

**§ 264.90 Applicability.**

(a)(1) Except as provided in paragraph (b) of this section, the regulations in this subpart apply to owners or operators of facilities that treat, store or dispose of hazardous waste. The owner or operator must satisfy the requirements identified in paragraph (a)(2) of this section for all wastes (or constituents thereof) contained in solid waste management units at the facility, regardless of the time at which waste was placed in such units.

(2) All solid waste management units must comply with the requirements in § 264.101. A surface impoundment, waste pile, and land treatment unit or landfill that receives hazardous waste after July 26, 1982 (hereinafter referred to as a “regulated unit”) must comply with the requirements of §§ 264.91 through 264.100 in lieu of § 264.101 for purposes of detecting, characterizing and responding to releases to the uppermost aquifer. The financial responsibility requirements of § 264.101 apply to regulated units.

(b) The owner or operator’s regulated unit or units are not subject to regulation for releases into the uppermost aquifer under this subpart if:

- (1) The owner or operator is exempted under § 264.1; or
- (2) He operates a unit which the Regional Administrator finds:
  - (i) Is an engineered structure,
  - (ii) Does not receive or contain liquid waste or waste containing free liquids,
  - (iii) Is designed and operated to exclude liquid, precipitation, and other run-on and run-off,
  - (iv) Has both inner and outer layers of containment enclosing the waste,
  - (v) Has a leak detection system built into each containment layer,
  - (vi) The owner or operator will provide continuing operation and maintenance of these leak detection systems during the active life of the unit and the closure and post-closure care periods, and
  - (vii) To a reasonable degree of certainty, will not allow hazardous constituents to migrate beyond the outer containment layer prior to the end of the post-closure care period.

(3) The Regional Administrator finds, pursuant to § 264.280(d), that the treatment zone of a land treatment unit

that qualifies as a regulated unit does not contain levels of hazardous constituents that are above background levels of those constituents by an amount that is statistically significant, and if an unsaturated zone monitoring program meeting the requirements of § 264.278 has not shown a statistically significant increase in hazardous constituents below the treatment zone during the operating life of the unit. An exemption under this paragraph can only relieve an owner or operator of responsibility to meet the requirements of this subpart during the post-closure care period; or

(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.

## Environmental Protection Agency

## § 264.92

(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 in-

creased 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]