

US EPA ARCHIVE DOCUMENT

as "physical obstacles". For example, the presence of overhead or underground electrical cables and wires may prevent a safe well installation at the hydraulically downgradient limit of the waste management area at some sites. In these cases an alternate well location should be selected that meets the performance standard of immediately detecting any statistically significant increases in constituent concentrations in the uppermost aquifer.

Alternate locations of downgradient wells are not appropriate when physical obstacles at the limit of the waste management area may be avoided. For example, physical obstacles may be avoided in some circumstances through the use of alternate drilling techniques (e.g., directional drilling) or by interrupting power in overhead electrical cables during installation of monitoring wells to ensure the safety of the drilling crew.

Proposed § 265.91(a)(3) also limits the availability of alternate locations of downgradient wells to units existing on the effective date of this proposed amendment. Owners or operators of new, expanding or replacement units are not eligible to select alternate downgradient monitoring well locations as a result of physical obstacles. The limitation to existing interim status units is consistent with the proposed requirements under § 264.96(a) for permitted facilities.

New, expanding, or replacement units can and should be designed to ensure that physical obstacles do not impede monitoring well placement at the downgradient limit of the waste management area. The Agency continues to believe that wells placed at the hydraulically downgradient limit of the waste management area generally provide the greatest assurance of immediate detection. However, some of the comments received on the July 26, 1988 proposal for permitted facilities urged the Agency to allow alternate hydraulically downgradient monitoring wells to avoid physical obstacles at all units, regardless of whether the units were in existence at the effective date of the rule. Although in the vast majority of situations EPA expects that owners and operators of new, expanding, or replacement units should be able to plan construction to avoid the need for alternate point of compliance wells, the Agency is soliciting comment on whether this provision should be expanded to apply to new, expanding, and replacement units in addition to existing units. The Agency requests comment on whether proposed § 265.91(a)(2) should treat new,

expanding, and replacement units in interim status differently than units existing at the effective date of the final rule.

As discussed above, demonstrations of the necessity and location of alternate hydraulically downgradient monitoring wells must be certified by a qualified geologist or geotechnical engineer. Certifications by qualified geologists or geotechnical engineers are currently required under two interim status provisions; § 265.90(c) demonstrations for waiver of ground-water monitoring requirements, and ground-water quality assessment plans submitted to the Regional Administrator under § 265.93(d)(2). Certification is required under each of these provisions, similar to proposed § 265.91(a)(3), because they require facility owners or operators to make judgements or assessments concerning complex hydrogeologic conditions. Given the largely self-implementing nature of the interim status program, certification by qualified geologists or geotechnical engineers is necessary to provide the oversight to ensure technically sound decision-making in regard to these conditions.

The terms "qualified geologist" and "qualified geotechnical engineer" are not defined in existing federal regulations. State registration or licensing requirements for geologists can vary significantly among those states that have such requirements. For example, geologist registration codes in one state require a bachelor's degree in geology, at least five additional years of experience in geology, and the successful completion of the state examination; while another state does not require completion of a state exam, and instead requires the approval of members from a national geologist association. Because state geologist registration requirements vary significantly among states and do not explicitly require study and experience in hydrogeology, individuals desiring to become "qualified geologists" may need to meet supplemental criteria in addition to state registration.

The Agency believes that a "qualified geologist" is an individual who has completed a degree in geological sciences from an accredited university, has met any state or local requirements for geologist registration, and has gained sufficient training and experience in ground-water hydrogeology, thus enabling that individual to make sound professional judgements regarding hydrogeologic processes and contaminant transport. The Agency also believes that if the individual practices

in a state without registration requirements, he or she is a "qualified geologist" if the supplemental criteria outlined above have been met.

All states have relatively comparable exams for registering professional engineers, but few states have programs for registering engineers in the field of geotechnical engineering. The Agency believes that a "qualified geotechnical engineer" is an individual who is a registered professional engineer in the state in which they practice, has met any state and local requirements concerning registration of civil and geotechnical engineers, and has gained sufficient training and experience in the application of soil and hydrological sciences as demonstrated by completion of accredited university programs and state certification examinations that enable that individual to make sound professional judgments regarding soil and ground-water processes, including contaminant transport. The Agency also believes that if an individual practices in a state without geotechnical engineer registration requirements, he or she is a "qualified geotechnical engineer" if the above criteria have been met.

The Agency requests comments on all provisions of proposed § 265.91.

IV. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have independent enforcement authority.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA requirements apply in authorized States in the interim.

B. Effect on State Authorizations

Today's rule proposes standards that are not effective in authorized States since the requirements are not being imposed pursuant to the Hazardous and Solid Waste Amendments of 1984. Thus, the requirements will be effective only in those States that do not have final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law.

Section 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect more stringent Federal program changes, and must subsequently submit the modification to EPA for approval. Generally, these authorized State programs must be revised to adopt those changes in a Federal program that are more stringent or broader in scope than existing Federal standards.

For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. See § 271.1(k). Today's proposed rule would reduce the stringency of § 265.91(a). Therefore, authorized States may but are not required to modify their programs to adopt requirements equivalent or substantially equivalent to those proposed in today's rule. Because the requirements proposed today are less stringent than the existing Federal requirements, it is unlikely that any authorized State has requirements equivalent to those proposed.

V. Regulatory Requirements

A. Regulatory Impact Analysis

Executive Order 12291 requires EPA to determine whether a new regulation will be "major" and, if so, that a Regulatory Impact Analysis be conducted. A major rule is defined as a regulation that is likely to result in:

1. An annual effect on the economy of \$100 million or more;
2. A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or
3. Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Agency has determined that today's proposed rule is not a major rule, because it does not meet the above criteria. Today's proposed action will add flexibility to the current interim status ground-water monitoring requirements, and will not impose further resource burdens on the regulated community.

B. Paperwork Reduction Act

The information collection and recordkeeping requirements in this proposed rule have been submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Recordkeeping burden on the public for this proposal is estimated at 1800 hours for the respondents, with an average of 20 hours per response. These burden estimates include all aspects of the recordkeeping effort and may include time for reviewing instructions, searching existing data sources, and gathering and maintaining necessary data.

If you wish to submit comments regarding any aspect of this collection of information, including suggestions for reducing the burden, contact Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460 (202-382-2745); and Paperwork Reduction Project (2050-0033), Office of Management and Budget, Washington,

DC 20503. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 265

Hazardous waste, Hazardous materials, Reporting and recordkeeping requirements, Ground-water monitoring.

Dated: January 11, 1991.

F. Henry Habicht,
Acting Administrator.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

2. In § 265.91 by adding paragraph (a)(3) to read as follows:

§ 265.91 Ground-water monitoring system.

(a) * * *

(3) The facility owner or operator may demonstrate that an alternate hydraulically downgradient monitoring well location will meet the criteria in § 265.91(a)(2). The demonstration must be in writing and kept at the facility. Additionally, the demonstration must be certified by a qualified geologist or geotechnical engineer and establish that:

(i) An existing physical obstacle prevents monitoring well installation at the hydraulically downgradient limit of the waste management area; and

(ii) The selected alternate downgradient location is as close to the limit of the waste management area as practical; and

(iii) The location ensures immediate detection of any statistically significant amounts of hazardous waste or hazardous waste constituents that migrate from the waste management area to the uppermost aquifer. Lateral expansion, new, or replacement units are not eligible for an alternate downgradient location under this paragraph.

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