



FREQUENTLY ASKED QUESTIONS (FAQ) & ANSWERS

Reporting Reduction Variance petition for solid waste landfills permitted under the Virginia Solid Waste Management Regulations

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

V.1 – September 2012

Introduction

The Virginia Solid Waste Management Regulations (VSWMR) require all landfill owner/operators submit the results of their required groundwater compliance sampling events in semi-annual or quarterly monitoring reports. These reports are defined under 9 VAC 20-81-250.E.2.b.(1). The reported information forms the basis for determining whether a facility is operating in the appropriate phase of groundwater monitoring.

For those facilities that have exceeded groundwater protection standards and are in or moving toward groundwater corrective action by completing steps under 9 VAC 20-81-260, the submission of semi-annual or quarterly reports no longer provides information which is new to the Department (or the facility file record). As a means of reducing the reporting burden for this category of landfills, owner/operators are provided this Frequently Asked Questions (FAQ) document which addresses a potential variance from the semi-annual or quarterly submission requirements.

This FAQ is provided as a reference for owner/operators who may have questions on the development and submission of a reporting reduction variance, the type of technical information required of the variance submittal, and process followed for final Director approval. For further assistance with questions related to this FAQ, 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 this variance would be applicable at your site.

1] How do I know if my landfill would qualify for a reporting reduction variance petition?

A] Has your landfill exceeded groundwater protection standards (GPS)? If yes, ...

B] Does the facility currently submit semi-annual or quarterly groundwater monitoring reports under separate cover to the Department within the VSWMR defined timeframes? If yes, ...

C] Has the facility initiated actions related to corrective action such as installing nature and extent wells, assessing potential remedies, submitting a proposed remediation plan (9 VAC 20-81-260.D), or initiating corrective action via the Permit modification (9 VAC 20-81-260.E) or Interim Measures (9 VAC 20-81-260.F) allowance? If yes, ...

... you could consider submitting a reporting reduction variance petition as described herein.

2] What information does the reporting reduction variance petition need to include?

All regulatory items listed under 9 VAC 20-81-760.A.1 must be included in the submission. The certification statement defined in A.1.h must be included verbatim and signed by the applicant or his authorized representative.

In addition, the applicant must demonstrate/address the ‘need’ issues of 720.A.1 and 2 (discussed in more detail later in this FAQ) and demonstrate the criteria listed in question #1 above apply to the requesting facility.

3] Is there a cost associated with the reporting reduction variance submission?

Yes, the fee associated with this reporting-related variance would be the ‘base’ fee which is currently \$390. Refer to 9 VAC 20-90-120 for further information on variance fees.

4] Where does the fee and variance get submitted?

Fee payment goes under separate cover to:

*Virginia DEQ Receipt Control Office
P.O. Box 1104
Richmond, Virginia 23218.*

The variance petition, including a photocopy of the \$390 fee payment check (with bank routing information blacked-out for security reasons) should be submitted to:

A] Your Regional Office groundwater contact

*B] Solid Waste Groundwater Program Coordinator
Land Protection and Revitalization
629 East Main Street
5th Floor
Richmond, VA 23219*

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

A] *The Regional Office will determine whether the facility qualifies for the potential variance. If the facility is determined to be eligible ...*

B] *The variance petition will be reviewed for completeness by Central Office staff.*

C] *If the information contained is deemed insufficient, or record of fee payment cannot be demonstrated, the Director will request that missing information be furnished in accordance with 9 VAC 20-81-760.B.1.*

D] *Once the variance has been deemed complete from a content stand point, it will undergo technical review by Central Office staff against criteria in the VSWMR and items listed in question #1 of this FAQ.*

E] *If the technical 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.*

F] *If the technical review leads to the decision to grant tentative approval (on the original or revised variance), the Director will proceed with the public notification process.*

6] What type of public participation is required?

The Department's tentative approval or denial determination, which will be sent to the applicant under signed cover from your Regional Office, will be subject to a 30-day public comment period. This tentative decision must be advertised in a local newspaper that has circulation in the location of the applicant facility (9 VAC 20-81-760.B.3.c).

The Department will furnish the applicant with the variance advertisement text to be public noticed. The owner/operator will be responsible for arranging for the advertisement (and assuming the cost) of the one-time newspaper advertisement (9 VAC 20-90-70.C). This is a separate cost not covered by the Variance submission fee. The Department will also post the notice electronically on the DEQ website.

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

All comments received by the Department during the 30-day public comment period will be evaluated and addressed by the Director as required under 9 VAC 20-81-760.B.3.c-d and the interested parties will be responded to in writing.

8] 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 variance approval, denial, ... or some form of modified approval (9 VAC 20-81-720.B.1) with appropriate conditions defined as part of the approval (9 VAC 20-81-720.B.2.b.(2)).

The variance petition will be signed in Central Office and attached to a cover letter issued by your Regional Office.

9] Is there any condition which would prevent the Department from even accepting the reporting reduction variance even if all other petition requirements have been fulfilled?

Yes. Under 9 VAC 20-81-700.B.4, the Director cannot accept a variance to suspend submission of the semi-annual (or quarterly) reports defined under 9 VAC 20-81-250.E.2.b.(1) if the applicant is currently violating the regulatory requirement to submit these reports as required by the Assessment or Phase II monitoring programs. The issue of non-compliance first has to be resolved through the enforcement process.

If you are not currently submitting the required semi-annual (or quarterly) reports under the timeframes defined in the VSWMR, you should contact your Regional Office as soon as possible before considering petitioning for the variance described herein. The Regional Office also retains discretionary authority to review and place on hold any petitions received from owner/operators currently undergoing other compliance review for groundwater non-compliance issues.

10] Is there any condition which should be considered prior to submitting the petition to the Department for processing and review?

Yes. As stated under question #1 above, there are certain criteria a site has to meet before they would be judged as qualifying for variance review.

First and foremost, the facility must have exceeded GPS. However, it should be remembered that the VSWMR allow an owner/operator certain allowances to potentially alleviate the reported GPS exceedance including verification sampling, an Alternate Source Demonstration (ASD) or a variance to utilize an Alternate Point of Compliance (APC). If an owner/operator is working toward any of these actions, it would be premature to submit the reporting reduction petition and fee to the Director for review since the facility may soon thereafter have its reported GPS exceedance nullified.

Submission of the reporting reduction variance should not take place until the GPS exceedance on site is determined to be one which cannot be alleviated by these other regulatory mechanisms.

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

If the current Permit Modules X or XI define a semi-annual or quarterly reporting requirement, this requirement would eventually need to be updated via a minor modification process. You can 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 action will be allowed on site regardless of whether or not the Permit has been modified to match the variance approval.

12] In general, what would be the definition of ‘applicant’s interest’ under 760.A.1.b?

Most commonly this would be an interest in reducing the groundwater reporting burden for sites which have already documented an impact in groundwater quality at the relevant groundwater point of compliance and have moved toward groundwater corrective action.

13] What specific regulatory citations would the applicant be requesting variance from?

For an owner/operator with a landfill in Assessment monitoring, the appropriate reference would be 9 VAC 20-81-250.B.3.f.(3).(b).

For an owner/operator with a landfill in Phase II monitoring, the appropriate reference would be 9 VAC 20-81-250.C.3.e.(3).(b).

14] In general, what would the definition of ‘justification’ be under 760.A.1.d?

Most commonly the request to use this type of variance will be based on the justification that the facility has already notified the Department that it has impacted groundwater above regulatory standards and thus the continued submission of sampling results demonstrating the ongoing impact(s) to the aquifer is redundant to the file record.

To demonstrate this, the owner/operator should submit a copy of the most recent GPS exceedance notification as part of the variance package. The ‘justification’ discussion will likely close by noting costs saved by not submitting these redundant reports could be better put to use toward groundwater corrective actions otherwise required under 9 VAC 20-81-260.

15] How long would the variance be in effect if approved?

Most owner/operators will ask for the variance to be in place until such time as corrective action has been completed under 9 VAC 20-81-260.H or deemed technically infeasible to complete under 9 VAC 20-81-260.G.3. Once GPS are no longer being exceeded on site, routine Semi-annual or Quarterly monitoring reports will once again be submitted until full termination of Post-closure Care activities has been granted.

16] How would the petitioner define changes in potential impact to human health and the environment if the variance would be approved?

This potential variance does not affect the actual groundwater monitoring on site (i.e., constituents, frequency, wells sampled, etc.).

Because the owner/operator would still be filing the required GPS SSI exceedance notifications associated with the Assessment or Phase II monitoring programs, and still be submitting the Annual Report required under 9 VAC 20-81-250.E.2.a, the Department will still be receiving annual information on the status of the groundwater monitoring activities onsite.

Lack of submissions of the semi-annual (or quarterly) sampling results under separate cover will not change the fact the Department will still be receiving groundwater sampling results in a yearly summary which would be available for review should any interested party like to see the materials under the FOIA process. As a result, no change in impact to human health and the

environment would be anticipated solely as a result of variance approval to reporting requirements.

17] What kind of information would be included in the petition to address 720.A.1 and 2?

While each applicant will be representing a landfill with unique characteristics, most often they will note that reporting redundant groundwater sampling results (exceedances of GPS) causes an undue hardship by taking time and money away from other groundwater corrective action efforts.

While there would exist no technical condition which would make a strict application of the normal reporting regulation difficult to achieve (see 720.A.1.c), it will be often be noted that since the facility will still be submitting the GPS SSI notifications required under the Assessment and Phase II programs as well as an Annual Report, the Department will still have access to all the groundwater data normally obtained during the calendar year so there will be no change in the information available to determine protection of human health and the landfills potential impact of the environment (see 720.A1.b ad 2).

18] Would there be any conditions attached to variance approval?

Most likely, yes.

Because the owner/operator would be relieved from submitting the reports defined under 9 VAC 20-81-250.E.2.b.(1), some of the technical items formerly required of the semi-annual or quarterly report and defined in the VSWMR should be included in the groundwater Annual Report, ... specifically items 'c', 'f', and 'g' under E.2.b.(1).

Variance approval would also likely be conditional upon the owner/operator continuing to meet the GPS SSI notification and Annual Report submission timeframes spelled out in the regulation. Any conditions issued as part of variance tentative approval would be submit to public comment during the 30-day comment period.

19] How would a cessation of GPS exceedances affect variance approval?

There may be times in the latter stages of corrective action where a site may no longer exceed GPS. However, from a programmatic standpoint, the VSWMR require corrective action to continue until the site has not recognized a GPS exceedance for three consecutive years (9 VAC 20-81-260.H.1.a). Therefore, the simple recognition that no GPS exceedance has taken place during a particular sampling event would not automatically trigger termination of variance approval. Completion of corrective action would however.

20] Is there a QA/QC checklist available to help ensure my petition is complete before I submit to DEQ?

Yes, the form on the following page will be used by Regional and Central Office staff when reviewing each petition prior to the Director making a tentative approval or denial decision. The same form can be used by the applicant.

Administrative Completeness Topics	Yes / No ?
Regional Office concurs facility is eligible for Variance submission?	
Applicant name and address included? [760.A.1.a.]	
A description of requested action to cease submission of semi-annual (quarterly) monitoring reports was included? [760.A.1.b-c.]	
A description of the need and justification for the proposed action was included, likely noting cost savings and prior notification that the facility has impacted groundwater above remedial standards as basis for reducing this type of report submission which states information the file record already contains. [760.A.1.d]	
Proposed duration of Variance. Most likely to be listed as duration of PCC period or until corrective action requirements are no longer applicable. [760.A.1.e.]	
Discussion of any potential impact on public health or the environment. [760.A.1.f]	
Name of the local newspaper with distribution in the locality of the applicant landfill within which the advertisement of the tentative Variance decision and request for public comment will eventually be published was included. [760.B.3.c]	
Certification Statement (language must be exactly as written in VSWMR). [760.A.1.h.]	
Signature. [760.A.1.h.]	
Proof that Variance fee of \$390 was submitted to DEQ Receipt Control. [9 VAC 20-90-120]	

Technical Basis Topics	Adequate?
Did the Variance contain a copy of the most recent, signed GPS exceedance notification submitted to DEQ by the landfill owner/operator or their representative? If not, the Variance has not established proper eligibility.	
Does Variance discuss why including the semi-annual (quarterly) sampling results in the Annual report instead of in standalone submissions required by 9 VAC 20-81-250.E.2.b.(1) still allows the facility to be operated in an equally protective of human health and the environment manner? [see 720.A.1.b]	
Does the Variance contain a statement noting that granting the Variance will not result in an unreasonable risk to public health or the environment, likely based upon the fact that the information typically included in semi-annual or quarterly submissions will still be included in the Annual groundwater report required under 9 VAC 20-81-250.E.1? [see 720.A.2]	

21] Is there any benefit to contacting the Department prior to Variance submission?

Because each Variance submission has a manpower and administrative cost associated with it, the Department suggests that if there is any question about a facility's potential use of the Reporting Reduction allowance, the facility contact the Department to discuss the issue prior to the Variance being developed for submittal.

22] Is there an example of the language which would likely be part of an approved Reporting Reduction Variance petition?

Yes, refer to the boilerplate example on the following page.

Please note this example does not include any potential site-specific conditions which could be added to the approval by the Director.

Variance to the Virginia Solid Waste Management Regulations (VSWMR)

Submission of Semi-Annual or Quarterly Reports from GPS exceeding facilities

In response to a variance request submitted under 9 VAC 20-81-720 by **X-applicant-X** for its solid waste landfill located at **X-description-X**, Permit Number **X-ID-X**, the Department hereby grants approval of the request to cease submittal of routine Semi-annual or Quarterly monitoring reports limited to the conditions below.

If any of the conditions below are found to be violated, as allowed by 9 VAC 20-81-760.C.2, the Director approval of this variance shall be immediately terminated.

1] This approval shall remain in effect until such time as corrective action requirements of 9 VAC 20-81-260 are no longer applicable to addressing exceedances of groundwater protection standards (GPS) at the facility or the facility has been granted full termination of post-closure care groundwater monitoring requirements by the Director.

2] This approval shall be terminated if:

A] the owner/operator fails to notify the Department of GPS exceedances recognized in any well onsite within appropriate timeframes after each groundwater sampling event as otherwise required under 9 VAC 20-81-250.B.3.f.(3).(a) or 250.C.3.e.(3).(a), or

B] the owner/operator fails to submit the groundwater Annual report within appropriate timeframes of 9 VAC 20-81-250.E.2.a.(1), or

C] the owner/operator fails to include the technical items of 9 VAC 20-81-250.E.2.b.(1).(c); (f); and (g) which are normally included within the semi-annual or quarterly report, within the Annual report defined under 9 VAC 20-81-250.E.2.a.

If termination of the variance occurs as a result of conditions under item 2 above, the facility shall retain the right to re-apply for the variance after appropriate actions to address any non-compliance have been successfully completed.

APPROVED: **DRAFT**

DATE: **DRAFT**