

[FR Doc. 2026–12913 Filed 6–25–26; 8:45 am]

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**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Part 268****[EPA–HQ–OLEM–2025–2038; FRL–8504–
04–OLEM]****RIN 2050–AH21****U.S. Ecology Nevada, Inc. High
Mercury Subcategory Wastes Land
Disposal Restrictions Variance****AGENCY:** Environmental Protection
Agency (EPA).**ACTION:** Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is granting, with conditions, U.S. Ecology Nevada Inc.'s (USE) petition for a site-specific treatability variance (SSTV) from the Resource Conservation and Recovery Act (RCRA) Land Disposal Restrictions (LDR) treatment standards. USE's petition is for a variance from the existing treatment and disposal standard for elemental mercury waste generated from retorting high mercury waste as prescribed by the LDR technology-based standard of RMERC. The petition demonstrated that the LDR standard for placing elemental mercury waste generated from RMERC back into commerce for reuse is inappropriate and the alternative treatment variance proposed by USE is sufficient to minimize threats to human health and the environment posed by land disposal of the waste. Under the approved SSTV, the existing LDR treatment standard of RMERC will continue to apply to high mercury hazardous wastes, but the elemental mercury generated from this process will be treated and land disposed subject to specified conditions at both Bethlehem Apparatus's facility in Bethlehem, Pennsylvania, and USE's Beatty, Nevada, subtitle C treatment, storage, and disposal (TSD) facility where the treated mercury wastes will be disposed in a designated RCRA subtitle C compliant monofill.

DATES: This final rule is effective July 27, 2026.

FOR FURTHER INFORMATION CONTACT: Bethany Russell, Waste Characterization Branch, Waste Identification, Notice, and Generators Division, Office of Resource Conservation and Recovery (5304P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 566–0823; email address: russell.bethany@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information***A. Does this document apply to me?*

This action applies only to elemental mercury treated at Bethlehem Apparatus's Pennsylvania facility located at 935 Bethlehem Drive, Bethlehem, PA, and land disposed at USE's facility located at Highway 95, 11 Miles South of Beatty, Beatty, Nevada. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What action is the Agency taking?

The EPA is finalizing a SSTV for U.S. Ecology's treatment and disposal of elemental mercury waste generated from retorting high mercury waste in accordance with the LDR technology-based standard of RMERC. In this action, the EPA hereby approves, with conditions, a variance for USE from the requirement that elemental mercury reclaimed from RMERC of D009, U151, or Bevill-exempt high mercury wastes generated in the U.S. gold mining industry¹ be placed into commerce. Specifically, the EPA is granting, with conditions, USE's petition for a variance pursuant to 40 CFR 268.44 to allow land disposal of elemental mercury converted to mercuric sulfide powder that is then blended with linear low-density polyethylene (LLDPE) and extruded as a monolith into an impermeable/non-reactive container that is placed into a future permitted monofill located at USE's facility in Beatty, Nevada. At the time of this approval, USE has an agreement with Bethlehem Apparatus to perform the treatment portion of this process. See section V of this preamble, Future Amendments to this Variance, for procedures that may allow USE to retain this variance if USE moves any portion of the treatment process from Bethlehem Apparatus's Bethlehem, Pennsylvania, location.

For the reasons described in the February 6, 2026, preamble to the proposed approval (91 FR 5400) and in the Agency's response to comments received on the proposal, the EPA is finalizing the variance without alteration.

¹ The issue has arisen that U.S. gold mining Bevill-exempt high mercury waste does not carry a waste code because of the Bevill exemption. Although exempt, Bevill waste is like D009/U151 wastes in that it must be retorted to extract the elemental mercury to meet DOE's acceptance criteria. After retorting, the prohibition on land disposal of elemental mercury remains and is unaffected by the Bevill exemption.

C. What is the Agency's authority for taking this action?

Under 40 CFR 268.44, EPA may grant site-specific treatability variances in cases when facilities generate hazardous wastes that cannot be treated to the specified levels or when it is technically inappropriate for such wastes to undergo the prescribed treatment. See 51 FR 40605–40606, November 7, 1986, and 62 FR 64504, December 5, 1997. The requirements for an LDR treatment variance are found at 40 CFR 268.44 and LDR variance petitioners must follow the procedures in 40 CFR 260.20. Of note, 40 CFR 268.44(k) cross-references compliance with 40 CFR 268.7, which includes testing, tracking and recordkeeping requirements for generators, reverse distributors, treaters and disposal facilities.

In this case, EPA finds that the existing requirement is inappropriate,² even though the treatment is technically possible, and the variance would be applicable to a specific treatment process conducted at Bethlehem Apparatus and disposal location at USE's TSD in Beatty, Nevada. Specifically, as the USE petition demonstrates, the required treatment standard of placing elemental mercury into commerce for reuse after RMERC is inappropriate because the small market demand for elemental mercury is greatly exceeded by the supply of elemental mercury recovered from D009 and U151 hazardous wastes and from Bevill wastes generated by the U.S. gold mining industry, and the resulting stockpiled elemental mercury poses an ongoing potential hazard to human health and the environment. This SSTV, with conditions, allows for the site-specific treatment and land disposal of elemental mercury in a manner that minimizes threats to human health and the environment posed by the waste.

II. Background*A. The Petition*

On June 30, 2021, USE submitted a petition to the EPA for a Determination

² According to 42 CFR 268.44(h)(2), a petitioner may obtain a variance from an applicable treatment standard if it is inappropriate to require the waste to be treated to the level specified in the treatment standard or by the method specified as the treatment standard, even though such treatment is technically possible. To show that this is the case, as applicable here, the petitioner must demonstrate that treatment to the specified level or by the specified method is technically inappropriate (for example, resulting in combustion of large amounts of mildly contaminated environmental media). Section 268.44(m) further requires the petitioner to demonstrate that compliance with the variance is sufficient to minimize threats to human health and the environment posed by land disposal of the waste.

of Equivalent Treatment under 40 CFR 268.42(b) to treat and dispose of elemental mercury reclaimed from the retort of D009 and U151 high mercury wastes. In response to EPA requests following the original June 2021 submission, on September 22, 2025, USE provided supplemental information and a revised petition, including a separate request for the Agency to evaluate the treatment and disposal process as a site-specific treatability variance pursuant to 40 CFR 268.44. The original and revised petitions and associated responses to Agency information requests (together referred to as “the petition”) can be found in the docket (EPA–HQ–OLEM–2025–2038).

B. Brief Summary of Common Themes in Comments Received and the EPA’s Responses

Many commenters on the proposed variance expressed concern that mercury is a persistent, bioaccumulative neurotoxin and raised the possibility of leaching into groundwater, surrounding soils, nearby wells or surface water. Some commenters questioned the long-term integrity of monofill containment systems. While EPA agrees that mercury poses serious risks to human health and the environment, these risks are the basis for stringent controls under RCRA and are fully considered in EPA’s evaluation of this petition. As detailed in the proposed variance, the approved treatment—conversion of elemental mercury generated from RMERC to mercuric sulfide and stabilization in LLDPE monolithic solids—significantly reduces mercury mobility and the treatment meets or exceeds the performance standards applicable under the LDR program.

Several commenters supported the variance but recommended long-term groundwater monitoring, limits on stored volumes, periodic inspections, and further measures to address contingency scenarios. EPA notes that the variance does not remove or alter any existing regulatory obligations under RCRA subtitle C. The facility must adhere to all applicable monitoring, inspection, and contingency requirements under its hazardous waste permit. Additionally, the Nevada Department of Environmental Protection, as the authorized entity that oversees permitting at U.S. Ecology’s Nevada facility, may choose to require additional controls or disposal volume limits based on its review of U.S. Ecology’s permit application for the subtitle C monofill where the treated elemental mercury will be disposed.

Some comments opposed departing from traditional RMERC recycling requirements, while others noted that the elemental mercury market has collapsed and supported permanent disposal through stabilization. EPA’s review of the mercury market as discussed in the proposed rule shows that the mandated recycling standard is no longer technically appropriate due to the lack of viable market demand. The variance authority exists precisely for circumstances such as this, in which the underlying treatment standard is inappropriate even if technically possible.

Some commenters questioned whether granting the variance could set a precedent for weakening hazardous waste controls or raised concerns about long-term facility responsibility. EPA points out that this variance applies only to the specific waste streams and facility described in the petition. Approval does not alter national standards and does not create an automatic pathway for future variances. Long-term oversight obligations remain in effect under existing RCRA requirements. Further, the record demonstrates that the treatment approach significantly limits the potential mobility of the elemental mercury and that disposal in a designated monofill will ensure that any leaching is discovered before it can contaminate ground or surface water in the surrounding areas. The EPA also believes the approved treatment approach is preferable to the status quo, which is indefinite long-term storage in its elemental mercury form since the market for mercury is currently insufficient.

Several commenters supported the proposed variance, noting that the treatment method reduces long-term environmental risks. One commenter provided only a correction to a facility location description and did not take a position.

III. Description of the Treatment and Disposal Approach in the Petition

A. Treatment Process

The petition includes the conclusions of a study of a process for treating and stabilizing elemental mercury reclaimed from high mercury wastes that will minimize the risk of mercury release from the treated waste and allow for land disposal. USE has an existing agreement with Bethlehem Apparatus to perform the treatment process. The Bethlehem Apparatus process post-RMERC includes: (1) conversion of distilled and retorted high-purity elemental mercury into a stable form of

mercuric sulfide (HgS) powder by reaction without significant excess sulfur through a patented proprietary process (U.S. Patent Nos. 7,691,361 and 8,501,107); (2) blending the HgS powder with melted linear low-density polyethylene (LLDPE) under a proprietary process with defined parameters under vacuum; and (3) extruding the LLDPE-HgS blend as a monolith (hereafter referred to in this document as “HgS waste”) directly into Department of Transportation (DOT)-rated nonreactive container (such as high density polyethylene (HDPE) closed-head drums). USE must only accept containers of HgS waste that meet all applicable DOT requirements under 49 CFR.

B. Disposal Environment

For final disposal, USE must construct a designated HgS waste RCRA monofill at its Beatty, Nevada facility, in compliance with its RCRA permit. Controlling variable environmental conditions that may influence mercury leaching from HgS waste is a critical part of this variance. USE’s proposed monofill must only accept HgS waste treated by the process described in this rule and USE’s September 22, 2025, petition, subject to the conditions summarized in section IV of this preamble, Conditions for Treatment and Disposal of HgS Wastes. The proposed monofill disposal site must be located within a RCRA subtitle C permitted facility in an arid environment in Beatty, Nevada. This location limits the potential impacts of rainwater to the disposal site by lowering the potential for leachate generation. Disposal in a segregated monofill reduces potential infiltration of storm water or leachate from other portions of the facility and the introduction of other contaminants or minerals from rainwater that may increase mercury leachability. For these reasons, the EPA has determined that the proposed monofill location will minimize the potential for mercury migration or leaching from the treated waste.

The Nevada Department of Environmental Protection (NDEP) regulates hazardous waste pursuant to Nevada Administrative Code (NAC) and the Nevada Revised Statutes (NRS), as a State authorized to implement a hazardous waste program under the RCRA. As such, prior to construction of the monofill and acceptance/disposal of any HgS waste at the Beatty, Nevada, facility, USE must obtain all necessary permits and permit modifications from NDEP.

The proposed monofill must meet, at a minimum, all hazardous waste

standards and requirements imposed by NDEP. The approval of this variance does not limit the delegated RCRA authority of NDEP to establish design and permitting conditions. Nothing in this variance authorizes the disposal of HgS waste from the process described in this approval at any portion of the facility other than the designated monofill that must be approved and permitted by NDEP. In addition to all applicable RCRA requirements of 40 CFR parts 260 through 271 and corresponding State regulations, EPA herein requires USE to comply with the conditions described in section IV of this preamble, Conditions for Treatment and Disposal of HgS Wastes below, to retain this variance.

IV. Conditions for Treatment and Disposal of HgS Wastes

In addition to the alternative treatment protocol described in section III.A. of this preamble and of this variance approval and further detailed in USE's September 22, 2025, petition, USE must comply with the following conditions.

1. Prior to construction of the monofill and acceptance/disposal of any HgS waste at the Beatty, Nevada, facility, USE must obtain all necessary Federal, State and local permits.

2. For HgS waste, USE must meet the concentration based LDR standard of 0.025 mg/L using TCLP, Method 1311; however, USE must also conduct periodic confirmation testing on two (2) batches at least quarterly for the first two (2) years and annually on two (2) batches thereafter of the HgS waste using the most recently approved revision of LEAF Method 1315 with modifications appropriate for mercury (See EPA "Summary Document" in the docket for details) to confirm continued compliance with the concentration-based LDR standard of 0.025 mg/L. Additional confirmation testing may be established by NDEP as part of the permitting process.

3. USE must confirm that excess mercury is not present in the HgS powder prior to blending with LLDPE, for at least one (1) of every twenty (20) batches of HgS powder destined to be blended with LLDPE and disposed at the Beatty, Nevada, facility.

4. HgS waste must be disposed within a permitted subtitle C monofill at the USE Beatty, Nevada, TSD facility.

5. Disposal of HgS waste at the Beatty, Nevada, monofill must comply with USE's RCRA permit conditions for the treated HgS waste.

6. The HgS waste management facilities at USE, including any waste storage or disposal areas, must be

designed and constructed such that the containment system, leachate management system, stormwater collection and control system, and future cover and closure systems are independent of other environmental control systems for the facility. The stormwater control systems for the HgS waste management facilities must not allow stormwater run-off to or run-on from other waste management units and must be designed to contain at least the water volume resulting from a 24-hour, 100-year event. This condition must be met during the life of the facility for operation, closure, and post-closure periods.

7. Leachate from other waste management units of the USE facility must not be used for dust suppression at the monofill. Leachate from the monofill itself may only be used for dust suppression at the monofill if the leachate collected from the monofill is analyzed and does not contain any hazardous constituents.

8. Unless a Future Amendment to this variance is approved as described in section V of this preamble, Future Amendments to this Variance, below, USE must only accept HgS waste treated via existing agreement between USE and Bethlehem Apparatus as is described in this variance.

V. Future Amendments to This Variance

Prior to the acceptance of HgS powder or HgS waste at the Beatty, Nevada, facility from any facility other than Bethlehem Apparatus's Bethlehem, Pennsylvania, location, USE must submit a request for a modification of this variance through a revised petition submitted pursuant to 40 CFR 268.44 for approval by the EPA. To ensure such a process change does not alter the performance of the treatment process for HgS waste, the following steps are required for the Agency to determine that the process and treatment residuals are equivalent to those analyzed for this variance.

A. If USE proposes to use an alternate vendor for conversion of elemental mercury to HgS powder that will then be blended into LLDPE and extruded into a monolith, USE must:

1. Ensure any alternate vendor has secured all necessary permits for such treatment processes from local, State and Federal regulators.

2. Demonstrate and receive approval from EPA that the conversion process is the same as or equivalent to the Bethlehem Apparatus process. The demonstration must detail equivalency for the following process controls: type of equipment used, conversion

temperature, color of the HgS powder, type and quantity of sulfur added for reaction completion without significant excess sulfur, external environmental conditions at the time of conversion (humidity and temperature), control of mercury losses through volatilization and residual concentrations of other mercury species. If any process controls differ from the Bethlehem Apparatus process, USE must submit such revisions to EPA for approval and request a technical meeting to discuss such revisions with the Agency prior to receiving HgS powder from the alternate vendor.

3. Provide third-party analysis from at least five (5) samples of HgS waste from different batches to the EPA. The analysis must demonstrate that leaching does not exceed 0.025mg/L using TCLP and EPA Method 1315 with modifications appropriate for mercury (refer to the mercury leaching report at document ID: EPA-HQ-OLEM-2025-2038-0026 for data transformation from Method 1315 to aqueous concentration using the liquid-to-solid ratio and liquid-to-solid equilibration time for TCLP).

B. If USE proposes to move the LLDPE-HgS blending and extrusion process from Bethlehem Apparatus to its Beatty, Nevada, facility, USE must:

1. Secure all necessary permits for such treatment processes from local, State and Federal regulators.

2. Demonstrate and receive approval from EPA that the blending and extrusion process is the same as or equivalent to the Bethlehem Apparatus process. The demonstration must detail equivalency for the following process controls: type of equipment used, temperature of the blending and extrusion process, residence time of HgS in the mixing chamber, mixing speed, external environmental conditions at the time of blending (humidity and temperature) and control of mercury losses thorough volatilization. If any process controls differ from the Bethlehem Apparatus process, USE must submit such revisions to the EPA for approval and request a technical meeting to discuss such revisions with the Agency prior to commencement of the treatment process.

3. Provide third-party analysis of at least three (3) samples of the treated LLDPE-HgS monolithic waste using TCLP and EPA Method 1315 from different batches of HgS powder with modifications appropriate for mercury (refer to the mercury leaching report at document ID: EPA-HQ-OLEM-2025-2038-0026 for data transformation from Method 1315 to aqueous concentration using the liquid-to-solid ratio and

liquid-to-solid equilibration time for TCLP).

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is an Executive Order 14192 deregulatory action. This rule is expected to provide burden reduction by replacing an unachievable LDR standard that led to the requirement for

indefinite storage of high concentration mercury wastes by DOE. The site-specific LDR standard will allow for the treatment and disposal of high concentration mercury wastes.

C. Congressional Review Act (CRA)

This rule is exempt from the CRA because it is a rule of particular applicability.

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, and Variances.

Thomas D. Croci,

Acting Assistant Administrator, Office of Land and Emergency Management.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 268—LAND DISPOSAL RESTRICTIONS

■ 1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

■ 2. In § 268.44,

■ a. Designate the table that immediately follows paragraph (o) as table 1 to paragraph (o); and

■ b. Amend newly designated table 1 by adding, in alphabetical order, an entry for “U.S. Ecology Nevada, Inc.”.

The addition reads as follows:

§ 268.44 Variance from a treatment standard.

* * * * *

(o) * * *

TABLE 1 TO PARAGRAPH (o)—WASTES EXCLUDED FROM THE TREATMENT STANDARDS UNDER § 268.40

Facility name ¹ and address	Waste code	See also	Regulated hazardous constituent	Wastewaters		Nonwastewaters	
				Concentration (mg/L)	Notes	Concentration (mg/kg)	Notes
* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
U.S. Ecology Nevada, Inc.	D009, U151 ²¹	NA	Mercury	NA	NA	0.025 mg/L TCLP	22 23

¹ A facility may certify compliance with these treatment standards according to provisions in 40 CFR 268.7.

²¹ The waste codes included in this column are only for those mercury wastes identified as the high mercury subcategory in 40 CFR 268.40.

²² This site-specific treatment standard applies only to elemental mercury resulting from RMERC of D009 or U151 high mercury subcategory wastes containing greater than or equal to 260 mg/kg mercury treated via the alternative treatment method protocol of EPA 600/R-25/228, March 2026 (Evaluation of the Leaching Potential of Mercury from Polyethylene-Encapsulated Mercury Sulfide Material for Disposal). This alternative treatment method converts elemental mercury post-RMERC to mercuric sulfide powder and blends the mercuric sulfide powder with linear low-density polyethylene and extrudes the mixture as a monolithic block directly into a nonreactive container.

²³ Disposal of elemental mercury resulting from RMERC of D009 or U151 wastes that use the alternative treatment standards identified in footnote 22 in this paragraph (o) table, is conditioned upon disposal at the U.S. Ecology Beatty, Nevada facility in a permitted subtitle C monofill that is segregated from other disposal units at the facility. This treatment variance does not relieve U.S. Ecology of its responsibilities in the management of hazardous waste under 40 CFR parts 260 through 271. This treatment variance is conditioned on U.S. Ecology's complying with the conditions enumerated in Conditions for Treatment and Disposal of HgS Wastes (see [INSERT FEDERAL REGISTER CITATION for SUPPLEMENTARY INFORMATION], June 26, 2026), SUPPLEMENTARY INFORMATION section IV.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS-HQ-MB-2026-1421; FF09M32000-267-FXMB1231099BPP0]

RIN 1018-BI04

Process for Authorizing Seasonal Migratory Game Bird Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Direct final rule; request for comments.

SUMMARY: This direct final rule changes the administrative process for

authorizing seasonal migratory game bird hunting in the United States. Migratory game bird hunting regulations are currently promulgated annually to provide opportunities for recreation and sustenance; aid Federal, State, and Tribal governments in the management of migratory game birds; and allow harvests at levels compatible with migratory game bird population status and habitat conditions. The U.S. Fish and Wildlife Service (Service or we) is adopting a more efficient administrative process for authorizing seasonal migratory game bird hunting. The Service will issue a memorandum for migratory game bird hunting once every 3 years. The Service will continue to make annual decisions on harvest levels and will update the memorandum sooner than 3 years if changes are prescribed by our decision frameworks. The process eliminates the need for

subsequent annual Federal regulation promulgation and rulemaking and is expected to increase efficiency; better meet State, Tribal, and Federal rulemaking constraints; and reduce the complexity and costs. Our goal is to better serve State partners and the hunting public while continuing to meet the legal and conservation purposes of the Migratory Bird Treaty Act. Tribes are already authorized under a similar process.

DATES: This final rule is effective on August 25, 2026, without further action, unless significant adverse comments are received by July 27, 2026. If significant adverse comments are received, we will publish a notification in the **Federal Register** before the effective date either withdrawing all or part of the rule or issuing a new final rule that responds to any significant adverse comments.

ADDRESSES: