RCRA No-Migration Variance From Land Disposal Restrictions: U.S. EPA Proposal to Grant for Tooele County, Utah Facility



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The United States Environmental Protection Agency ("EPA") published a December 31, 2025 Notice of Proposal to Grant ("Notice") a Resource Conservation and Recovery Act No-Migration Variance From Land Disposal Restrictions for Clean Harbors. See 90 Fed. Reg. 61356.

The Notice addresses a commercial treatment, storage and disposal facility ("TSDF") in Tooele County, Utah.

A no-migration variance ("NMV") is described by EPA as a response to a Petition filed with the agency, to:

… allow land disposal within a particular disposal unit, of specific prohibited waste when it has been demonstrated, ''to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit . . . for as long as the wastes remain hazardous."

A demonstration must be provided to EPA that, to a reasonable degree of certainty, that hazardous constituents will not exceed agency-approved human health-based levels (or environmentally protective levels, if they are appropriate) beyond the boundary of the disposal unit. The disposal unit boundary is defined in most instances as the outermost boundary of engineered components. See 57 Fed. Reg. 35941(August 11, 1992).

The December 31st Notice is stated to propose to grant, with conditions, NMVs for four categories/groups of wastes. They are stated to contain up to 250 temporary disposal units (''put piles'') at any one time, from the RCRA Land Disposal Restrictions standards at the Tooele County, Utah TSDF.

Clean Harbors is stated to have on July 16, 2024, submitted to EPA a no-migration variance (NMV) petition, in accordance with 40 CFR 268.6, seeking an exemption from the LDR prohibition on land placement of hazardous waste on the ground, if that waste does not meet the prescribed LDR standards at 40 CFR 268.40. The Petition is stated to propose that for as long as the wastes remain hazardous, there will be no migration of hazardous constituents from the disposal units. This is stated to apply to 250 put piles at any one time located in the facility's Subtitle C landfill. The request also asks that the variance proactively apply to future put piles of identical waste characteristics that would be staged in future proposed and permitted Subtitle C landfills.

EPA's Notice states that Clean Harbors demonstrated to a reasonable degree of certainty that there would be no migration of hazardous constituents from the disposal units for as long as the waste remained hazardous.

The preamble to the Notice outlines EPA's basis for its proposed determination which includes:

- Facility Description.
- Site Characterization/Unit Description.
- Waste Characterization.
- Uncertainty Analysis.
- No-Migration Demonstration.
- Treatment effectiveness.
- Duration of temporary storage.
- Disposal unit engineered controls.
- Liners.
- Covers.
- Run-On/Run-Off Controls.
- General surrounding area engineered controls.
- Groundwater monitoring.

A copy of the Notice can be found here.