

## Environmental Protection Agency

## § 264.99

(iv) For each hazardous constituent detected at the compliance point, a proposed concentration limit under § 264.94(a) (1) or (2), or a notice of intent to seek an alternate concentration limit under § 264.94(b); and

(5) Within 180 days, submit to the Regional Administrator:

(i) All data necessary to justify an alternate concentration limit sought under § 264.94(b); and

(ii) An engineering feasibility plan for a corrective action program necessary to meet the requirement of § 264.100, unless:

(A) All hazardous constituents identified under paragraph (g)(2) of this section are listed in Table 1 of § 264.94 and their concentrations do not exceed the respective values given in that Table; or

(B) The owner or operator has sought an alternate concentration limit under § 264.94(b) for every hazardous constituent identified under paragraph (g)(2) of this section.

(6) If the owner or operator determines, pursuant to paragraph (f) of this section, that there is a statistically significant difference for chemical parameters or hazardous constituents specified pursuant to paragraph (a) of this section at any monitoring well at the compliance point, he or she may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis, or statistical evaluation or natural variation in the ground water. The owner operator may make a demonstration under this paragraph in addition to, or in lieu of, submitting a permit modification application under paragraph (g)(4) of this section; however, the owner or operator is not relieved of the requirement to submit a permit modification application within the time specified in paragraph (g)(4) of this section unless the demonstration made under this paragraph successfully shows that a source other than a regulated unit caused the increase, or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

(i) Notify the Regional Administrator in writing within seven days of deter-

mining statistically significant evidence of contamination at the compliance point that he intends to make a demonstration under this paragraph;

(ii) Within 90 days, submit a report to the Regional Administrator which demonstrates that a source other than a regulated unit caused the contamination or that the contamination resulted from error in sampling, analysis, or evaluation;

(iii) Within 90 days, submit to the Regional Administrator an application for a permit modification to make any appropriate changes to the detection monitoring program facility; and

(iv) Continue to monitor in accordance with the detection monitoring program established under this section.

(h) If the owner or operator determines that the detection monitoring program no longer satisfies the requirements of this section, he or she must, within 90 days, submit an application for a permit modification to make any appropriate changes to the program.

[47 FR 32350, July 26, 1982, as amended at 50 FR 4514, Jan. 31, 1985; 52 FR 25946, July 9, 1987; 53 FR 39729, Oct. 11, 1988; 71 FR 16904, Apr. 4, 2006]

### **§ 264.99 Compliance monitoring program.**

An owner or operator required to establish a compliance monitoring program under this subpart must, at a minimum, discharge the following responsibilities:

(a) The owner or operator must monitor the ground water to determine whether regulated units are in compliance with the ground-water protection standard under § 264.92. The Regional Administrator will specify the ground-water protection standard in the facility permit, including:

(1) A list of the hazardous constituents identified under § 264.93;

(2) Concentration limits under § 264.94 for each of those hazardous constituents;

(3) The compliance point under § 264.95; and

(4) The compliance period under § 264.96.

(b) The owner or operator must install a ground-water monitoring system at the compliance point as specified under § 264.95. The ground-water monitoring system must comply with § 264.97(a)(2), (b), and (c).

(c) The Regional Administrator will specify the sampling procedures and statistical methods appropriate for the constituents and the facility, consistent with § 264.97 (g) and (h).

(1) The owner or operator must conduct a sampling program for each chemical parameter or hazardous constituent in accordance with § 264.97(g).

(2) The owner or operator must record ground-water analytical data as measured and in form necessary for the determination of statistical significance under § 264.97(h) for the compliance period of the facility.

(d) The owner or operator must determine whether there is statistically significant evidence of increased contamination for any chemical parameter or hazardous constituent specified in the permit, pursuant to paragraph (a) of this section, at a frequency specified under paragraph (f) under this section.

(1) In determining whether statistically significant evidence of increased contamination exists, the owner or operator must use the method(s) specified in the permit under § 264.97(h). The method(s) must compare data collected at the compliance point(s) to a concentration limit developed in accordance with § 264.94.

(2) The owner or operator must determine whether there is statistically significant evidence of increased contamination at each monitoring well at the compliance point within a reasonable time period after completion of sampling. The Regional Administrator will specify that time period in the facility permit, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of ground-water samples.

(e) The owner or operator must determine the ground-water flow rate and direction in the uppermost aquifer at least annually.

(f) The Regional Administrator will specify the frequencies for collecting samples and conducting statistical

tests to determine statistically significant evidence of increased contamination in accordance with § 264.97(g).

(g) Annually, the owner or operator must determine whether additional hazardous constituents from Appendix IX of this part, which could possibly be present but are not on the detection monitoring list in the permit, are actually present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in § 264.98(f). To accomplish this, the owner or operator must consult with the Regional Administrator to determine on a case-by-case basis: which sample collection event during the year will involve enhanced sampling; the number of monitoring wells at the compliance point to undergo enhanced sampling; the number of samples to be collected from each of these monitoring wells; and, the specific constituents from Appendix IX of this part for which these samples must be analyzed. If the enhanced sampling event indicates that Appendix IX constituents are present in the ground water that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month or at an alternative site-specific schedule approved by the Regional Administrator, and repeat the analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the Regional Administrator within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he or she must report the concentrations of these additional constituents to the Regional Administrator within seven days after completion of the initial analysis, and add them to the monitoring list.

(h) If the owner or operator determines pursuant to paragraph (d) of this section that any concentration limits under § 264.94 are being exceeded at any monitoring well at the point of compliance he or she must:

(1) Notify the Regional Administrator of this finding in writing within seven days. The notification must indicate what concentration limits have been exceeded.

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(2) Submit to the Regional Administrator an application for a permit modification to establish a corrective action program meeting the requirements of §264.100 within 180 days, or within 90 days if an engineering feasibility study has been previously submitted to the Regional Administrator under §264.98(h)(5). The application must at a minimum include the following information:

(i) A detailed description of corrective actions that will achieve compliance with the ground-water protection standard specified in the permit under paragraph (a) of this section; and

(ii) A plan for a ground-water monitoring program that will demonstrate the effectiveness of the corrective action. Such a ground-water monitoring program may be based on a compliance monitoring program developed to meet the requirements of this section.

(i) If the owner or operator determines, pursuant to paragraph (d) of this section, that the ground-water concentration limits under this section are being exceeded at any monitoring well at the point of compliance, he or she may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis, or statistical evaluation or natural variation in the ground water. In making a demonstration under this paragraph, the owner or operator must:

(1) Notify the Regional Administrator in writing within seven days that he intends to make a demonstration under this paragraph;

(2) Within 90 days, submit a report to the Regional Administrator which demonstrates that a source other than a regulated unit caused the standard to be exceeded or that the apparent non-compliance with the standards resulted from error in sampling, analysis, or evaluation;

(3) Within 90 days, submit to the Regional Administrator an application for a permit modification to make any appropriate changes to the compliance monitoring program at the facility; and

(4) Continue to monitor in accord with the compliance monitoring program established under this section.

(j) If the owner or operator determines that the compliance monitoring program no longer satisfies the requirements of this section, he must, within 90 days, submit an application for a permit modification to make any appropriate changes to the program.

[47 FR 32350, July 26, 1982, as amended at 50 FR 4514, Jan. 31, 1985; 52 FR 25946, July 9, 1987; 53 FR 39730, Oct. 11, 1988; 71 FR 16904, Apr. 4, 2006]

### § 264.100 Corrective action program.

An owner or operator required to establish a corrective action program under this subpart must, at a minimum, discharge the following responsibilities:

(a) The owner or operator must take corrective action to ensure that regulated units are in compliance with the ground-water protection standard under §264.92. The Regional Administrator will specify the ground-water protection standard in the facility permit, including:

(1) A list of the hazardous constituents identified under §264.93;

(2) Concentration limits under §264.94 for each of those hazardous constituents;

(3) The compliance point under §264.95; and

(4) The compliance period under §264.96.

(b) The owner or operator must implement a corrective action program that prevents hazardous constituents from exceeding their respective concentration limits at the compliance point by removing the hazardous waste constituents or treating them in place. The permit will specify the specific measures that will be taken.

(c) The owner or operator must begin corrective action within a reasonable time period after the ground-water protection standard is exceeded. The Regional Administrator will specify that time period in the facility permit. If a facility permit includes a corrective action program in addition to a compliance monitoring program, the permit will specify when the corrective action will begin and such a requirement will operate in lieu of §264.99(i)(2).

(d) In conjunction with a corrective action program, the owner or operator