

US EPA ARCHIVE DOCUMENT

CHAPTER THREE
REVIEW OF TREATMENT RESULTS UNDER PROPOSED §269.33

One commenter commented on the proposed §269.33, which states that if treatment standards are not achieved at a site, the facility owner/operator would be required to either submit a new RMP including plans to re-treat or submit an application for Media Treatment Variance. [Also see Section 16.F regarding termination of RMPs.]

Specifically, the commenter supports this provision.

- “USWAG supports the provision in proposed section 269.33(b) that allows a generator to apply for a treatability variance if the initial treatment of the waste fails to achieve compliance with the treatment standard. *Id.* at 18810. This provision adds useful flexibility to the regulatory system by recognizing that, because of the heterogeneous nature of remediation wastes, treatment methodologies may not always perform as predicted.” (59)

Response: The Agency appreciates this support of the proposed approach; however, 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 require a new RAP -- or a treatment variance -- if initial treatment of contaminated media proved unsuccessful. The Agency notes that, in any case, current regulations seem to already provide this opportunity. Under 40 CFR 268.44(h) the Agency may, on a case-by-case basis, approve an alternative LDR treatment standards through a treatment variance process in a number of circumstances including when the otherwise applicable treatment standards is unachievable -- that is, when application of the treatment technologies on which the treatment standard was based fails to meet the treatment standard in any given waste (or contaminated soil).