

**567—133.3(455B,455E) Documentation of contamination and source.**

**133.3(1) *Sampling and analytical procedures.*** Unless rules for specific programs under USEPA or department authority provide otherwise, or unless other methods are approved by the department for a specific situation, samples taken and analyses made to document contamination or cleanup levels under this chapter shall be conducted in accordance with the following:

*a. Samples.* “A Compendium of Superfund Field Operations Methods,” USEPA, Office of Emergency and Remedial Response, Washington, D.C. 20460 (EPA/540/P-87/001, OSWER Directive 93.55.0-14, December 1987).

*b. Analyses.* “Test Methods for Evaluation of Solid Waste, Physical-Chemical Methods (SW-846),” USEPA, Third Edition, November 1986, as revised through December 1988. Until the department adopts rules regarding certification of laboratories, analyses shall be conducted at a laboratory that certifies to the department that the appropriate analytical procedure is utilized, or a laboratory which has been approved under EPA’s Contract Laboratory Program. Upon adoption of rules by the department regarding certification of laboratories, all analyses shall be made at a certified laboratory. The parties, both the department and person responsible for investigating, shall have the opportunity to split samples for independent analysis, and where appropriate a sample portion shall be retained for a reasonable period of time for possible reanalysis.

**133.3(2) *Department determination of contamination.*** When the department receives or obtains evidence of groundwater contamination or the release or presence of contaminants in the environment associated with groundwater, where contamination of the groundwater may reasonably be expected, the department shall make reasonable efforts to document the source of contamination, and shall require responsible persons to take appropriate preventative, investigatory and remedial actions. Evidence of contamination may include but is not limited to the following:

- a.* Water samples indicating the presence of a contaminant at levels above background.
- b.* Soil or surface water samples indicating the presence of a contaminant at levels above background, where release to the groundwater is likely.
- c.* Known releases of contaminants into the environment in quantities and locations that could reasonably be expected to cause groundwater contamination.
- d.* Other events that the department determines could potentially cause groundwater contamination.

The amount and type of evidence necessary to document contamination or potential contamination will vary with the circumstances of each case, including the amount and type of contaminant involved, site topography and geologic conditions, and potential adverse effects. Normally, a reasonable number of water and soil samples will be taken or analyses obtained by the department. However, where a significant quantity of contaminants is known to have been released into the environment, for example from a spill, which could reach groundwater, the department is not required to collect samples.

**133.3(3) *Department determination of source.*** The department shall determine whether the contamination is or likely was caused by a particular source or sources, for example a known spill of contaminants or current or past facilities or activities in the vicinity which involved products or substances which could be a likely source. If no such person or event can be identified, the department shall make reasonable efforts to determine whether there is a relatively restricted area of more concentrated contaminants in the vicinity which is or is likely to be a source of the contamination. This subrule does not require the department to identify a specific person or persons responsible for the contamination, but to determine whether the contamination has or has likely come from a relatively defined source.

**133.3(4) *Determination of responsible persons.*** Where a source or likely source of contamination is identified, the person or persons responsible for that source or sources shall conduct necessary preventative, investigatory and remedial actions.

*a. Identification.* The persons responsible or potentially responsible initially shall be identified by the department through such measures as on-site observations; interviews with witnesses and local officials; review of public records, including department files; and interviews with or information obtained from potentially responsible persons. Where there may be more than one source, or the

source is otherwise not conclusively identified, persons who handle or have handled materials or wastes in the vicinity of the contamination, which could be the source, shall investigate and provide information satisfactory to the department to confirm or disaffirm that their activities are a source of the contamination. Investigation by the responsible or potentially responsible person may include inspection of inventory or other records, and soil and groundwater monitoring to better define the source. Such monitoring shall conform to the requirements of 133.4(3)“a,” provided that a full-scale assessment may not be required for this purpose.

*b.* Notification. The department shall notify in writing the persons determined responsible under the above procedures, and include a brief statement of the facts upon which the department concluded that they are responsible, and the actions required; provided that where immediate action is necessary, verbal notification may be given, followed up with written notification. The persons notified may provide information disputing or supplementing the information relied on by the department, which shall be considered by the department.

*c.* Responsible persons may be jointly and severally liable, and the department is not required to name all potentially responsible parties in directing responsive actions to contamination.