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**Summary of Concerns**

1. Need for more discussion/clarification in general
2. Overall usefulness
3. Interpretation on how 131.10 language for removing a DU apply to variances (since 1976)
	1. Strict interpretation—more conservative view of how variances are implemented
	2. Flexible interpretation—focus on facility implementation, as opposed to a removal of a DU for a waterbody. It’s discharger and pollutant specific and for a limited time.

**Specific Concerns**

1. **131.10(h)(1)** existing use language—“…variance may not result in any loss or impairment of an existing use.”
	* How does this apply to a discharger variance, as opposed to removing a DU?
	* How do you define “loss or impairment”?
	* EPA HQ
2. **131.10(h)(2)** – “…must demonstrate that implementation of all cost effective and reasonable BMPs for NPS cannot correct the underlying WQ problem”
	* Previously discussed by EPA in GLI
	* DEQ has revised language in variance regulation to reflect this interpretation
	* EPA HQ
3. **New facilities**
	* In principle, variances shouldn’t be allowed for new facilities, since the idea is to not further degrade a waterbody; however, are there exceptions?
		1. Clean up sites?
		2. WWTP in lieu of onsite systems?
* Other states have included exceptions
	1. Imminent threat to public health or welfare
	2. CERCLA actions
* Other exceptions?
1. **Renewal confirmation**
2. **AL applicability**
* Thus far, the focus has been on meeting the revised HHC, but the proposed variance regulations, as w/ the current regulations, also includes the inclusion of possible variances based on the AL criteria
* We do not anticipate variances from AL criteria, but we would look critically at these requests and would work closely w/ EPA if any were requested. ESA consultation would be required.
* The decisional regulatory framework is there already
1. **Duration of variance**
	* Coincide w/ NPDES permit
	* Remains in effect as long as the permit is in effect
2. **MDVs**…