

Environmental Protection Agency

§ 257.28

(5) Potential risks to human health and the environment from exposure to contamination prior to completion of the remedy;

(6) Resource value of the aquifer including:

(i) Current and future uses;

(ii) Proximity and withdrawal rate of users;

(iii) Ground-water quantity and quality;

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

(v) The hydrogeologic characteristic of the unit and surrounding land;

(vi) Ground-water removal and treatment costs; and

(vii) The cost and availability of alternative water supplies.

(7) Practicable capability of the owner or operator.

(8) Other relevant factors.

(e) The Director of an approved State may determine that remediation of a release of an appendix II (appendix II of 40 CFR part 258) constituent from the unit is not necessary if the owner or operator demonstrates to the Director of the approved state that:

(1) The ground-water is additionally contaminated by substances that have originated from a source other than the unit and those substances are present in concentrations such that cleanup of the release from the unit would provide no significant reduction in risk to actual or potential receptors; or

(2) The constituent(s) is present in ground water that:

(i) Is not currently or reasonably expected to be a source of drinking water; and

(ii) Is not hydraulically connected with waters to which the hazardous constituents are migrating or are likely to migrate in a concentration(s) that would exceed the ground-water protection standards established under §257.25 (h) or (i); or

(3) Remediation of the release(s) is technically impracticable; or

(4) Remediation results in unacceptable cross-media impacts.

(f) A determination by the Director of an approved State pursuant to paragraph (e) of this section shall not affect

the authority of the State to require the owner or operator to undertake source control measures or other measures that may be necessary to eliminate or minimize further releases to the ground-water, to prevent exposure to the ground-water, or to remediate the ground-water to concentrations that are technically practicable and significantly reduce threats to human health or the environment.

§ 257.28 Implementation of the corrective action program.

(a) Based on the schedule established under §257.27(d) for initiation and completion of remedial activities the owner/operator must:

(1) Establish and implement a corrective action ground-water monitoring program that:

(i) At a minimum, meets the requirements of an assessment monitoring program under §257.25;

(ii) Indicates the effectiveness of the corrective action remedy; and

(iii) Demonstrates compliance with ground-water protection standard pursuant to paragraph (e) of this section.

(2) Implement the corrective action remedy selected under §257.27; and

(3) Take any interim measures necessary to ensure the protection of human health and the environment. Interim measures should, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to §257.27. The following factors must be considered by an owner or operator in determining whether interim measures are necessary:

(i) Time required to develop and implement a final remedy;

(ii) Actual or potential exposure of nearby populations or environmental receptors to hazardous constituents;

(iii) Actual or potential contamination of drinking water supplies or sensitive ecosystems;

(iv) Further degradation of the ground-water that may occur if remedial action is not initiated expeditiously;

(v) Weather conditions that may cause hazardous constituents to migrate or be released;

§ 257.28

40 CFR Ch. I (7-1-08 Edition)

(vi) Risks of fire or explosion, or potential for exposure to hazardous constituents as a result of an accident or failure of a container or handling system; and

(vii) Other situations that may pose threats to human health and the environment.

(b) An owner or operator may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of § 257.27(b) are not being achieved through the remedy selected. In such cases, the owner or operator must implement other methods or techniques that could practicably achieve compliance with the requirements, unless the owner or operator makes the determination under § 257.28(c).

(c) If the owner or operator determines that compliance with requirements under § 257.27(b) cannot be practically achieved with any currently available methods, the owner or operator must:

(1) Obtain certification of a qualified ground-water scientist or approval by the Director of an approved State that compliance with requirements under § 257.27(b) cannot be practically achieved with any currently available methods;

(2) Implement alternate measures to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment; and

(3) Implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are:

(i) Technically practicable; and

(ii) Consistent with the overall objective of the remedy.

(4) Notify the State Director within 14 days that a report justifying the alternative measures prior to implementing the alternative measures has been placed in the operating record.

(d) All solid wastes that are managed pursuant to a remedy required under § 257.27, or an interim measure required under § 257.28(a)(3), shall be managed in a manner:

(1) That is protective of human health and the environment; and

(2) That complies with applicable RCRA requirements.

(e) Remedies selected pursuant to § 257.27 shall be considered complete when:

(1) The owner or operator complies with the ground-water protection standards established under §§ 257.25 (h) or (i) at all points within the plume of contamination that lie beyond the ground-water monitoring well system established under § 257.22(a).

(2) Compliance with the ground-water protection standards established under §§ 257.25 (h) or (i) has been achieved by demonstrating that concentrations of appendix II (appendix II of Part 258) constituents have not exceeded the ground-water protection standard(s) for a period of three consecutive years using the statistical procedures and performance standards in § 257.23 (g) and (h). The Director of an approved State may specify an alternative length of time during which the owner or operator must demonstrate that concentrations of appendix II (appendix II of 40 CFR part 258) constituents have not exceeded the ground-water protection standard(s) taking into consideration:

(i) Extent and concentration of the release(s);

(ii) Behavior characteristics of the hazardous constituents in the ground-water;

(iii) Accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variabilities that may affect the accuracy; and

(iv) Characteristics of the ground-water.

(3) All actions required to complete the remedy have been satisfied.

(f) Upon completion of the remedy, the owner or operator must notify the State Director within 14 days that a certification that the remedy has been completed in compliance with the requirements of § 257.28(e) has been placed in the operating record. The certification must be signed by the owner or operator and by a qualified ground-water scientist or approved by the Director of an approved State.