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groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, shall be proposed by the owner or operator and approved by the Regional Administrator if he or she finds these parameters to be protective of human health and the environment. These parameters will be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(5) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantification limit (pql) approved by the Regional Administrator under § 264.97(h) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(6) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(j) Ground-water monitoring data collected in accordance with paragraph (g) of this section including actual levels of constituents must be maintained in the facility operating record. The Regional Administrator will specify in the permit when the data must be submitted for review.

[47 FR 32350, July 26, 1982, as amended at 50 FR 4514, Jan. 31, 1985; 53 FR 39728, Oct. 11, 1988; 71 FR 40272, July 14, 2006]

§ 264.98 Detection monitoring program.

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

(a) The owner or operator must monitor for indicator parameters (e.g., specific conductance, total organic carbon, or total organic halogen), waste constituents, or reaction products that provide a reliable indication of the

presence of hazardous constituents in ground water. The Regional Administrator will specify the parameters or constituents to be monitored in the facility permit, after considering the following factors:

(1) The types, quantities, and concentrations of constituents in wastes managed at the regulated unit;

(2) The mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the waste management area;

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

(4) The concentrations or values and coefficients of variation of proposed monitoring parameters or constituents in the ground-water background.

(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 owner or operator must conduct a ground-water monitoring program for each chemical parameter and hazardous constituent specified in the permit pursuant to paragraph (a) of this section in accordance with § 264.97(g). The owner or operator must maintain a record of ground-water analytical data as measured and in a form necessary for the determination of statistical significance under § 264.97(h).

(d) The Regional Administrator will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the permit conditions under paragraph (a) of this section in accordance with § 264.97(g).

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

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

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at a frequency specified under paragraph (d) of this section.

(1) In determining whether statistically significant evidence of contamination exists, the owner or operator must use the method(s) specified in the permit under §264.97(h). These method(s) must compare data collected at the compliance point(s) to the background ground-water quality data.

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

(g) If the owner or operator determines pursuant to paragraph (f) of this section that there is statistically significant evidence of contamination 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 must:

(1) Notify the Regional Administrator of this finding in writing within seven days. The notification must indicate what chemical parameters or hazardous constituents have shown statistically significant evidence of contamination;

(2) Immediately sample the ground water in all monitoring wells and determine whether constituents in the list of appendix IX of this part are present, and if so, in what concentration. However, the Regional Administrator, on a discretionary basis, may allow sampling for a site-specific subset of constituents from the Appendix IX list of this part and other representative/related waste constituents.

(3) For any appendix IX compounds found in the analysis pursuant to paragraph (g)(2) of this section, the owner or operator may resample within one month or at an alternative site-specific schedule approved by the Administrator and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial

results, then these constituents will form the basis for compliance monitoring. If the owner or operator does not resample for the compounds in paragraph (g)(2) of this section, the hazardous constituents found during this initial appendix IX analysis will form the basis for compliance monitoring.

(4) Within 90 days, submit to the Regional Administrator an application for a permit modification to establish a compliance monitoring program meeting the requirements of §264.99. The application must include the following information:

(i) An identification of the concentration of any appendix IX constituent detected in the ground water at each monitoring well at the compliance point;

(ii) Any proposed changes to the ground-water monitoring system at the facility necessary to meet the requirements of §264.99;

(iii) Any proposed additions or changes to the monitoring frequency, sampling and analysis procedures or methods, or statistical methods used at the facility necessary to meet the requirements of §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 determining 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; 71 FR 40272, July 14, 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