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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.

[69 FR 3524, Jan. 26, 2004]

§ 131.41 Bacteriological criteria for those states not complying with Clean Water Act section 303(i)(1)(A).

(a) *Scope.* This section is a promulgation of the Clean Water Act section 304(a) criteria for bacteria for coastal recreation waters in specific States. It is not a general promulgation of the Clean Water Act section 304(a) criteria

for bacteria. This section also contains a compliance schedule provision.

(b) *Definitions.* (1) *Coastal Recreation Waters* are the Great Lakes and marine coastal waters (including coastal estuaries) that are designated under section 303(c) of the Clean Water Act for use for swimming, bathing, surfing, or similar water contact activities. Coastal recreation waters do not include inland waters or waters upstream from the mouth of a river or stream having an unimpaired natural connection with the open sea.

(2) *Designated bathing beach waters* are those coastal recreation waters that, during the recreation season, are heavily-used (based upon an evaluation of use within the State) and may have: a lifeguard, bathhouse facilities, or public parking for beach access. States may include any other waters in this category even if the waters do not meet these criteria.

(3) *Moderate use coastal recreation waters* are those coastal recreation waters that are not designated bathing beach waters but typically, during the recreation season, are used by at least half of the number of people as at typical designated bathing beach waters within the State. States may also include light use or infrequent use coastal recreation waters in this category.

(4) *Light use coastal recreation waters* are those coastal recreation waters that are not designated bathing beach waters but typically, during the recreation season, are used by less than half of the number of people as at typical designated bathing beach waters within the State, but are more than infrequently used. States may also include infrequent use coastal recreation waters in this category.

(5) *Infrequent use coastal recreation waters* are those coastal recreation waters that are rarely or occasionally used.

(6) *New pathogen discharger* for the purposes of this section means any building, structure, facility, or installation from which there is or may be a discharge of pathogens, the construction of which commenced on or after December 16, 2004. It does not include relocation of existing combined sewer overflow outfalls.

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(7) Existing pathogen discharger for the purposes of this section means any discharger that is not a new pathogen discharger.

(c) EPA's section 304(a) ambient water quality criteria for bacteria. (1) Freshwaters:

A Indicator ^d	B Geometric mean	C Single sample maximum (per 100 ml)			
		C1 Designated bathing beach (75% confidence level)	C2 Moderate use coastal recreation waters (82% confidence level)	C3 Light use coastal recreation waters (90% confidence level)	C4 Infrequent use coastal recreation waters (95% confidence level)
<i>E. coli</i> ^e	126/100 ml ^a	^b 235	^b 298	^b 409	^b 575
Enterococci ^e	33/100 ml ^c	^b 61	^b 78	^b 107	^b 151

Footnotes to table in paragraph (c)(1):
 a. This value is for use with analytical methods 1103.1, 1603, or 1604 or any equivalent method that measures viable bacteria.
 b. Calculated using the following: single sample maximum = geometric mean * 10^{^(confidence level factor * log standard deviation)}, where the confidence level factor is: 75%: 0.68; 82%: 0.94; 90%: 1.28; 95%: 1.65. The log standard deviation from EPA's epidemiological studies is 0.4.
 c. This value is for use with analytical methods 1106.1 or 1600 or any equivalent method that measures viable bacteria.
 d. The State may determine which of these indicators applies to its freshwater coastal recreation waters. Until a State makes that determination, *E. coli* will be the applicable indicator.
 e. These values apply to *E. coli* or enterococci regardless of origin unless a sanitary survey shows that sources of the indicator bacteria are non-human and an epidemiological study shows that the indicator densities are not indicative of a human health risk.

(2) Marine waters:

A Indicator	B Geometric mean	C Single sample maximum (per 100 ml)			
		C1 Designated bathing beach (75% confidence level)	C2 Moderate use coastal recreation waters (82% confidence level)	C3 Light use coastal recreation waters (90% confidence level)	C4 Infrequent use coastal recreation waters (95% confidence level)
Enterococci ^c	35/100 ml ^a	^b 104	^b 158	^b 276	^b 501

Footnotes to table in paragraph (c)(2):
 a. This value is for use with analytical methods 1106.1 or 1600 or any equivalent method that measures viable bacteria.
 b. Calculated using the following: single sample maximum = geometric mean * 10^{^(confidence level factor * log standard deviation)}, where the confidence level factor is: 75%: 0.68; 82%: 0.94; 90%: 1.28; 95%: 1.65. The log standard deviation from EPA's epidemiological studies is 0.7.
 c. These values apply to enterococci regardless of origin unless a sanitary survey shows that sources of the indicator bacteria are non-human and an epidemiological study shows that the indicator densities are not indicative of a human health risk.

(3) As an alternative to the single sample maximum in paragraph (c)(1) or (c)(2) of this section, States may use a site-specific log standard deviation to calculate a single sample maximum for individual coastal recreation waters, but must use at least 30 samples from a single recreation season to do so.

(d) *Applicability.* (1) The criteria in paragraph (c) of this section apply to the coastal recreation waters of the States identified in paragraph (e) of this section and apply concurrently with any ambient recreational water criteria adopted by the State, except for those coastal recreation waters where State regulations determined by EPA to meet the requirements of Clean

Water Act section 303(i) apply, in which case the State's criteria for those coastal recreation waters will apply and not the criteria in paragraph (c) of this section.

(2) The criteria established in this section are subject to the State's general rules of applicability in the same way and to the same extent as are other Federally-adopted and State-adopted numeric criteria when applied to the same use classifications.

(e) *Applicability to specific jurisdictions.* (1) The criteria in paragraph (c)(1) of this section apply to fresh coastal recreation waters of the following States: Illinois, Minnesota, New York, Ohio, Pennsylvania, Wisconsin.

(2) The criteria in paragraph (c)(2) of this section apply to marine coastal recreation waters of the following States: Alaska, California (except for coastal recreation waters within the jurisdiction of Regional Board 4), Florida, Georgia, Hawaii (except for coastal recreation waters within 300 meters of the shoreline), Louisiana, Maine (except for SA waters and SB and SC waters with human sources of fecal contamination), Maryland, Massachusetts, Mississippi, New York, North Carolina, Oregon, Puerto Rico (except for waters classified by Puerto Rico as intensely used for primary contact recreation and for those waters included in §131.40), Rhode Island, United States Virgin Islands.

(f) *Schedules of compliance.* (1) This paragraph (f) applies to any State that does not have a regulation in effect for Clean Water Act purposes that authorizes compliance schedules for National Pollutant Discharge Elimination System permit limitations needed to meet the criteria in paragraph (c) of this section. All dischargers shall promptly comply with any new or more restrictive water quality-based effluent limitations based on the water quality criteria set forth in this section.

(2) When a permit issued on or after December 16, 2004, to a new pathogen discharger as defined in paragraph (b) of this section contains water quality-based effluent limitations based on water quality criteria set forth in paragraph (c) of this section, the permittee shall comply with such water quality-based effluent limitations upon the commencement of the discharge.

(3) Where an existing pathogen discharger reasonably believes that it will be infeasible to comply immediately with a new or more restrictive water quality-based effluent limitations based on the water quality criteria set forth in paragraph (c) of this section, the discharger may request approval from the permit issuing authority for a schedule of compliance.

(4) A compliance schedule for an existing pathogen discharger shall require compliance with water quality-based effluent limitations based on water quality criteria set forth in paragraph (c) of this section as soon as possible, taking into account the dis-

charger's ability to achieve compliance with such water quality-based effluent limitations.

(5) If the schedule of compliance for an existing pathogen discharger exceeds one year from the date of permit issuance, reissuance or modification, the schedule shall set forth interim requirements and dates for their achievement. The period between dates of completion for each requirement may not exceed one year.

If the time necessary for completion of any requirement is more than one year and the requirement is not readily divisible into stages for completion, the permit shall require, at a minimum, specified dates for annual submission of progress reports on the status of interim requirements.

(6) In no event shall the permit issuing authority approve a schedule of compliance for an existing pathogen discharge which exceeds five years from the date of permit issuance, reissuance, or modification, whichever is sooner.

(7) If a schedule of compliance exceeds the term of a permit, interim permit limits effective during the permit shall be included in the permit and addressed in the permit's fact sheet or statement of basis. The administrative record for the permit shall reflect final permit limits and final compliance dates. Final compliance dates for final permit limits, which do not occur during the term of the permit, must occur within five years from the date of issuance, reissuance or modification of the permit which initiates the compliance schedule.

[69 FR 67242, Nov. 16, 2004]

§ 131.42 Antidegradation Implementation Methods for the Commonwealth of Puerto Rico.

(a) *General Policy Statement.* (1) All point sources of pollution are subject to an antidegradation review.

(2) An antidegradation review shall be initiated as part of the Section 401—"Water Quality Certification Process" of the Clean Water Act.

(3) The 401 Certification Process shall follow the procedures established by the February 2, 1989 Resolution R-89-2-2 of the Governing Board of the Puerto