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.
(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:

<table>
<thead>
<tr>
<th>A Indicator</th>
<th>B Geometric mean</th>
<th>C Single sample maximum (per 100 ml)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>C1 Designated bathing beach (75% confidence level)</td>
</tr>
<tr>
<td>E. coli</td>
<td>126/100 mil</td>
<td>h235</td>
</tr>
<tr>
<td>Enterococci</td>
<td>33/100 mil</td>
<td>h61</td>
</tr>
</tbody>
</table>

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\(^{(confidence level factor \times log standard deviation)}\), 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:

<table>
<thead>
<tr>
<th>A Indicator</th>
<th>B Geometric mean</th>
<th>C Single sample maximum (per 100 ml)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>C1 Designated bathing beach (75% confidence level)</td>
</tr>
<tr>
<td>Enterococci</td>
<td>35/100 mil</td>
<td>h104</td>
</tr>
</tbody>
</table>

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\(^{(confidence level factor \times log standard deviation)}\), 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.
§ 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