

ENVIRONMENTAL PROTECTION AGENCY**40 CFR PART 265****[FRL-3866-8]****Hazardous Waste Management System: Amendments To Interim Status Standards for Downgradient Ground-Water Monitoring Well Locations at Hazardous Waste Facilities****AGENCY:** Environmental Protection Agency.**ACTION:** Proposed rule and notice of availability.

SUMMARY: The Environmental Protection Agency ("EPA" or "the Agency") is proposing to amend 40 CFR 265.91 to allow alternate placement of hydraulically downgradient monitoring wells at interim status facilities where existing physical obstacles prevent installations at the limit of the waste management area.

DATES: Written comments on today's proposed rule must be received on or before March 19, 1991.

ADDRESSES: Comments should be addressed to the docket clerk at the following address: U.S. Environmental Protection Agency, RCRA Docket (room 2427) (OS-305), 401 M Street, SW., Washington, DC 20460. One original and two copies should be sent and identified by regulatory docket reference number F-91-DGWP-FFFF. The Docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials, and should call the docket clerk at (202) 475-9327 for appointments. The public may copy, free of charge, a maximum of one hundred pages of material from any one regulatory docket. Additional copies are \$0.15 per page.

FOR FURTHER INFORMATION CONTACT:

For general information about this rulemaking, contact the RCRA Hotline, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (800) 424-9346 (tollfree) or (202) 382-3000 in the Washington, DC metropolitan area. For technical information contact Neal D. Durant, Office of Solid Waste (OS-341), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-7371.

Preamble Outline

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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.

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