

**§ 257.25**

**40 CFR Ch. I (7-1-02 Edition)**

(iii) The detectability of indicator parameters, waste constituents, and reaction products in the ground water; and

(iv) The concentration or values and coefficients of variation of monitoring parameters or constituents in the groundwater background.

(b) The monitoring frequency for all constituents listed in appendix I to 40 CFR part 258, or in the alternative list approved in accordance with paragraph (a)(2) of this section, shall be at least semiannual during the active life of the unit plus 30 years. A minimum of four independent samples from each well (background and downgradient) must be collected and analyzed for the appendix I (Appendix I of 40 CFR part 258) constituents, or the alternative list approved in accordance with paragraph (a)(2) of this section, during the first semiannual sampling event. At least one sample from each well (background and downgradient) must be collected and analyzed during subsequent semiannual sampling events. The Director of an approved State may specify an appropriate alternative frequency for repeated sampling and analysis for appendix I (Appendix I of 40 CFR part 258) constituents, or the alternative list approved in accordance with paragraph (a)(2) of this section, during the active life plus 30 years. The alternative frequency during the active life shall be no less than annual. The alternative frequency shall be based on consideration of the following factors:

- (1) Lithology of the aquifer and unsaturated zone;
- (2) Hydraulic conductivity of the aquifer and unsaturated zone;
- (3) Ground-water flow rates;
- (4) Minimum distance between upgradient edge of the unit and downgradient monitoring well screen (minimum distance of travel); and
- (5) Resource value of the aquifer.

(c) If the owner or operator determines, pursuant to §257.23(g), that there is a statistically significant increase over background for one or more of the constituents listed in appendix I to 40 CFR part 258, or in the alternative list approved in accordance with paragraph (a)(2) of this section, at any monitoring well at the boundary specified

under §257.22(a)(2), the owner or operator:

(1) Must, within 14 days of this finding, place a notice in the operating record indicating which constituents have shown statistically significant changes from background levels, and notify the State Director that this notice was placed in the operating record; and

(2) Must establish an assessment monitoring program meeting the requirements of §257.25 within 90 days except as provided for in paragraph (c)(3) of this section.

(3) The owner/operator may demonstrate that a source other than the unit caused the contamination or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground-water quality. A report documenting this demonstration must be certified by a qualified groundwater scientist or approved by the Director of an approved State and be placed in the operating record. If a successful demonstration is made and documented, the owner or operator may continue detection monitoring as specified in this section. If, after 90 days, a successful demonstration is not made, the owner or operator must initiate an assessment monitoring program as required in §257.25.

**§257.25 Assessment monitoring program.**

(a) Assessment monitoring is required whenever a statistically significant increase over background has been detected for one or more of the constituents listed in appendix I of 40 CFR part 258 or in the alternative list approved in accordance with §257.24(a)(2).

(b) Within 90 days of triggering an assessment monitoring program, and annually thereafter, the owner or operator must sample and analyze the ground water for all constituents identified in appendix II of 40 CFR part 258. A minimum of one sample from each downgradient well must be collected and analyzed during each sampling event. For any constituent detected in the downgradient wells as the result of the complete appendix II (Appendix II

## Environmental Protection Agency

## § 257.25

of 40 CFR part 258) analysis, a minimum of four independent samples from each well (background and downgradient) must be collected and analyzed to establish background for the new constituents. The Director of an approved State may specify an appropriate subset of wells to be sampled and analyzed for appendix II (Appendix II of 40 CFR part 258) constituents during assessment monitoring. The Director of an approved State may delete any of the appendix II (Appendix II of 40 CFR part 258) monitoring parameters for a unit if it can be shown that the removed constituents are not reasonably expected to be in or derived from the waste contained in the unit.

(c) The Director of an approved State may specify an appropriate alternate frequency for repeated sampling and analysis for the full set of appendix II (Appendix II of 40 CFR part 258) constituents, or the alternative list approved in accordance with paragraph (b) of this section, during the active life plus 30 years considering the following factors:

(1) Lithology of the aquifer and unsaturated zone;

(2) Hydraulic conductivity of the aquifer and unsaturated zone;

(3) Ground-water flow rates;

(4) Minimum distance between upgradient edge of the unit and downgradient monitoring well screen (minimum distance of travel);

(5) Resource value of the aquifer; and

(6) Nature (fate and transport) of any constituents detected in response to this section.

(d) After obtaining the results from the initial or subsequent sampling events required in paragraph (b) of this section, the owner or operator must:

(1) Within 14 days, place a notice in the operating record identifying the appendix II (appendix II of 40 CFR part 258) constituents that have been detected and notify the State Director that this notice has been placed in the operating record;

(2) Within 90 days, and on at least a semiannual basis thereafter, resample all wells specified by §257.22(a) to this section, conduct analyses for all constituents in appendix I (Appendix I of 40 CFR part 258) to this part or in the alternative list approved in accordance

with §257.24(a)(2), and for those constituents in appendix II to 40 CFR part 258 that are detected in response to paragraph (b) of this section, and record their concentrations in the facility operating record. At least one sample from each well (background and downgradient) must be collected and analyzed during these sampling events. The Director of an approved State may specify an alternative monitoring frequency during the active life plus 30 years for the constituents referred to in this paragraph. The alternative frequency for appendix I (appendix I of 40 CFR part 258) constituents, or the alternative list approved in accordance with §257.24(a)(2), during the active life shall be no less than annual. The alternative frequency shall be based on consideration of the factors specified in paragraph (c) of this section;

(3) Establish background concentrations for any constituents detected pursuant to paragraphs (b) or (d)(2) of this section; and

(4) Establish ground-water protection standards for all constituents detected pursuant to paragraph (b) or (d) of this section. The ground-water protection standards shall be established in accordance with paragraphs (h) or (i) of this section.

(e) If the concentrations of all appendix II (appendix II of 40 CFR part 258) constituents are shown to be at or below background values, using the statistical procedures in §257.23(g), for two consecutive sampling events, the owner or operator must notify the State Director of this finding and may return to detection monitoring.

(f) If the concentrations of any appendix II (appendix II of part 258) constituents are above background values, but all concentrations are below the ground-water protection standard established under paragraphs (h) or (i) of this section, using the statistical procedures in §257.23(g), the owner or operator must continue assessment monitoring in accordance with this section.

(g) If one or more appendix II (appendix II of CFR part 258) constituents are detected at statistically significant levels above the ground-water protection standard established under paragraphs (h) or (i) of this section in any sampling event, the owner or operator

§ 257.25

40 CFR Ch. I (7-1-02 Edition)

must, within 14 days of this finding, place a notice in the operating record identifying the appendix II (appendix II of 40 CFR part 258) constituents that have exceeded the ground-water protection standard and notify the State Director and all appropriate local government officials that the notice has been placed in the operating record. The owner or operator also:

(1)(i) Must characterize the nature and extent of the release by installing additional monitoring wells as necessary;

(ii) Must install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with paragraph (d)(2) of this section;

(iii) Must notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site if indicated by sampling of wells in accordance paragraph (g)(1) of this section; and

(iv) Must initiate an assessment of corrective measures as required by § 257.26 within 90 days; or

(2) May demonstrate that a source other than the non-municipal non-hazardous waste disposal unit caused the contamination, or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground-water quality. A report documenting this demonstration must be certified by a qualified ground-water scientist or approved by the Director of an approved State and placed in the operating record. If a successful demonstration is made the owner or operator must continue monitoring in accordance with the assessment monitoring program pursuant to this § 257.25, and may return to detection monitoring if the appendix II (appendix II of 40 CFR part 258) constituents are at or below background as specified in paragraph (e) of this section. Until a successful demonstration is made, the owner or operator must comply with § 257.25(g) including initiating an assessment of corrective measures.

(h) The owner or operator must establish a ground-water protection standard for each appendix II (appendix

II of 40 CFR part 258) constituent detected in the ground-water. The ground-water protection standard shall be:

(1) For constituents for which a maximum contaminant level (MCL) has been promulgated under section 1412 of the Safe Drinking Water Act (codified) under 40 CFR part 141, the MCL for that constituent;

(2) For constituents for which MCLs have not been promulgated, the background concentration for the constituent established from wells in accordance with § 257.22(a)(1); or

(3) For constituents for which the background level is higher than the MCL identified under subparagraph (h)(1) of this section or health based levels identified under paragraph (i)(1) of this section, the background concentration.

(i) The Director of an approved State may establish an alternative ground-water protection standard for constituents for which MCLs have not been established. These ground-water protection standards shall be appropriate health based levels that satisfy the following criteria:

(1) The level is derived in a manner consistent with Agency guidelines for assessing the health risks of environmental pollutants (51 FR 33992, 34006, 34014, 34028, September 24, 1986);

(2) The level is based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act Good Laboratory Practice Standards (40 CFR part 792) or equivalent;

(3) For carcinogens, the level represents a concentration associated with an excess lifetime cancer risk level (due to continuous lifetime exposure) within the  $1 \times 10^{-4}$  to  $1 \times 10^{-6}$  range; and

(4) For systemic toxicants, the level represents a concentration to which the human population (including sensitive subgroups) could be exposed to on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. For purposes of this subpart, systemic toxicants include toxic chemicals that cause effects other than cancer or mutation.

(j) In establishing ground-water protection standards under paragraph (i)

## Environmental Protection Agency

## § 257.27

of this section, the Director of an approved State may consider the following:

- (1) Multiple contaminants in the ground water;
- (2) Exposure threats to sensitive environmental receptors; and
- (3) Other site-specific exposure or potential exposure to ground water.

### § 257.26 Assessment of corrective measures.

(a) Within 90 days of finding that any of the constituents listed in appendix II (appendix II of 40 CFR Part 258) have been detected at a statistically significant level exceeding the ground-water protection standards defined under § 257.25 (h) or (i), the owner or operator must initiate an assessment of corrective measures. Such an assessment must be completed within a reasonable period of time.

(b) The owner or operator must continue to monitor in accordance with the assessment monitoring program as specified in § 257.25.

(c) The assessment shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under § 257.27, addressing at least the following:

- (1) The performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;
- (2) The time required to begin and complete the remedy;
- (3) The costs of remedy implementation; and
- (4) The institutional requirements such as State or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy(s).

(d) The owner or operator must discuss the results of the corrective measures assessment, prior to the selection of remedy, in a public meeting with interested and affected parties.

### § 257.27 Selection of remedy.

(a) Based on the results of the corrective measures assessment conducted under § 257.26, the owner or operator

must select a remedy that, at a minimum, meets the standards listed in paragraph (b) of this section. The owner or operator must notify the State Director, within 14 days of selecting a remedy, that a report describing the selected remedy has been placed in the operating record and how it meets the standards in paragraph (b) of this section.

(b) Remedies must:

(1) Be protective of human health and the environment;

(2) Attain the ground-water protection standard as specified pursuant to §§ 257.25 (h) or (i);

(3) Control the source(s) of releases so as to reduce or eliminate, to the maximum extent practicable, further releases of appendix II (appendix II of 40 CFR part 258) constituents into the environment that may pose a threat to human health or the environment; and

(4) Comply with standards for management of wastes as specified in § 257.28(d).

(c) In selecting a remedy that meets the standards of § 257.27(b), the owner or operator shall consider the following evaluation factors:

(1) The long- and short-term effectiveness and protectiveness of the potential remedy(s), along with the degree of certainty that the remedy will prove successful based on consideration of the following:

(i) Magnitude of reduction of existing risks;

(ii) Magnitude of residual risks in terms of likelihood of further releases due to waste remaining following implementation of a remedy;

(iii) The type and degree of long-term management required, including monitoring, operation, and maintenance;

(iv) Short-term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and re-disposal or containment;

(v) Time until full protection is achieved;