



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

RCRA No-Migration Variance/Temporary Placement of Treated Hazardous Waste Within a Permitted Subtitle C Landfill: U.S. Environmental Protection Agency Issues Guidance Policy

02/27/2023

The United States Environmental Protection Agency (“EPA”) published in the February 22nd Federal Register a notice that it is finalizing guidance involving petitions for a No-Migration Variance (“NMV”) under the Land Disposal Restrictions (“LDRs”) pursuant to the Resource Conservation and Recovery Act (“RCRA”). See 88 Fed. Reg. 10894.

The guidance policy is intended to assist persons applying for a NMV for a waste pile temporarily located within a RCRA-permitted Subtitle C Landfill cell.

Regulatory requirements for an NMV have been in place since the RCRA LDRs were first established in 1986. Land disposal of hazardous waste that does not meet applicable treatment standards can be allowed if an NMV is approved by EPA. The NMV is a formal decision rendered by EPA in response to a petition requesting allowance of landfill disposal at a particular facility of a prohibited waste.

The NMV petition/submittal process is codified in 40 CFR 268.6. EPA Regions have been delegated the authority to address such petitions. States do not have the authority to implement the NMV petition process.

To obtain an NMV there typically must be a demonstration that actual or predicted concentrations of hazardous constituents or emission rates at the edge or boundary of the unit do not exceed health-based levels or environmentally protective levels for groundwater, surface water, soil, or air for as long as the waste remains hazardous. There is also a mandate for monitoring all environmental media, including groundwater, surface water, soil, and air to demonstrate compliance.

A copy of the Federal Register Notice can be downloaded [here](#).