



REGIONAL GUIDE: ISSUING SITE-SPECIFIC TREATABILITY VARIANCES FOR CONTAMINATED SOILS AND DEBRIS FROM LAND DISPOSAL RESTRICTIONS (LDRs)

Technology Innovation Office

Quick Reference Fact Sheet

Q's and A's for LDR Site Specific Treatability Variances

What type of LDR variance authority has been delegated to the Regions?

The Regional Administrator (RA) may exercise the authority to grant or deny applications for site-specific variances for contaminated soils and debris from a treatment standard established by the Land Disposal Program in CERCLA response actions and RCRA corrective actions and closures. For RCRA actions, the RA was delegated the authority to grant or deny these variances under 40 CFR 268.44(h) on April 22, 1991. For on-site CERCLA actions, the RA already had the authority to grant variances as part of the ROD process. Variance authority for CERCLA actions is discussed in LDR Guides 6A (revised, September 1990) and 6B (9347.3-06FS & 9347.3-06BFS).

Can the RA redelegate this authority under RCRA?

Yes, the RA may redelegate this authority with respect to RCRA actions to the Deputy RA and to the Division Director level.

Why should contaminated soils and debris be considered for a variance?

The National Contingency Plan establishes a presumption that contaminated soils are appropriate for treatability variances. Until specific standards for soils and debris are developed, current BDAT standards generally are considered to be inappropriate for contaminated soils and debris for CERCLA response actions and RCRA corrective actions and closures (55 FR 8760-1, March 8, 1990). It is expected that site managers, generators, and owners/operators of treatment or disposal facilities will apply for treatment variances. In considering variance requests, EPA Regions should carefully consider OSWER's guidance on soil treatment levels.

Where can one find OSWER's guidance for alternative treatability variance levels?

LDR Guides 6A and 6B. These guidances can be ordered through the RCRA/CERCLA Industry Assistance Hotline (1-800-424-9346) or regional library.

What type of oversight will EPA HQs provide?

For the first time variances granted outside the CERCLA ROD process in each Region, the Region must

consult with the Assistant Administrator of OSWER 21 days before finalizing these proposed treatability variances. Afterwards, only those variances that do not comply with the alternative treatability variance levels or the technologies specified in OSWER guidance (LDR Guide 6A & 6B) will need OSWER consultation.

Where can one find the regulatory requirements for site-specific treatability variances under RCRA?

RCRA regulatory requirements (40 CFR 268.44(i)): Each application for a site specific variance from a treatment standard must include the information in 40 CFR 260.20 (b) (1)-(4) and must also comply with 40 CFR 268.7. Until the variance is granted, the applicant must comply with LDR requirements (40 CFR 268.44 (1)). The figure on the reverse side describes the RCRA administrative process for issuing site specific treatability variances.

Where can one find the procedures used for granting treatability variances in CERCLA?

LDR Guides 6A (Revision) and 6B (9347.3-06FS & 9347.3-06BFS) set forth the procedures for granting treatability variance for CERCLA remedial and removal actions, respectively.

NOTE: This Fact Sheet highlights the delegation of LDR site-specific treatability variances to regional offices by describing both the procedures and requirements for issuance. Data generated by these variances on performance and cost data of alternative technologies will be valuable in evaluating innovative treatment technologies by determining whether environmental targets are achieved and what engineering parameters are of most importance for scale-up.

NOTICE: The policies set out in this FACT Sheet are intended solely as guidance. They are not intended nor can they be relied upon, to create any rights enforceable by any party in litigation with the United States. EPA officials may decide to follow the guidance provided in this FACT sheet, or to act at variance with the guidance, based on the analysis of specific site circumstances. The Agency also reserves the right to change this guidance at any time without public notice.

RCRA Administrative Process for Site Specific Treatability Variances

