**Section 728.144 USEPA Variance from a Treatment Standard**

a) Based on a petition filed by a generator or treater of hazardous waste, USEPA has stated that it may approve a variance from an applicable treatment standard if the petitioner can demonstrate that either of the following applies to treatment of the waste:

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 must 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 must demonstrate that either of the following applies to treatment of the waste:

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.

BOARD NOTE: A variance from a treatment standard is available only from USEPA. USEPA has reserved to itself the authority to grant a variance from a treatment standard.

b) Each petition must be submitted in accordance with the procedures in 40 CFR 260.20.

c) Each petition must include the following statement signed by the petitioner or an authorized representative:

 I certify under penalty of law that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

d) After receiving a petition for an adjusted treatment standard, USEPA has stated that it may request any additional information or samples that are necessary to evaluate the petition. Additional copies of the complete petition may be requested as needed to send to affected states and Regional Offices.

e) USEPA has stated that it will give public notice in the Federal Register of the intent to approve or deny a petition and provide an opportunity for public comment. USEPA has stated that the final decision on a variance from a treatment standard will be published in the Federal Register.

f) A generator, treatment facility or disposal facility that is managing a waste covered by an adjusted treatment standard must comply with the waste analysis requirements for restricted wastes found under Section 728.107.

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

h) Based on a petition filed by a generator or treater of hazardous waste, USEPA has stated that it may approve a site-specific variance from an applicable treatment standard if the petitioner can demonstrate that either of the following applies to treatment of the waste:

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 must 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 must demonstrate that either of the following applies to treatment of the waste:

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. USEPA has stated that a treatment variance granted under 40 CFR 268.44(h)(3) will include the following features:

A) At a minimum, USEPA has stated that a treatment variance approved under 40 CFR 268.44(h)(3) will impose an alternative land disposal restriction treatment standard that will achieve the following, using a reasonable maximum exposure scenario:

i) For carcinogens, it will 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

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

B) USEPA has stated that a treatment variance approved under 40 CFR 268.44(h)(3) will 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 be land disposed.

5) USEPA has stated that public notice and a reasonable opportunity for public comment must be provided before granting or denying a petition.

i) Each petition for a site-specific variance from a treatment standard must include the information in 40 CFR 260.20(b)(1) through (b)(4).

j) After receiving an application for a site-specific variance from a treatment standard, USEPA may request any additional information or samples that USEPA determines are necessary to evaluate the petition.

k) A generator, treatment facility, or disposal facility that is managing a waste covered by a site-specific variance from a treatment standard must comply with the waste analysis requirements for restricted wastes in Section 728.107.

l) During the petition review process, the petitioner for a site-specific variance must comply with all restrictions on land disposal under this Part once the effective date for the waste has been reached.

m) For any variance from a treatment standard, the petitioner must also demonstrate that compliance with the requested variance is sufficient to minimize threats to human health and the environment posed by land disposal of the waste. In evaluating this demonstration, USEPA has stated that it will take into account whether the treatment variance should be granted if the subject waste is to be used in a manner constituting disposal pursuant to 40 CFR 266.20 through 266.23.

n) This subsection (n) corresponds with 40 CFR 268.44(n), marked "reserved" by USEPA. This statement maintains structural consistency with corresponding federal regulations.

o) The facilities listed in Table H are excluded from the treatment standards under Section 728.143(a) and Table B, and are subject to the constituent concentrations listed in Table H.

p) After USEPA grants a treatability exception by regulatory action pursuant to 40 CFR 268.44 and a person demonstrates that the treatability exception needs to be adopted as part of the Illinois RCRA program because the waste is generated or managed in Illinois, the Board will adopt the treatability exception by identical in substance rulemaking pursuant to Section 22.4(a) of the Environmental Protection Act.

(Source: Amended at 42 Ill. Reg. 24924, effective November 19, 2018)