

US EPA ARCHIVE DOCUMENT

CHAPTER TWO

MORE STRINGENT TREATMENT UNDER PROPOSED §269.32

Several commenters commented on the proposed §269.32, which proposes site-specific determination regarding the effectiveness of proposed treatment standards of hazardous contaminated media and allows for more stringent treatment standards.

Specifically, two commenters assert that proposed §269.32 should be expanded to include less stringent treatment standards, as well as more stringent treatment standards, dependent upon site characteristics.

- “EPA has proposed to allow the overseeing agency to adjust the proposed generic treatment standard upward to address any particular risk posed by specific site or waste characteristics. 61 Fed. Reg. at 18807. USWAG believes that this concept should be expanded to allow the overseeing agency to approve less stringent treatment standards if such standards will adequately address the risks posed by the materials. In such circumstances, additional treatment is just treatment for treatment's sake and the regulations should provide a simple mechanism for avoiding it.” (59)
- “DuPont is concerned that, despite repeated statements regarding the site-specific nature of remediation and the ability of State programs to provide adequate oversight to ensure appropriate decisions, the Agency proposes to allow the States to determine when more stringent treatment is necessary, but not when less stringent treatment would be appropriate. We encourage the Agency to truly empower the States to make protective site specific determinations regarding the appropriate management requirements for remediation wastes on a site-specific basis, free of artificial regulatory impediments.” (117)

Response: EPA is not, at this time, going forward with the portion of the HWIR-Media proposal which would have allowed overseeing agencies to impose more stringent LDR treatment standards for hazardous contaminated soil on a case-by-case basis. EPA is, however, persuaded that there may be situations where the technology-based treatment standards might prompt treatment to a point beyond the point at which threats to human health and the environment are minimized. To reduce the likelihood of this, EPA is going forward with a, so called, site-specific minimize threat variance, which would allow, through application of the variance process, a site-specific, risk-based decision to cap the technology-based treatment standards. This new treatment variance will be available for all contaminated soils and is discussed in detail in the preamble to today's rulemaking.

Two commenters believe that §269.32 is inconsistent with the proposed rule's underlying concept and should be deleted in its entirety from the proposed rule.

- “This section allows the Director to require more stringent treatment than the modified LDR treatment requirements specified in the Proposed Rule in § 269.30. There is nothing in the proposal that would prevent the Director from requiring even more stringent treatment than is required by the current LDR provisions of 40 C.F.R. Part 268. This approach seems inconsistent with the entire concept underlying this Proposed Rule, which is that contaminated media, by its very nature, is generally expected to be a lesser risk than the initial "as generated" waste. For these reasons it is recommended that § 269.32 be deleted in the final rule.” (12)

- “The proposed rule, § 269.32, allows the Director to require more stringent treatment than the modified LDR treatment requirements specified in the proposal in § 269.30. Indeed, nothing in the proposal prevents the Director from requiring even more stringent treatment than is required by the current LDR provisions of 40 CFR Part 268. This approach seems inconsistent with the entire concept underlying this proposed rule which is that contaminated media, by its very nature, is generally expected to be a lesser risk than the initial "as-generated" waste. Therefore, Kaiser urges EPA to delete §269.32 in its entirety.” (24)

Response: EPA is not, at this time, taking action on the portions of the HWIR-Media proposal which would have established oversight of remediation waste management decisions through a remediation waste management plan (RMP), required an approved RMP in order to apply the soil treatment standards, or given program implementers the discretion to apply more stringent soil treatment standards on a case-by-case basis during the RMP approval process.

Two commenters suggest developing a specific approach or methodology for deciding the site-specific treatment criteria in §269.32.

- “At §269.32, an option is extended to allow an agency to require more stringent treatment standards based on a determination that the treatment would not sufficiently diminish toxicity or provide for adequate control of migration of hazardous constituents. To avoid unfounded stringency on the part of authorized agencies in the exercise of this option, the option should include reference to a specific methodology or body of scientific models for evaluating the need for more stringent standards. Such reference would allow the entity undertaking the remedial action to more accurately evaluate the potential use of a Remedial Management Plan (RMP) and to more effectively structure the draft plan.” (06)
- “Risky based decision making should be stressed. **Section 269.32 More stringent treatment standards** should be revised as follows "... if s/he *using appropriate risk assessment and risk management methodologies based on sound science* determines...". This will provide for suitable site specific, risk based decision making on the need for additional treatment to be protective of human health and the environment.” (38)

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As discussed in the preamble to today’s action, the Agency has made a number of changes to the soil treatment standards to ensure their protectiveness. First, the Agency has modified its approach to constituents subject to treatment to require, for both soil containing listed waste and soil that exhibits a hazardous characteristic, treatment for all underlying hazardous constituents reasonable expected to be present in contaminated soil when such constituents are initially found at concentrations greater than ten

times the universal treatment standard. This will ensure substantial treatment for the diversity of contaminants that might be present in any given soil. Second, EPA has added restrictions to the use of treated contaminated soil in hazardous waste-derived products that are used in a manner constituting disposal (i.e., when such products are placed on the land).

One commenter believes that the example given in §269.32, which describes when a more stringent treatment standard may be developed, occurs more often than EPA anticipates and should not be underestimated.

- “Page 188809, column 1, paragraph 1, more stringent treatment requirements. The specific example given (which EPA believes would likely be rare), is probably more common than stated and should not be downplayed by the use of such language (even though EPA believes such situations would likely be rare).” (41)

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The majority of commenters did not raise concerns that, in some instances, site- or waste-specific concerns might prompt regulatory agencies to impose treatment requirements that are more stringent (or more aggressive) than the treatment which would be required under the soil treatment standards. Should those situations arise, for example, as discussed in the HWIR-Media proposal, if a site were located in a particularly sensitive environmental setting, or if contaminated soil contained particularly high concentrations of highly-mobile or highly toxic constituents, ample authority exists under cleanup programs such as the CERCLA or RCRA corrective action programs, to ensure that remedies adequately address these concerns. The Agency notes that the purpose of the land disposal restriction treatment standards is to ensure that hazardous waste is properly pre-treated before disposal, not to define protective cleanup levels for the diversity of cleanup sites.