if it has expired.

(b) If the permittee certifies that it has not achieved or cannot maintain compliance with the WQBEL, the director reviews the data submittedwith the certification and such other relevant

information as may be available,and:

(i) If the director concurs with the certification, the director allows the variance to continue in force if the variance has not expired or renew the variance in accordance with paragraph (J) of this rule if the variance has expired.

(ii) If the director concludes, despite contrary certification by the permittee, that the permittee has achieved and can maintain compliance with the WQBEL, the director incorporates the WQBEL into the permit in lieu of the variance via a permit modification if the permit has not yet expired or as a part of any renewal of the permit if it has expired.

(6) If at any time after the date specified in a variance by which the discharger is to have met an average annual mercury effluent concentration of twelve ng/l, as defined in paragraph (I)(1) of this rule, the discharger's average mercury effluent concentration as defined in paragraph (I)(1) of this rule exceeds twelve ng/l, the discharger shall submit an individual variance application, if a variance is desired, or request a permit modification for a compliance schedule to attain compliance with the WQBEL. Paragraph (I) of this rule no longer applies to the discharger on the date the director acts on the discharger's individual variance application or the date the permit modification becomes effective. The requirements of this paragraph will not apply to the discharger if the discharger demonstrates to the satisfaction of the director that the mercury level in the discharger's effluent exceeds twelve ng/l due primarily to the presence of mercury in discharger's intake water.

(7) Multiple discharger mercury variances approved for dischargers in the Ohio river basin prior to the effective date of this rule remain in effect until the discharger's permit is renewed or an individual variance application is approved, whichever occurs first.

(8) The variance and the highest attainable condition will be reviewed every five years to determine whether the variance is still needed, or if the highest attainable condition needs to be revised based on the mercury reduction options and the mercury concentrations achievable at that time, and the results of the review will be submitted to U.S. EPA.

(M) Multiple discharger ammonia variance, applicable upon the effective date of the adoption of revised ammonia water quality criteria for the protection of aquatic life in rule 3745-1-35 of the

Administrative Code. The director has reviewed the available information on ammonia removal by controlled discharge wastewater lagoons and the cost. Based on effluent data for NPDES permittees with this treatment technology, as well as federal data on these plants and the communities where they are located, the director has determined that requiring removal of ammonia by construction of end-of-pipe controls to attain ammonia WQBELs would result in substantial and widespread social and economic impact. The director may determine whether there are other means by which the permittee could comply with the WQBEL without constructing end-of-pipe treatment based on the information provided by the permittee in the application submitted in accordance with this paragraph. The director has also determined that the increased risk to human health and the environment associated with granting the variance compared with compliance with the WQS absent the variance, is consistent with the protection of the public health, safety, and welfare. The variance is effective for twenty years from date of U.S. EPA approval. Before the end of the term, the variance may be updated and resubmitted to U.S. EPA. If U.S. EPA approves the variance, the effective date may be extended based on the updated term of the variance.

[Comment: controlled discharge lagoons are defined as facultative lagoons consisting of multiple treatment cells that are able to control the timing of their discharge.]

(1) The director may grant a variance under paragraph (M) of this rule without giving any additional consideration to the factors specified in paragraphs (B)(1) and (B)(2)(i)(ii) of this rule where the director determines all of the following:

(a) That a monthly average ammonia WQBEL based on theaquatic life criteria adopted in this chapter would be necessary for aparticular permittee to comply with water quality standards in the absence of avariance.

(b) That the permittee is not currently complying with theWQBEL and information available from the application described in paragraph(M)(2) of this rule indicates that there is no readily apparent means ofcomplying with the WQBEL without constructing end-of-pipe controls morestringent than those required by sections 301 (b) and 306 of theact.

(2) In lieu of complying with the requirements of paragraph (B) of this rule, a discharger seeking a variance under paragraph (M) of this rule shall submit to the director an application containing the

following information in writing:

(a) A demonstration that the discharge cannot meet thewasteload allocation for ammonia-nitrogen.

(b) A certification that the discharger intends to besubject to the terms of paragraph (M) of this rule.

(c) A description of measures taken to date to minimizeammonia in the final discharge.

(d) A PMP for the evaluation and optimization of ammoniareduction from the treatment plant to the discharger's effluent. The PMPshall include the following, at a minimum:

(i) A schedule for removing sludges in order to maintain adequate treatment capacity;

(ii) Facility flow management that ensures optimal treatment.

(e) An explanation of the discharger's basis forconcluding that there are no readily available means of complying with theWQBEL without construction of end-of-pipe controls and documentation of resultant significant and widespread social and economic impact.

(f) A demonstration of compliance with the conditions inparagraph (B)(2)(i)(i) of this rule.

(3) The director shall deny the applicability of paragraph (M)(1) of this rule to a discharger if the discharger fails to fulfill the requirements specified in paragraphs (M)(1) and (M)(2) of this rule.

(4) If the conditions of paragraphs (M)(1) and (M)(2) of this rule are met, the director shall issue the variance and the following requirements, at a minimum, into the discharger's NPDES permit:

(a) All conditions described in paragraph (F)(1) of thisrule;

(b) An effluent limit that represents an interim HACachievable by the discharge;

(c) Permit conditions needed to implement the PMP submittedunder paragraph (M)(2)(d) of this rule;

(d) A variance term no longer than twentyyears.

(5) The variance and the HAC will be reviewed every five years to determine whether the variance is still needed, or if the HAC needs to be revised based on the ammonia reduction options and the ammonia concentrations achievable at that time, and the results of the review will be submitted to U.S. EPA.