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Title 22@ Social Security

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Division 4.5@ Environmental Health Standards for the Management of Hazardous Waste

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Chapter 18@ Land Disposal Restrictions

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Article 4@ Treatment Standards

|-&gt;

Section 66268.44@ Variance from a Treatment Standard

## **66268.44 Variance from a Treatment Standard**

### **(a)**

Based on a petition filed by a generator or treater of RCRA hazardous waste, the USEPA Administrator may approve a variance from an applicable treatment standard if: (1) It is not physically possible to treat the waste to the level specified in the treatment standard, or by the method specified as the treatment standard. To show that this is the case, the petitioner shall demonstrate that because the physical or chemical properties of the waste differ significantly from waste analyzed in developing the treatment standard, the waste cannot be treated to the specified level or by the specified method; or (2) It is inappropriate to require the waste to be treated to the level specified in the treatment standard or by the method specified as the treatment standard, even though such treatment is technically possible. To show that this is the case, the petitioner shall either demonstrate that: (A) Treatment to the specified level or by the specified method is technically inappropriate (for example, resulting in combustion of large amounts of mildly contaminated environmental media); or (B) For remediation waste only, treatment to the specified level or by the specified method is environmentally inappropriate because it would likely discourage aggressive remediation.

### **(1)**

It is not physically possible to treat the waste to the level specified in the treatment

standard, or by the method specified as the treatment standard. To show that this is the case, the petitioner shall demonstrate that because the physical or chemical properties of the waste differ significantly from waste analyzed in developing the treatment standard, the waste cannot be treated to the specified level or by the specified method; or

**(2)**

It is inappropriate to require the waste to be treated to the level specified in the treatment standard or by the method specified as the treatment standard, even though such treatment is technically possible. To show that this is the case, the petitioner shall either demonstrate that: (A) Treatment to the specified level or by the specified method is technically inappropriate (for example, resulting in combustion of large amounts of mildly contaminated environmental media); or (B) For remediation waste only, treatment to the specified level or by the specified method is environmentally inappropriate because it would likely discourage aggressive remediation.

**(A)**

Treatment to the specified level or by the specified method is technically inappropriate (for example, resulting in combustion of large amounts of mildly contaminated environmental media); or

**(B)**

For remediation waste only, treatment to the specified level or by the specified method is environmentally inappropriate because it would likely discourage aggressive remediation.

**(b)**

For hazardous waste subject to RCRA land disposal restrictions set forth in article 4 of this chapter, the applicant shall petition the U.S. EPA Administrator for a variance from a treatment standard pursuant to 40 CFR section 268.44. Within 30 days after the applicant has received from the U.S. EPA Administrator an

approved variance from a treatment standard, the applicant shall submit to the Department a copy of the approved variance.

**(c)**

For hazardous waste listed in section 66268.29 of this chapter subject to non-RCRA land disposal restrictions set forth in article 11 of this chapter, the applicant shall petition the Department for a variance from a treatment standard pursuant to this section and section 25179.8, Health and Safety Code. Each petitioner shall demonstrate that all the following conditions apply to the waste. (1) The hazardous waste cannot be recycled, reused, or treated to meet the standards adopted by the department pursuant to section 25179.6 California Health and Safety Code at a commercial offsite hazardous waste facility in the state. (2) Recycling or treatment alternatives cannot be provided at the site of generation. (3) Measures have been, or will be, taken to reduce the generation of the hazardous waste. (4) Land disposal of the hazardous waste is in compliance with all existing statutes and regulations.

**(1)**

The hazardous waste cannot be recycled, reused, or treated to meet the standards adopted by the department pursuant to section 25179.6 California Health and Safety Code at a commercial offsite hazardous waste facility in the state.

**(2)**

Recycling or treatment alternatives cannot be provided at the site of generation.

**(3)**

Measures have been, or will be, taken to reduce the generation of the hazardous waste.

**(4)**

Land disposal of the hazardous waste is in compliance with all existing statutes and

regulations.

**(d)**

A generator, treatment facility, or disposal facility that is managing a waste covered by a variance from the treatment standards shall comply with the waste analysis requirements for restricted wastes found under section 66268.7.

**(e)**

During the petition review process, the applicant is required to comply with all restrictions on land disposal under this chapter once the effective date for the waste has been reached.

**(f)**

Based on a petition filed by a generator or treater of RCRA hazardous waste, the Department may approve a site-specific variance from an applicable treatment standard pursuant to this section and Health and Safety Code section 25179.8 if:(1) It is not physically possible to treat the waste to the level specified in the treatment standard, or by the method specified as the treatment standard. To show that this is the case, the petitioner shall demonstrate that because the physical or chemical properties of the waste differ significantly from waste analyzed in developing the treatment standard, the waste cannot be treated to the specified level or by the specified method; or (2) It is inappropriate to require the waste to be treated to the level specified in the treatment standard or by the method specified as the treatment standard, even though such treatment is technically possible. To show that this is the case, the petitioner shall either demonstrate that: (A) Treatment to the specified level or by the specified method is technically inappropriate (for example, resulting in combustion of large amounts of mildly contaminated environmental media where the treatment standard is not based on combustion of such media); or (B) For remediation waste

only, treatment to the specified level or by the specified method is environmentally inappropriate because it would likely discourage aggressive remediation. (3) For contaminated soil only, treatment to the level or by the method specified in the soil treatment standards would result in concentrations of hazardous constituents that are below (i.e., lower than) the concentrations necessary to minimize short- and long-term threats to human health and the environment. Treatment variances approved under this subsection shall: (A) At a minimum, impose alternative land disposal restriction treatment standards that, using a reasonable maximum exposure scenario: 1. for carcinogens, achieve constituent concentrations that result in the total excess risk to an individual exposed over a lifetime generally falling within a range from  $10^{-4}$  to  $10^{-6}$ ; and 2. for constituents with non-carcinogenic effects, achieve constituent concentrations that an individual could be exposed to on a daily basis without appreciable risk of deleterious effect during a lifetime. (B) not consider post-land-disposal controls. (4) For contaminated soil only, treatment to the level or by the method specified in the soil treatment standards would result in concentrations of hazardous constituents that are below (i.e., lower than) natural background concentrations at the site where the contaminated soil will land disposed. (5) Public notice and a reasonable opportunity for public comment shall be provided before granting or denying a petition.

**(1)**

It is not physically possible to treat the waste to the level specified in the treatment standard, or by the method specified as the treatment standard. To show that this is the case, the petitioner shall demonstrate that because the physical or chemical properties of the waste differ significantly from waste analyzed in developing the treatment standard, the waste cannot be treated to the specified level or by the

specified method; or

**(2)**

It is inappropriate to require the waste to be treated to the level specified in the treatment standard or by the method specified as the treatment standard, even though such treatment is technically possible. To show that this is the case, the petitioner shall either demonstrate that: (A) Treatment to the specified level or by the specified method is technically inappropriate (for example, resulting in combustion of large amounts of mildly contaminated environmental media where the treatment standard is not based on combustion of such media); or (B) For remediation waste only, treatment to the specified level or by the specified method is environmentally inappropriate because it would likely discourage aggressive remediation.

**(A)**

Treatment to the specified level or by the specified method is technically inappropriate (for example, resulting in combustion of large amounts of mildly contaminated environmental media where the treatment standard is not based on combustion of such media); or

**(B)**

For remediation waste only, treatment to the specified level or by the specified method is environmentally inappropriate because it would likely discourage aggressive remediation.

**(3)**

For contaminated soil only, treatment to the level or by the method specified in the soil treatment standards would result in concentrations of hazardous constituents that are below (i.e., lower than) the concentrations necessary to minimize short- and long-term threats to human health and the environment. Treatment variances approved under this subsection shall: (A) At a minimum, impose alternative land disposal restriction treatment standards that, using a reasonable maximum exposure scenario: 1. for carcinogens, achieve constituent concentrations that result in the total excess risk to

an individual exposed over a lifetime generally falling within a range from  $10^{-4}$  to  $10^{-6}$ ; and 2. for constituents with non-carcinogenic effects, achieve constituent concentrations that an individual could be exposed to on a daily basis without appreciable risk of deleterious effect during a lifetime. (B) not consider post-land-disposal controls.

**(A)**

At a minimum, impose alternative land disposal restriction treatment standards that, using a reasonable maximum exposure scenario: 1. for carcinogens, achieve constituent concentrations that result in the total excess risk to an individual exposed over a lifetime generally falling within a range from  $10^{-4}$  to  $10^{-6}$ ; and 2. for constituents with non-carcinogenic effects, achieve constituent concentrations that an individual could be exposed to on a daily basis without appreciable risk of deleterious effect during a lifetime.

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**2.**

for constituents with non-carcinogenic effects, achieve constituent concentrations that an individual could be exposed to on a daily basis without appreciable risk of deleterious effect during a lifetime.

**(B)**

not consider post-land-disposal controls.

**(4)**

For contaminated soil only, treatment to the level or by the method specified in the soil treatment standards would result in concentrations of hazardous constituents that are below (i.e., lower than) natural background concentrations at the site where the contaminated soil will land disposed.

**(5)**

Public notice and a reasonable opportunity for public comment shall be provided before granting or denying a petition.

**(g)**

Each petition shall be submitted to the Department and shall include: (1) The petitioner's name and address; (2) A statement of the petitioner's interest in the proposed action; (3) A description of the proposed action, including (where appropriate) suggested regulatory language; and (4) A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information.

**(1)**

The petitioner's name and address;

**(2)**

A statement of the petitioner's interest in the proposed action;

**(3)**

A description of the proposed action, including (where appropriate) suggested regulatory language; and

**(4)**

A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information.

**(h)**

For hazardous waste listed in section 66268.29 of this chapter subject to non-RCRA land disposal restrictions set forth in article 11 of this chapter, the applicant shall petition the Department for a site-specific variance from a treatment standard pursuant to this section and section 25179.8, Health and Safety Code. Each petitioner for a site-specific variance shall demonstrate that all the following conditions apply to the waste. (1) The hazardous waste cannot be



recycled, reused, or treated to meet the standards adopted by the department pursuant to section 25179.6 California Health and Safety Code at a commercial offsite hazardous waste facility in the state. (2) Recycling or treatment alternatives cannot be provided at the site of generation. (3) Measures have been, or will be, taken to reduce the generation of the hazardous waste. (4) Land disposal of the hazardous waste is in compliance with all existing statutes and regulations.

**(1)**

The hazardous waste cannot be recycled, reused, or treated to meet the standards adopted by the department pursuant to section 25179.6 California Health and Safety Code at a commercial offsite hazardous waste facility in the state.

**(2)**

Recycling or treatment alternatives cannot be provided at the site of generation.

**(3)**

Measures have been, or will be, taken to reduce the generation of the hazardous waste.

**(4)**

Land disposal of the hazardous waste is in compliance with all existing statutes and regulations.

**(i)**

A generator, treatment facility, or disposal facility that is managing a waste covered by a site-specific variance from a treatment standard shall comply with the waste analysis requirements for restricted wastes found under section 66268.7.

**(j)**

During the application review process, the applicant for a site-specific variance

shall comply with all restrictions on land disposal under this chapter once the effective date for the waste has been reached.

**(k)**

After receiving a petition pursuant to subsections (c), (f), and (h) for variance from a treatment standard, the Department may request any additional information or samples which the Department may require to evaluate the petition. Additional copies of the petition may be requested as needed. Within 45 days of the receipt of the petition, the Department shall inform the petitioner, in writing, that the petition is complete and accepted for filing, or that the petition is deficient and what specific information is required.

**(l)**

The Department shall make a decision on a petition pursuant to subsections (c), (f), and (h) for variance from a treatment standard within 120 days of the filing of a completed petition.

**(m)**

For all variances, the petitioner shall also demonstrate that compliance with any given treatment variance is sufficient to minimize threats to human health and the environment posed by land disposal of the waste. In evaluating this demonstration, the Department may take into account whether a treatment variance should be approved if the subject waste is to be used in a manner constituting disposal.