Water Quality Standards and Assessment

Changes to State Variance Rule

Presentation to Willamette Basin Mercury
MDV Advisory Committee
January 24, 2019
DEQ Headquarters, Portland, OR

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State of Oregon
Department of
Environmental
Quality

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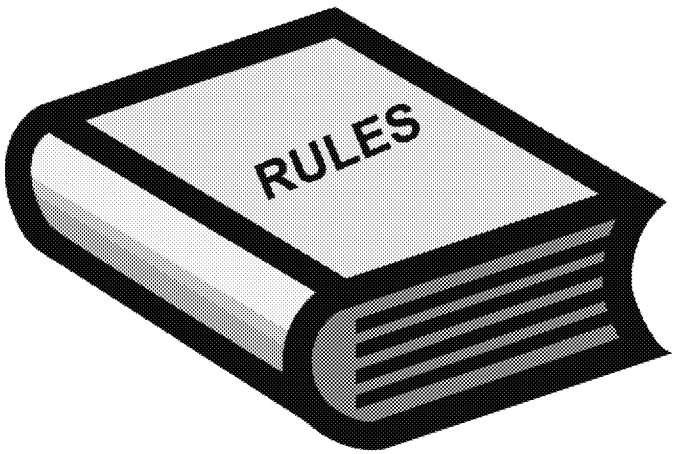
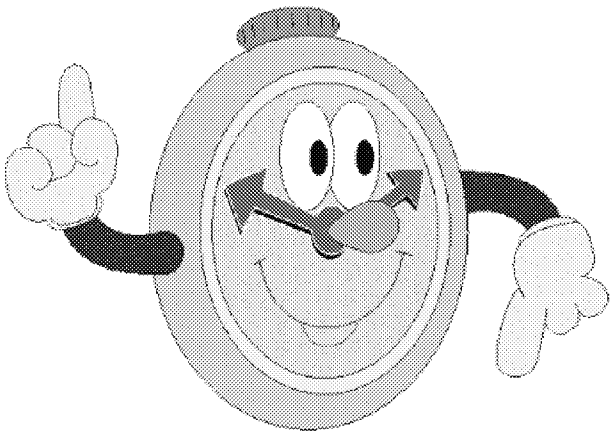
Federal vs. State

- Federal rules promulgated in 2015
  - First federal regulations about variances
  - How to justify the need for a variance
  - Duration
  - Highest attainable condition
- State rules last amended in 2011



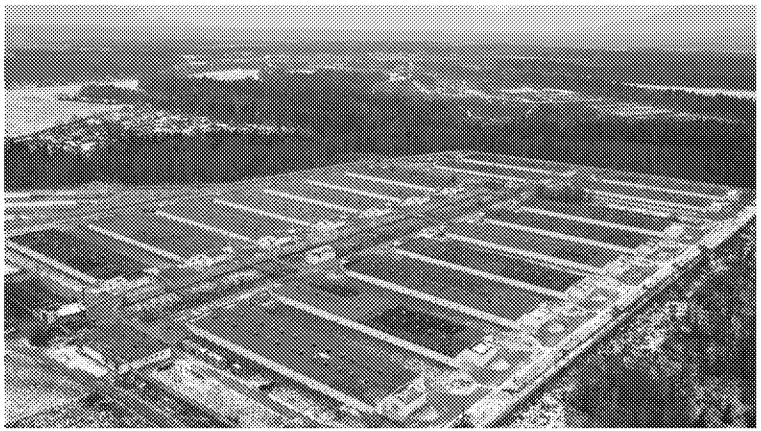
Variance Term

- Federal:
  - As long as necessary to achieve HAC
  - Can be longer than 5 years
  - Re-evaluate every 5 years
- Oregon:
  - Term of the permit including any administrative extension.
- Proposal: make consistent with federal rule.



Variances for new permits

- Federal
  - Allowed
- Oregon
  - Only under limited circumstances
- Proposal
  - Remove current language to make consistent with federal rule, as limitations already addressed in antidegradation and through TMDLs (reserve capacity).



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Variance requirements

- Federal
  - Reflect the highest attainable condition
  - Shall not result in lowering of currently attained water quality with limited exceptions
- Oregon
  - Interim concentration based permit limit or requirement representing the best achievable effluent quality or best achievable technology
- Proposal
  - Make wording consistent with federal rule.

Limits on granting a variance

- Federal
  - Effluent limit can be attained by technology-based effluent limits (compliance schedule)
- Oregon
  - Technology-based effluent limits and reasonable BMPs for nonpoint sources under control of discharger
  - Jeopardize ESA species or adversely harm critical habitat
  - Unreasonable risk to human health
  - New permits, with some exceptions
- Proposal
  - Consistent with federal language and maintain language regarding ESA species and risk to human health.

Nonpoint source control

- Federal
  - For a watershed variance, supporting documentation must identify any cost effective and reasonable nonpoint BMPs that could make progress toward standard
- Oregon
  - Submittal for ANY variance must identify any cost effective and reasonable nonpoint BMPs under the control of the discharger that could make progress toward standard
- Proposal
  - Make consistent with federal rule

Questions and Discussion

Documents can be provided upon request in an alternate format for individuals with disabilities or in a language other than English for people with limited English skills. To request a document in another format or language, call DEQ in Portland at 503-229-5696, or toll-free in Oregon at 1-800-452-4011, ext. 5696; or email deqinfo@deq.state.or.us.