

Revision Checklist 162 Summary

Rule Title:	Clarification of Standards for Hazardous Waste Land Disposal Restriction Treatment Variances
Checklist Title:	Clarification of Standards for Hazardous Waste LDR Treatment Variances
Reference:	62 <u>FR</u> 64504-64509
Promulgation Date:	December 5, 1997
Effective Date:	December 5, 1997
Cluster:	RCRA Cluster VIII
Provision Type:	HSWA
Linkage:	Revision Checklists 34, 50, 66, 151, and 157
Optional:	Yes

Summary: This rule finalizes clarifying amendments to the rule authorizing treatment variances from the national LDR treatment standards, adopting EPA's interpretation that a treatment variance may be granted when treatment of any given waste to the level or by the method specified in the regulations is not appropriate, under either technical or environmental circumstances. EPA has also incorporated preamble language from the August 17, 1988 rule (53 FR 31200), requiring public participation for site-specific variances. Additionally, this rule withdraws the proposal to reissue the treatment variance granted to Citgo Petroleum under the clarified standard, and withdrawn the treatment variance for Citgo Petroleum.

State Authorization: 40 CFR 268.44 contains two types of variances. The provisions at 40 CFR 268.44(a)-(g) address general treatment standard variances. The authority for such variances is not delegable because these variances could result in nationally applicable standards for a new waste treatability group. The provisions at 40 CFR 268.44(h)-(m), on the other hand, address site-specific variances. In the HWIR-Media Proposal (61 FR 18780, 18828, April 29, 1996), EPA clarified that the authority to review and approve this second type of treatment variance can be delegated to States. The amendment to both types of treatment variances addressed by the December 5, 1997 rule are included in this checklist. States that have correctly adopted 40 CFR 268.44(a)-(g), leaving the authority for these variances with EPA, are encouraged to make the indicated amendments to these provisions so that the State's provisions are consistent with their Federal counterparts.

This rule is placed in RCRA Cluster VIII. All changes go into effect immediately because this rule was promulgated under HSWA authorities. Because the standards in this rule narrow and reduce regulatory requirements which preceded it, States are not required to adopt the changes addressed by this rule. As such, the checklist for this rule has been designated optional. For States that choose to adopt the checklist, the State modification deadline is July 1, 1999 (or July 1, 2000 if a State statutory change is necessary). Both interim and final authorization are available. Interim authorization expires January 1, 2003. The State Revision Application must include applicable regulations, AG statement addendum, Revision Checklist 162, other associated

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checklists and other application materials; i.e., a program description and an MOA, as determined by the Regional office.

Attorney General's Statement Entry: The following entry should be placed at Subsection XXI (BB) in the Model Revision Attorney General's Statement.

BB. [OPTIONAL: This is a reduced requirement.] State statutes and regulations include revisions to the LDR treatment variances at 40 CFR 268.44, and specify that a variance may be granted when treatment to the level or by the method specified in the regulations either is not physically possible or is not appropriate under either technical or environmental circumstances as indicated in Revision Checklist 162.

Federal Authority: RCRA 3004(m); 40 CFR 268.44(a), 268.44(h), and 268.44(m) as amended December 5, 1997 (62 FR 64504).

Citation of Laws and Regulations; Date of Enactment and Adoption

Remarks of the Attorney General

Incorporation by Reference Guidance: The term “Administrator” in 40 CFR 268.44(a) should not be substituted with an analogous state term because this provision is not delegable. “Administrator” at 40 CFR 268.44(h) should only be substituted if the State has or is seeking authorization for the site-specific variances at 40 CFR 268.44(h)-(m).