

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 26 1997

Mr. James M. Kuszaj
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Dear Mr. Kuszaj:

Thank you for your recent inquiry concerning interpretation of the Resource Conservation and Recovery Act (RCRA) groundwater monitoring regulations (40 CFR Part 264, Subpart F). Please note that States approved to implement the RCRA program can exercise more stringency than the Federal government in promulgating standards or in issuing permits, and that you should work directly with the appropriate State agency to address your questions. However, we have prepared answers to your questions assuming that the State regulations are identical to the Federal standards.

1. Can Appendix IX constituents that are not also Appendix VIII constituents, be made part of a facility's groundwater protection standard under 40 CFR §264.92, §264.93, or §264.94?

Interpretation: Appendix VIII to 40 CFR Part 261 lists chemicals that have been shown in reputable scientific studies to have toxic, carcinogenic, mutagenic, or teratogenic effects on humans or other life forms. Appendix IX to 40 CFR Part 264 is a list of constituents that can be analyzed for in ground-water samples, and that serve as reliable indicators of ground-water contamination. EPA's strategy in developing the Appendix IX rule generally limited setting ground-water protection standards and requiring corrective action to chemicals listed on Appendix VIII (51 FR 26637; July 24, 1986). Constituents subject to the ground-water protection standard requirements are all members of the categories of constituents listed on Appendix VIII.

Appendix IX to Part 264 is made up of those compounds on Appendix VIII to Part 261 for which it is feasible to analyze in ground-water samples, plus 17 chemicals that are routinely monitored for in the Superfund program (52 FR 25943; July 9, 1987). Thus, the Appendix IX constituents not generally subject to the ground-water protection standard requirements are the 17 constituents routinely monitored for in the Superfund program. However, if any of these 17 constituents (or other constituents) are detected in ground water, and the Regional Administrator decides that they are a threat to human health or the environment, then he or she

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may use the "omnibus" authority of 40 CFR Part 270.32(b)(2) and section 3005(c)(3) of RCRA as amended, to set ground-water protection standards and require corrective action.

2. *Under 40 CFR §264.99(g), if the owner or operator finds Appendix IX constituents that are not also listed Appendix VIII constituents in the ground-water, and these newly identified constituents are not already identified in the permit as monitoring constituents, are those constituents automatically added to the ground-water protection monitoring standards under 40 CFR. §264.99?*

Interpretation: These "newly identified" constituents may be added to the ground-water protection standard requirements by use of the omnibus authority (cited above) or section 3005(c)(3) of RCRA as amended, only after the Regional Administrator decides that they pose a threat to human health or the environment.

3. *Who has the burden of proving that an Appendix IX constituent that is not also an Appendix VIII constituent should be excluded from the list of hazardous constituents specified in the ground-water protection standard in the facility's permit?*

Interpretation: If a constituent not on Appendix VIII is detected in ground-water, the Regional Administrator may include the constituent as a hazardous constituent to which the ground-water protection standard applies if he or she decides that the constituent poses a threat to human health or the environment.

4. *If the Regional Administrator, relying on the authority in §264.99(g), included an Appendix IX constituent that is not also an Appendix VIII constituent on the ground-water protection standard of a facility's permit, but has made no finding under 40 CFR. §270.32(b)(2), what is the proper procedure to have that constituent removed from the permit?*

Interpretation: A permit modification would need to be issued to remove the constituent from the permit. The permit modification procedures are described at §270.42.

5. *Is an Appendix IX constituent that is not also an Appendix VIII constituent eligible for a variance under 40 CFR §264.93(b) or an alternate concentration limit under 40 CFR §264.94? If not, what is the procedure for asking for an alternate concentration limit for such a constituent?*

Interpretation: If a constituent not on Appendix VIII is detected in ground-water and the Regional Administrator has included the constituent as a hazardous constituent to which the ground-water protection standard applies, then the constituent should be eligible for a variance under 40 CFR §264.93(b) or an alternate concentration limit under 40 CFR §264.94. EPA issued Alternate Concentration Limit Guidance in July 1987 (OSWER Directive 9481.00-6C; EPA/530-SW-87-017) and May 1988 (OSWER Directive 9481.00-11; EPA/530-SW-87-031). Copies of these guidance documents can be obtained by calling either the RCRA Hotline (800-424-9346) or NTIS (703-987-4650).

I hope that you find these responses to your questions helpful. You may call Vernon Myers (703-308-8660) if you have any further questions.

Sincerely yours,

Elizabeth Cotsworth, Acting Director
Office of Solid Waste