

15A NCAC 13B .1637 IMPLEMENTATION OF THE CORRECTIVE ACTION PROGRAM

- (a) Based on the approved schedule for initiation and completion of remedial activities, the owner or operator shall:
- (1) within 120 days after the approval of the selected remedy or as approved by the Division, submit a corrective action plan that establishes and implements a corrective action groundwater monitoring program that:
 - (A) meets the requirements of an assessment monitoring program under Rule .1634 of this Section;
 - (B) indicates the effectiveness of the corrective action remedy; and
 - (C) demonstrates compliance with groundwater quality standards established in accordance with 15A NCAC 02L .0202 or the groundwater protection standards established in accordance with Rule .1634(b) of this Section pursuant to Paragraph (f) of this Rule.
 - (2) implement the approved corrective action remedy; and
 - (3) take any interim measures necessary to ensure the protection of human health and the environment. Interim measures shall be consistent with the objectives of and contribute to the performance of any remedy that may be required. The following factors shall be considered by an owner or operator in determining whether interim measures are necessary:
 - (A) the time required to develop and implement a final remedy;
 - (B) actual or potential exposure of nearby populations or environmental receptors to constituents of concern;
 - (C) actual or potential contamination of drinking water supplies or sensitive ecosystems;
 - (D) further degradation of the groundwater that may occur if remedial action is not initiated;
 - (E) weather conditions that may cause constituents of concern to migrate or be released;
 - (F) risks of fire or explosion, or potential for exposure to constituents of concern resulting from an accident or failure of a container or handling system; and
 - (G) other situations that may pose threats to human health or the environment.
- (b) The owner or operator shall submit a corrective action evaluation report to the Division in an electronic format that is accessible and viewable by the Division no less than once every five calendar years until the owner or operator are released from the corrective action program in accordance with Paragraph (g) of this Rule. The report shall contain a description of the corrective measure remedies that have been implemented or completed since the initiation of the corrective action program; and an evaluation of the effectiveness of the corrective action program. The owner or operator may request to submit the corrective action evaluation report to the Division on an alternate schedule. The owner or operator shall submit the request in writing to the Division, and the request shall include a justification for the alternate schedule. In making the determination on approval of the request, the Division shall consider the following factors:
- (1) the schedules for corrective action established in the corrective action plan and changes to corrective actions;
 - (2) the justification submitted by the owner or operator;
 - (3) the size, direction, and rate of travel of the contaminant plume;
 - (4) the circumstances and use of properties, groundwater, and surface water downgradient of the contaminant plume; and
 - (5) whether the alternate schedule complies with Article 9 of Chapter 130A of the General Statutes and the rules adopted thereunder.
- (c) The owner or operator or the Division may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of Rule .1636(b) of this Section are not being achieved through the remedy selected. In such cases, the owner or operator shall implement other methods or techniques to comply with Rule .1636 of this Section unless the Division determines that active remediation is not necessary in accordance with Rule .1636(e) of this Section.
- (d) If the owner or operator or the Division determines that compliance with requirements under Rule .1636(b) of this Section cannot be achieved with any currently available methods, the owner or operator shall:
- (1) submit a written report that documents that compliance with the requirements under Rule .1636(b) of this Section cannot be achieved with any currently available methods and gain approval from the Division. If required by G.S. 89C or G.S. 89E, a licensed professional engineer or licensed geologist shall prepare these documents. [Note: The North Carolina Board of Examiners for Engineers and Surveyors and the Board of Licensing of Geologist has determined, via letters dated July 16, 2010 and November 30, 2010, that preparation of documents pursuant to this Paragraph constitutes practicing engineering or geology under G.S. 89C and G.S. 89E.];

- (2) implement alternate measures to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment;
 - (3) implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are technically practicable and consistent with the overall objective of the remedy; and
 - (4) submit a report justifying the alternative measures to the Division for review. The Division shall date and stamp the report "approved" if the conditions of this Paragraph are satisfied. The approved report shall be placed in the operating record prior to implementing the alternative measures.
- (e) All solid wastes that are managed pursuant to a remedy required under Rule .1636 of this Section, or an interim measure required under Paragraph (a) of this Rule, shall be managed in a manner that is protective of human health and the environment; and that complies with applicable Resource Conservation and Recovery Act requirements.
- (f) Remedies selected pursuant to Rule .1636 of this Section shall be considered complete when:
- (1) the owner or operator complies with the groundwater quality and groundwater protection standards at all points within the plume of contamination that lie beyond the relevant point of compliance;
 - (2) compliance with the groundwater quality standards established in accordance with 15A NCAC 02L .0202 or the groundwater protection standards established in accordance with Rule .1634(b) of this Section has been achieved by demonstrating that concentrations of 40 CFR 258 Appendix II constituents have not exceeded these standards for a period of three consecutive years, consistent with performance standards in Rule .1636(b) of this Section; and
 - (3) all actions required to complete the remedy have been satisfied.
- (g) Upon completion of the remedy, the owner or operator shall submit a report to the Division documenting that the remedy has been completed in compliance with Paragraph (f) of this Rule. This report shall be signed by the owner or operator and by the preparer of the report. If required by G.S. 89C or G.S. 89E, a licensed professional engineer or licensed geologist shall prepare these documents. [Note: The North Carolina Board of Examiners for Engineers and Surveyors and the Board of Licensing of Geologist has determined, via letters dated July 16, 2010 and November 30, 2010, that preparation of documents pursuant to this Paragraph constitutes practicing engineering or geology under G.S. 89C and G.S. 89E.] Upon approval by the Division, this report shall be placed in the operating record.
- (h) When, upon completion of the certification, the Division determines that the corrective action remedy has been completed in accordance with Paragraph (f) of this Rule, the owner or operator shall be released from the requirements for financial assurance for the corrective action program under Rule .1628 of this Section and Section .1800 of this Subchapter. Nothing in this Paragraph shall release the owner or operator from the requirements for financial assurance for closure, post-closure care, or potential assessment and corrective action in accordance with Rule .1628 of this Section and Section .1800 of this Subchapter.

*History Note: Authority G.S. 130A-294;
Eff. October 9, 1993;
Amended Eff. April 1, 2011;
Readopted Eff. September 16, 2021;
Amended Eff. March 15, 2023.*