

## Environmental Protection Agency

## § 264.91

(4) The Regional Administrator finds that there is no potential for migration of liquid from a regulated unit to the uppermost aquifer during the active life of the regulated unit (including the closure period) and the post-closure care period specified under §264.117. This demonstration must be certified by a qualified geologist or geotechnical engineer. In order to provide an adequate margin of safety in the prediction of potential migration of liquid, the owner or operator must base any predictions made under this paragraph on assumptions that maximize the rate of liquid migration.

(5) He designs and operates a pile in compliance with §264.250(c).

(c) The regulations under this subpart apply during the active life of the regulated unit (including the closure period). After closure of the regulated unit, the regulations in this subpart:

(1) Do not apply if all waste, waste residues, contaminated containment system components, and contaminated subsoils are removed or decontaminated at closure;

(2) Apply during the post-closure care period under §264.117 if the owner or operator is conducting a detection monitoring program under §264.98; or

(3) Apply during the compliance period under §264.96 if the owner or operator is conducting a compliance monitoring program under §264.99 or a corrective action program under §264.100.

(d) Regulations in this subpart may apply to miscellaneous units when necessary to comply with §§264.601 through 264.603.

(e) The regulations of this subpart apply to all owners and operators subject to the requirements of 40 CFR 270.1(c)(7), when the Agency issues either a post-closure permit or an enforceable document (as defined in 40 CFR 270.1(c)(7)) at the facility. When the Agency issues an enforceable document, references in this subpart to “in the permit” mean “in the enforceable document.”

(f) The Regional Administrator may replace all or part of the requirements of §§264.91 through 264.100 applying to a regulated unit with alternative requirements for groundwater monitoring and corrective action for releases to groundwater set out in the

permit (or in an enforceable document) (as defined in 40 CFR 270.1(c)(7)) where the Regional Administrator determines that:

(1) The regulated unit is situated among solid waste management units (or areas of concern), a release has occurred, and both the regulated unit and one or more solid waste management unit(s) (or areas of concern) are likely to have contributed to the release; and

(2) It is not necessary to apply the groundwater monitoring and corrective action requirements of §§264.91 through 264.100 because alternative requirements will protect human health and the environment.

[47 FR 32350, July 26, 1982, as amended at 50 FR 28746, July 15, 1985; 52 FR 46963, Dec. 10, 1987; 63 FR 56733, Oct. 22, 1998]

### § 264.91 Required programs.

(a) Owners and operators subject to this subpart must conduct a monitoring and response program as follows:

(1) Whenever hazardous constituents under §264.93 from a regulated unit are detected at a compliance point under §264.95, the owner or operator must institute a compliance monitoring program under §264.99. Detected is defined as statistically significant evidence of contamination as described in §264.98(f);

(2) Whenever the ground-water protection standard under §264.92 is exceeded, the owner or operator must institute a corrective action program under §264.100. Exceeded is defined as statistically significant evidence of increased contamination as described in §264.99(d);

(3) Whenever hazardous constituents under §264.93 from a regulated unit exceed concentration limits under §264.94 in ground water between the compliance point under §264.95 and the downgradient facility property boundary, the owner or operator must institute a corrective action program under §264.100; or

(4) In all other cases, the owner or operator must institute a detection monitoring program under §264.98.

(b) The Regional Administrator will specify in the facility permit the specific elements of the monitoring and

response program. The Regional Administrator may include one or more of the programs identified in paragraph (a) of this section in the facility permit as may be necessary to protect human health and the environment and will specify the circumstances under which each of the programs will be required. In deciding whether to require the owner or operator to be prepared to institute a particular program, the Regional Administrator will consider the potential adverse effects on human health and the environment that might occur before final administrative action on a permit modification application to incorporate such a program could be taken.

[47 FR 32350, July 26, 1982, as amended at 53 FR 39728, Oct. 11, 1988]

**§ 264.92 Ground-water protection standard.**

The owner or operator must comply with conditions specified in the facility permit that are designed to ensure that hazardous constituents under § 264.93 detected in the ground water from a regulated unit do not exceed the concentration limits under § 264.94 in the uppermost aquifer underlying the waste management area beyond the point of compliance under § 264.95 during the compliance period under § 264.96. The Regional Administrator will establish this ground-water protection standard in the facility permit when hazardous constituents have been detected in the ground water.

[53 FR 39728, Oct. 11, 1988]

**§ 264.93 Hazardous constituents.**

(a) The Regional Administrator will specify in the facility permit the hazardous constituents to which the ground-water protection standard of § 264.92 applies. Hazardous constituents are constituents identified in appendix VIII of part 261 of this chapter that have been detected in ground water in the uppermost aquifer underlying a regulated unit and that are reasonably expected to be in or derived from waste contained in a regulated unit, unless the Regional Administrator has excluded them under paragraph (b) of this section.

(b) The Regional Administrator will exclude an appendix VIII constituent from the list of hazardous constituents specified in the facility permit if he finds that the constituent is not capable of posing a substantial present or potential hazard to human health or the environment. In deciding whether to grant an exemption, the Regional Administrator will consider the following:

(1) Potential adverse effects on ground-water quality, considering:

(i) The physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity of ground water and the direction of ground-water flow;

(iv) The proximity and withdrawal rates of ground-water users;

(v) The current and future uses of ground water in the area;

(vi) The existing quality of ground water, including other sources of contamination and their cumulative impact on the ground-water quality;

(vii) The potential for health risks caused by human exposure to waste constituents;

(viii) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(ix) The persistence and permanence of the potential adverse effects; and

(2) Potential adverse effects on hydraulically-connected surface water quality, considering:

(i) The volume and physical and chemical characteristics of the waste in the regulated unit;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity and quality of ground water, and the direction of ground-water flow;

(iv) The patterns of rainfall in the region;

(v) The proximity of the regulated unit to surface waters;

(vi) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;