



FREQUENTLY ASKED QUESTIONS (FAQ) & ANSWERS

Alternate Point of Compliance (APC) Variance Petitions related to permitted solid waste landfills

**Division of Land Protection and Revitalization
629 East Main Street
Richmond, Virginia 23219**

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Introduction

The Virginia Solid Waste Management Regulations (VSWMR) allow a landfill owner/operator the option to request a variance to the location of the groundwater monitoring system other than the default location at the waste management unit boundary (9 VAC 20-81-250.A.3.a). This Alternate Point of Compliance (APC) allowance is sourced from Federal language in 40 CFR 258.40.d and if requested, must be supported by site-specific information. Virginia uses the variance process of 9 VAC 20-81-2760 to approve APC requests.

This Frequently Asked Questions (FAQ) document is provided as a reference for owner/operators who may have questions on the process of requesting use of APC, technical information required in the variance submittal, and process for final Director approval. If you need further assistance with questions related to this FAQ or general monitoring well network issues, please contact the solid waste Groundwater Program Coordinator, Mr. Geoff Christe at (804) 698-4283 or via email at geoff.christe@deq.virginia.gov. You may call your Regional Office groundwater contact if you have questions on whether APC use would be beneficial at your site.

1] What instances could trigger the need to submit an APC variance petition?

If monitoring well replacement/relocation will be at a location other than the disposal unit boundary and the cause of the replacement//relocation action is not triggered by a physical obstacle (9 VAC 20-81-250.A.3.a.(2)) such as haul roads, storm water run-off or collection features, power lines, leachate or landfill gas conveyance lines, engineering aspects of unit expansion or closure, etc.

2] What well replacement/relocation actions would not trigger need to submit an APC variance petition?

Anytime a monitoring well has to be replaced/relocated because of physical obstacles at the waste management unit boundary. In cases such as these, the monitoring wells may be installed at the closest practical distance downgradient of the unit (9 VAC 20-81-250.A.3.a(3)) and the new location would not be considered an APC.

3] What information does the APC variance petition need to include?

All regulatory items of 9 VAC 20-81-720.A, 740 and 760.A.1, including the certification statement must be included. Please refer to the Department's APC Submission Instructions for additional guidance regarding the content of the variance.

4] Is there a cost associated with APC variance submission?

If the variance deals with use of APC for a single well, the fee would be the variance 'base' fee (currently \$390).

For sites proposing to move the entire downgradient monitoring well system to an APC, then the supplemental fee (currently \$920) would be added to the required base fee (9 VAC 20-90-120; Table 3.1-3).

5] Where does the fee get submitted?

DEQ-receipt Control, P.O. Box 1104, Richmond, Virginia 23218.

A photocopy of the check should be included in the variance submission as proof of fee payment.

6] What steps take place once the petition and fee have been received at DEQ?

The variance will be reviewed for completeness. If the information contained is deemed insufficient, the Director will request that additional information be furnished in accordance with 9 VAC 20-81-760.B.1.

Once the variance has been deemed complete, it will undergo technical review (see 9 VAC 20-81-740.C). If the review leads to a decision of tentative denial, the Director will offer the owner/operator the chance to withdraw the variance, or resubmit the request with revised content (9 VAC 20-81-760.B.3.b). If a tentatively denied variance is not withdrawn, the Director will proceed with public notification (9 VAC 20-81-760.B.3.c) of the tentative denial or tentative approval (if the variance has been successfully revised).

7] What type of public participation is required?

The Department's tentative approval or denial will be subject to a 30-day public comment period and will be advertised in a local newspaper that has circulation in the facility location (9 VAC 20-81-760.B.3.c).

The owner/operator will be responsible for the cost of the one-time advertisement (9 VAC 20-90-70.C). This cost is not covered by the Variance submission fee.-

8] What happens if an objection is raised during the public comment period?

All comments received by the Department during the public comment period will be evaluated and addressed as required under 9 VAC 20-81-760.B.3.c-d.

9] How long will it take to receive a final decision?

The Director is required to issue a final decision on the variance submission within 15-days of the close of the public comment period (9 VAC 20-81-760.B.3.d) by notifying the applicant and any commenting individuals. The final decision may be approval, denial, or modified approval/variance (9 VAC 20-81-720.B.1).

10] Would APC variance approval trigger the need to modify the current solid waste Permit?

APC approval will likely require the owner/operator update the facility solid waste Permit to reflect the change in the monitoring well network.

Contact your Regional Office with questions regarding the timing of the required Permit modification. However, it is important to note that upon Director variance approval, the APC is approved for use on site regardless of whether or not the Permit has been modified.

11] What are the location constraints on APC use?

The APC must be located within the permitted facility boundary and shall not be located more than 500 feet from the disposal unit boundary (9 VAC 20-81-740.A). This distance is an approximation of the EPA-defined Subtitle D 150 meter distance.

If the permitted facility boundary happens to be located approximately 500 feet from the edge of the waste disposal unit, the Department will not approve an APC location at the facility boundary. This is consistent with EPA's comment in the Subtitle D 1991 preamble (Appendix F – 56 FR 51068) which noted that:

“... the alternate boundary ... must be located on property owned by the owner/operator to prevent contamination off site”.

Any proposed APC must be located inside the facility boundary at a distance sufficient to allow potential impacts to groundwater to be remediated prior to their migration off site. Since installation of an aggressive groundwater remediation system can take more than a year (i.e., well installation, acquisition of discharge permits, etc.) it is advised that an APC not be proposed in a location which is less than the distance groundwater would travel in a 3 year time-span to allow for any delays in installation of a system to prevent off site plume migration.

In addition, if there are potential receptors within the permitted facility boundary, closer than 500 feet from the waste unit boundary, the proposed APC location will have to be “in front” of these receptors (9 VAC 20-81-740.C.1) in order to recognize groundwater impact prior to affecting the potential receptors.

12] What if an APC cannot be located within the current permitted facility boundary?

The owner/operator has the option of submitting a Part A revision to modify the facility boundary at the same time the APC variance petition is submitted.

For those older sites which lack an approved Part A, the owner/operator may submit a vicinity map meeting requirements of 9 VAC 20-81-460.C displaying the proposed facility boundary along with a demonstration of legal control over the site for the permit life as required by 9 VAC 20-81-460.D.

For further assistance with Part A issues related to APC use, the owner/operator is encouraged to contact their Regional Office.

13] What are the performance requirements of the APC location?

Any well installed at an APC must be located in a manner which can determine the landfill's impact on the quality of groundwater in the uppermost aquifer per 9 VAC 20-81-250.A.2.a.

14] Should I get APC pre-approval from the DEQ before submitting my variance petition?

Department pre-approval is not required under the VSWMR. However, an owner/operator is strongly encouraged to contact their Regional Office to discuss APC issues such as proposed location, and depth of completion, prior to well installation to lessen the chance later issue will be raised with the chosen location or installation specifics.

15] What aspects of risk need to be considered when choosing an appropriate APC location?

The owner/operator must consider the nearest current groundwater users (both potable and non-potable), expected future groundwater users (9 VAC 20-81-740.B.4 + 6) and potentially affected surface waters (9 VAC 20-81-740.C.1). As it applies to APC, the definition of groundwater may be found under §62.1-255 of the Code of Virginia, while the definition of surface water may be found under 9 VAC 20-81-10 and §62.1-44.3 of the Code of Virginia. Expected future use should be considered unrestricted use for the site and surrounding properties regardless of current usage unless use is prohibited by some binding legal provision.

16] Can APC be used to replace wells showing landfill derived impacts?

Yes.

However, an owner/operator must be cognizant of the fact that using APC to avoid the need to address landfill-derived aquifer impacts at the waste management unit boundary may lead to the risk of having to remediate a much larger area of impaired groundwater if groundwater protection standards are exceeded in the APC well(s) in the future. Although EPA acknowledged one of the goals of using APC was to allow for potential contaminant concentrations to: "... diminish due to degradation, dispersion, and attenuation ...", there is no guarantee that this will be successful in every instance.

Other potential options to address landfill impacts at the waste disposal unit boundary include: site-specific Alternate Concentration Level use (9 VAC 20-81-250.A.6.b.(4).(b)), increasing the

background data pool by installation of additional wells to capture spatial variability (9 VAC 20-81-250.A.4.d or e), or acknowledging the groundwater impact and proceeding to plume delineation (9 VAC 20-81-260.C.1.a).

17] If APC use is approved for wells showing a GPS exceedance, how long would the APC well need to be sampled before requesting termination of corrective action if no exceedance is recognized at the APC?

The owner/operator would need to submit three consecutive years of data showing no Table 3.1 Column B constituents have exceeded GPS within the APC before termination of corrective action could be considered consistent with the requirements of 9 VAC 20-81-260.H.1.a.

18] Can I use an existing corrective action well located beyond the compliance well at the waste disposal unit boundary as my APC?

Yes, as long as the requested Performance or Sentinel well meets the technical requirements under 9 VAC 20-81-250.A; 720.A; and 760.A.1 as described earlier in this document. Use of an existing well would remove the cost associated with new well installation on site.

19] If an existing corrective action well is used as APC, can the owner/operator use existing data obtained from this well to potentially request termination of corrective action?

Possibly.

If past data is below the applicable groundwater protection standard by a small margin, then the Department may require a full three years of no statistical exceedance before entertaining such a request. If however, the prior sampling results are well below the applicable groundwater protection standard, the Department may act on the request without requiring more than one sampling event at the APC well post variance approval.

20] Is there any other Department guidance available relating to APC use?

Yes. The Department has issued Alternate Compliance Point submission instructions (SI), available on the Virginia Townhall website, which also contain a technical content checklist to assist in the development of a complete variance submission.