MSWLF DELAY

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40 CFR Part 258

Solid Waste Disposal Facility Criteria; Delay of Compliance and Effective Dates; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FRL-4782-4/EPA530-Z-93-012]

Solid Waste Disposal Facility Criteria; Delay of Compliance and Effective Dates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On October 9, 1991, EPA promulgated revised Federal criteria for Municipal Solid Waste Landfills (MSWLFs) under subtitle D of the Resource Conservation and Recovery Act (RCRA). Today's final rule amends these criteria by delaying the general date for compliance with the criteria until April 9, 1994 for certain small landfills and by delaying the effective date of subpart G, Financial Assurance, until April 9, 1995 for all MSWLFs. In addition, the MSWLF criteria are amended by removing the exemption from the ground-water monitoring requirements and delaying the date for compliance with all requirements of the MSWLF criteria for two years for owners and operators of MSWLF units in arid and remote areas that meet the qualifications of the small landfill exemption in the MSWLF criteria. Additionally, the date of final cover installation is extended for owners/operators of MSWLFs units that cease receipt of waste by their compliance date. Finally, the compliance date is delayed for certain MSWLFs in the mid-west receiving flood-related waste from a federally designated disaster area. Because states/Tribes may have earlier effective dates or other requirements in their own state/Tribal regulations, owners and operators of MSWLFs are encouraged to consult with their state/Tribe.

EFFECTIVE DATES: The amendments in this final rule are effective October 9, 1993, except for the amendments to §§ 258.70 and 258.74 in subpart G, which are effective April 9, 1995.

The effective date of subpart G of part 258 (§§ 258.70 through 258.74) which was added at 56 FR 51016 is delayed from April 9, 1994 until April 9, 1995. See "II. Background, A. Effective Dates" under SUPPLEMENTARY INFORMATION for further information about this effective date.

ADDRESSES: The public record for this rulemaking (docket Number F-93-XMLP-FFFFF) is located at the RCRA Docket Information Center, (OS-305), U.S. Environmental Protection Agency Headquarters, 401 M Street SW., Washington, DC 20460. The public docket is located at EPA Headquarters and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Appointments may be made by calling (202) 260-9327. Copies cost $0.15/page. Charges under $25.00 are waived.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (800) 424-9346, TDD (800) 553-7672 (hearing impaired); in the Washington, DC metropolitan area the number is (703) 920-9810, TDD (703) 486-3323.

For more detailed information on specific aspects of this final rule, contact David Hockey or Allen Geswein, Office of Solid Waste (OS-301), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260-1099.

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I. Authority

EPA is promulgating these regulations under the authority of sections 2002 and 4010(c) of the Resource Conservation and Recovery Act of 1976, as amended. RCRA section 2002 provides the EPA Administrator with the authority to promulgate regulations as are necessary to carry out her functions under the Act. 42 U.S.C. 6912. Under section 4010(c) of RCRA, the EPA Administrator is required to promulgate revised criteria for facilities that may receive household hazardous waste (HHW) or small quantity generator (SQG) waste. The criteria shall be those necessary to protect human health and the environment. At the same time, in promulgating these revised criteria, the Administrator may take into account the practicable capabilities of facilities that may receive HHW or SQG waste. 42 U.S.C. 6949a(c). EPA has interpreted "practicable capability" to include both the costs which facilities will incur in complying with the revised criteria and the technical capability of facilities that must comply with the regulations. 56 FR 50978, 50983-84 (October 9, 1991); 53 FR 33314, 3325 (August 30, 1988). EPA has taken practicable capability of MSWLF owners and operators into account in modifying the effective date of the revised criteria as set forth in this Federal Register notice.

II. Background

A. Clarification of Effective Dates

By delaying the compliance dates of the MSWLF criteria in a number of ways, this rule relieves restrictions that part 258 would have imposed on those facilities that would have otherwise had to have complied with the criteria by the effective dates set forth in the rule published on October 9, 1991. 56 FR 50978. Because this rule relieves, rather than imposes, regulatory burdens, delaying the effective date of today's rule is not necessary in order to allow time for the regulatory community to comply. In addition, EPA believes that it has good cause to make today's rule effective in less than 30 days. If the rule's effective date were delayed until 30 days after today's publication, all owners and operators of MSWLFs that fall within the ambit of this rule would have to meet the deadline already established in part 258, which had a general effective date of October 9, 1993. 40 CFR 258.1 (e) and (j). Such a result would negate the entire effect of this rule, which is to provide some regulatory relief for certain owners/operators of MSWLFs that are finding it extremely difficult for a variety of reasons (including floods in the

Midwest) to comply with the original effective dates in part 258. Thus, the Agency believes that it has the authority to make today's rule effective in less than 30 days in accordance with section 553 of the Administrative Procedures Act. 5 U.S.C. 553(d) (1) and (3).

B. Overview of the Subtitle D Effective Dates as Promulgated on October 9, 1991

On October 9, 1991, EPA promulgated a rule under subtitle D of the Resource Conservation and Recovery Act and section 405 of the Clean Water Act pertaining to the disposal of solid waste and sewage sludge in MSWLFs (56 FR 50978 (October 9, 1991)). The regulations and effective dates of the criteria were originally promulgated as follows. The criteria applied to owners and operators of all MSWLF units that receive waste on or after October 9, 1993. Landfill owners and operators that stopped accepting waste before October 9, 1991 were not required to comply with the regulations. Those landfill owners and operators that stop accepting waste between October 9, 1991 and October 9, 1993 were exempt from all of the regulatory requirements except for the final cover (found in 40 CFR 258.60(a)), which had to be applied within six months of last receipt of waste. Owners and operators that continued to receive waste beyond the October 9, 1993 effective date were required to comply with the remainder of the landfill regulations (including location restrictions, operation, design, ground-water monitoring and corrective action, closure and post-closure, and financial assurance). Additionally, the regulations provided for a phase-in of two of the more costly requirements: the financial assurance requirements (effective April 9, 1994) and ground-water monitoring and corrective action requirements (effective October 9, 1994 through October 9, 1996). Finally, the regulations allowed for an exemption from the design, ground-water monitoring and corrective action provisions for very small arid and remote landfills that met the criteria of 258.1(f).

C. Implementation of the MSWLF Criteria

Section 4005(c)(1)(B) of RCRA, as amended, requires states to develop and implement permit programs or other systems of prior approval and conditions to ensure that the MSWLFs are complying with the MSWLF criteria. [The Agency intends to extend to Indian Tribes the same opportunity to apply for permit program approval as is available to states. Providing Tribes with the opportunity to apply for approval to adopt and implement MSWLF permit programs, while not a statutory requirement in RCRA section 4005(c)(1)(B), is consistent with EPA's Indian Policy. The Agency plans to propose the concept of Tribal permit program approval when a tentative notice of permit program adequacy is published for the first Indian Tribe seeking program approval.] EPA's implementation role is largely to review and determine whether these state/Tribal permit programs are adequate. EPA believes that for permit programs to be considered adequate, a state/Tribe must have the capability of issuing permits or some other form of prior approval for all MSWLFs in the state/Tribe, and must establish requirements adequate to ensure that owners and operators will comply with the federal landfill criteria. A state/Tribe also must be able to ensure compliance through monitoring and enforcement actions and must provide for public participation in their permitting and enforcement actions.

EPA-approved state/Tribal permit programs have the opportunity to exercise more flexibility and discretion in implementing the criteria according to local conditions and needs. Owners and operators of MSWLF units located within the jurisdiction of a state/Tribe with an approved program may benefit from this potential flexibility, which extends to many parts of the MSWLF regulations. For example, owners and operators of MSWLF units in unapproved states/Tribes must design their new units and lateral expansions of existing units with a composite liner in compliance with 40 CFR 258.40(b), whereas approved states/Tribes may allow an owner/operator to use an alternative design based on the performance standard described in 40 CFR 258.40(a). Because of the flexibility provided to an approved state permit program, and because state permit program approval is mandated by section 4005(c)(1)(B) of RCRA, EPA fully expects that most states will apply for and receive full approval of their MSWLF permit programs, thereby maintaining the lead role in implementing and enforcing the MSWLF Criteria promulgated under 40 CFR part 258.

States are currently in various stages of the program approval process. Some states have received full program approval, while several states have received "partial" program approval, whereby only some portions of the state permit program have been approved while the remainder of the program is awaiting approval pending completion of statutory and/or regulatory changes by the state. In situations where a state permit program is not approved, or where portions of a program are not approved (in the case of a partial approval), the MSWLF criteria (or unapproved portions of criteria) are implemented by the owner and operator, with no Federal permitting program or interaction. In such situations, where the MSWLF criteria are "self-implementing", each owner/operator must document compliance and maintain this documentation in the operating record.

D. Summary of Proposed Rule

When the municipal solid waste landfill criteria were developed, EPA included a number of features that serve to facilitate owners' and operators' ability to come into compliance by the promulgated effective dates. These features include phased-in effective dates, certain exemptions for very small arid and remote landfills, and numerous opportunities for flexibility in states/Tribes with EPA-approved permit programs. Despite these features, the Agency received a significant number of requests to extend the effective date of the MSWLF criteria. These requests came primarily from local governments that own/operate smaller landfills who related their problems with meeting the effective date, including: (1) inability to comply with unfunded federal requirements; (2) lack of flexibility in unapproved states; and (3) delays in gaining access to new waste management facilities. Therefore, on July 28, 1993, the Agency proposed to amend the municipal solid waste landfill criteria (58 FR 40568) to extend the effective date of the Criteria. The proposal was not intended to change the environmentally protective features of the MSWLF criteria, but would provide certain owners and operators with additional time to come into compliance with the MSWLF criteria requirements.

The July 28th notice proposed to amend the criteria in four areas. First, the Agency proposed to delay the effective date of the criteria until April 9, 1994 for certain small landfills that: dispose of 100 tons of waste per day or less; are located in a state that has submitted an application for permit program approval by October 9, 1993 or are located on Indian Lands; and are not currently on the National Priorities List. Second, EPA proposed to delay the effective date of Subpart G, Financial Assurance, until April 9, 1995 for all MSWLFs. Third, in response to a U.S. Court of Appeals decision, *Sierra Club v. United States Environmental Protection Agency*, 992 F.2d 337 (D.C.

Cir. 1993), the Agency proposed to remove the exemption from the ground-water monitoring requirements in 40 CFR 258.50–258.55, for owners and operators of MSWLF units in arid and remote areas that meet the qualifications of the small landfill exemption outlined in 40 CFR 258.1(f). Additionally, EPA proposed to extend the effective date for all requirements of the MSWLF criteria for a period of two years, until October 9, 1995, for all MSWLF units in arid and remote areas that qualify for the small landfill exemption under 258.1(f). Lastly, the Agency proposed to amend the final cover requirements by requiring owners/operators of MSWLF units that cease receipt of waste by their effective date to complete final cover installation by October 9, 1994 except for very small MSWLFs. Very small MSWLFs in arid and remote areas that qualify for the small landfill exemption (under 258.1(f)) and cease receipt of waste before their effective date of October 9, 1995 must complete final cover installation by October 9, 1996.

III. Response to Comments and Analysis of Issues

The 30-day comment period for the July 28th proposed rule ended on August 27, 1993. The Agency received over 300 comments on the proposal. This section summarizes and addresses the major comments as they relate to the four major amendments in the July 28, 1993 proposal. The Agency received a number of comments on the MSWLF criteria not directly related to the issue of delaying the effective date. The discussion that follows is limited to the major issues relevant to the July 28th proposal. A discussion of the remaining comments can be found in a background document available in the RCRA Docket Information Center.

A. Delaying the General Effective Date

In the July 28th proposal, EPA requested comment on a proposed six-month delay of the effective date (to April 9, 1994) for MSWLFs accepting 100 TPD or less of any combination of household, commercial, or industrial solid waste on an average annual basis that are located in either a state that has submitted an application for permit program approval by October 9, 1993 or on Indian lands and are not on the Superfund National Priorities List (NPL). The majority of commentors were generally in favor of the proposed delay. The major comments submitted on this portion of the proposal are summarized below.

1. A Six-Month Time Frame

The proposed rule provided for a one-time, six-month delay of the general effective date. Some commentors questioned the appropriateness of the Agency's choice of a six-month delay of the effective date. Proposals from commentors ranged from total opposition to any delay to enthusiastic support for a longer delay by as much as two years. Commentors who supported the extension cited many reasons, including the following: (1) inability to comply with unfunded federal requirements; (2) lack of flexibility in unapproved states; and (3) delays in gaining access to a new waste management facility. As for those who supported a longer delay by as much as two years, these commentors believed that six months was too short based on their specific situation. As stated in the proposal, the Agency chose a six-month delay to accommodate the parties most in need—owners and operators, such as small communities (including local governments that own/operate MSWLFs)—who have made good faith efforts to seek alternative disposal facilities and need some limited additional time to complete those efforts. 58 FR 40570–71. While six months may not be enough time for all owners and operators to complete all necessary actions, EPA does not want to further delay the implementation of the criteria promulgated almost two years ago. This additional time is not designed to solve the problems facing communities that recently started the siting process or who are many months or years away from operating a new facility. Lengthy delays could increase the potential for environmental problems (e.g., failure to close substandard landfills) and would penalize those who took the necessary steps to comply with the October 9, 1993 effective date. Therefore, the Agency did not find these arguments to delay the effective date beyond six months to be persuasive.

Other commentors suggested that EPA should delay the general effective date for more than six months to allow EPA more time to approve additional state permit programs. EPA has determined that, on the average, review and approval of a typical state permit program application can be completed within approximately six months. Based on current information from states, EPA believes that all or almost all states will submit an application for approval by October 9, 1993. This six-month extension will ensure in most cases that the federal criteria would not become effective before the state permit program was approved, thus allowing many owners and operators to avoid the situation of gearing up to meet federal standards and then, a few months later, changing to meet newly approved state standards. In addition, this additional time will allow a vast majority of MSWLF owners and operators to take advantage of the flexibility and the potential cost savings available when states are approved.

2. 100 Tons Per Day or Less Size Limitation

The proposed rule limited the six-month extension to smaller landfills that accept 100 tons per day or less of any combination of household, commercial, or industrial solid waste. The Agency received a number of comments on this restriction. Some commentors suggested an increased tonnage limit (up to 750 TPD), while others questioned the need to limit the extension based on the amount of waste accepted by the landfill and felt that the extension should be available to owners and operators regardless of the amount of waste accepted per day (i.e., a blanket extension). As stated in the proposal, the Agency believes that the 100 TPD or less cut-off is representative of the majority of smaller community landfills that have had the most difficulty coming into full compliance by the October 9, 1993 deadline, because financial conditions, legal challenges, and geography have created significant obstacles to compliance, often despite good-faith efforts to comply. For example, many of the smaller landfills intend to close, and their users will instead send their waste to a regional waste management facility where they can take advantage of economies of scale. The process of regionalization, including closure of their existing MSWLF and construction of a new transfer station, has taken more time than many small communities had originally anticipated. Additionally, the Agency is concerned that increasing the tonnage or allowing a "blanket" or unlimited extension, as suggested by some commentors, would not fulfill EPA's goal of granting relief to only those most in need—primarily small communities. By setting the limit at 100 TPD, the Agency targets relief to the greatest extent possible while ensuring that most waste, as of October 9, 1993, will be disposed in accordance with the requirements of 40 CFR part 258. As discussed in the proposal, setting the limit at 100 tons per day would provide potential relief to approximately 75 percent of the MSWLFs in the country which manage only about 15 percent of the total national waste stream.

One commentor argued that the gency should have adhered to its own definition, in the October 9, 1991 rule, of a small landfill used for the small landfill exemption found at 258.1(f) (i.e., 20 tons per day). In developing the proposed size limitation, EPA found that landfills accepting no more than 100 tons per day of solid waste tend to be those experiencing the most severe budget and technical problems. The Agency did not set the waste acceptance limit for this extension at 20 tons per day, because the scope of the problem appeared to extend to somewhat larger landfills, primarily those serving communities with a population up to a range of 45,000 to 57,000 (i.e., landfills accepting approximately 100 tons per day). Additionally, a portion of the landfills accepting 20 TPD or less will qualify for the two year delay of all of the MSWLF criteria (see subsection D; Very Small Arid and Remote MSWLF Extension), if they meet the criteria of the small landfill exemption in 258.1(f). Therefore, the Agency is retaining the 100 TPD limit in the final rule. As in the proposal, it is important to note that the effective date for MSWLF units accepting greater than 100 TPD will continue to be October 9, 1993.

In the proposed rule, the Agency solicited comments on whether two calculations were necessary to determine whether an MSWLF unit qualified and continued to be eligible for the extension. First, to qualify for the extension, the MSWLF unit would have had to dispose of 100 tons per day or less of solid waste between October 9, 1991 and October 9, 1992. Second, the owner/operator of the MSWLF unit would not be allowed to dispose of more than an average of 100 TPD of solid waste each month between October 9, 1993 and April 9, 1994. The "historical" (e.g., October 9, 1991 through October 9, 1992) time frame was suggested mainly to assure that larger landfills would not alter the amount of waste they are presently accepting in order to take advantage of today's six-month extension, while the monthly average calculation was intended to ensure that the "small" landfills would remain so during the extension period. As discussed in this preamble, today's extension is intended for smaller landfills already in existence.

A few commentors generally supported the need for an historical time frame calculation to determine that the MSWLF qualifying for the extension was indeed a small landfill. However, numerous commentors, including many small landfill owners and operators, cited many reasons why they believed the proposed method of determining the historical time frame (i.e., based on the average collected during the year October 9, 1991 through October 9, 1992) was unnecessarily restrictive. For example, commentors felt the historical time frame did not consider that unusual circumstances (e.g., sudden additional incoming waste due to closure of a neighboring landfill during the target year) may have increased the quantity of waste to a landfill during the target period. Commentors also were concerned that a great deal of time and resources could be spent in determining whether or not a landfill, with no scales or past records, qualified for the extension. Commentors noted that recordkeeping at small landfills, usually staffed part-time, may be non-existent for the historical time period, may not be organized in a way that identifies the daily tonnage, nor allows such a time period to be readily identified. These commentors felt that such resources and time would be better spent upgrading the landfill or finding waste management alternatives. One commentor argued that their landfill did not begin receiving waste until after the historical time period and therefore has no records.

The Agency recognizes that some of these situations could prevent some otherwise deserving landfills from qualifying for the six-month extension. Today's rule is intended to grant needed relief to certain MSWLF owners and operators in a manner that does not disqualify truly deserving facilities and does not increase owner/operator record-keeping burden in order to qualify for the extension. In an effort to balance the need to limit the extension to only small landfills, while at the same time limiting the burden on those who qualify, today's final rule provides that the extension is for units that "disposed of 100 tons per day or less of solid waste during a representative period prior to October 9, 1993." The historical measurement of waste receipt should be based on the average acceptance of waste over a representative period prior to October 9, 1993, as determined by the owner/operator. In determining the historical measurement of waste, the Agency recommends that owners and operators determine the average receipt of waste during the period of October 9, 1991 through October 9, 1992. This period of time should provide the most current representative "snapshot" of waste receipt at a MSWLF unit. Waste receipt at MSWLF units after October 1992 may not be as representative due to changes in practices (either downsizing or upgrading) as a result of the impending October 9, 1993 effective date. However, in the instance that the owner/operator does not have records for this period, or believes that this period is not representative of their past receipt of waste, then the owner/operator may choose an alternative period (e.g., the most recent twelve consecutive month period not impacted by extraneous circumstances). The historical calculation method adopted for today's extension is implicitly the same as the historical measurement method MSWLF owners and operators use in determining if their MSWLF will meet the small landfill exemption (less than 20 TPD) of 258.1(f). Owners and operators therefore will have the flexibility to base their historical determination of average waste receipt on their available records while considering special circumstances.

It is the responsibility of the owner/operator to document an historical acceptance of waste of 100 TPD or less. The Agency will not require owners and operators to maintain records on the amount of waste the facility accepts, but if the owner/operator believes that the facility may be close to the 100 TPD limit, then it may be in the owner/operators' best interest to develop and maintain some indication on the amount of waste accepted given the possibility of citizen suits being filed under section 7002 of RCRA.

Commentors supported the proposed monthly calculation during the extension period to continue to qualify for the extension. Therefore, MSWLFs will continue to be required to accept 100 TPD or less based on a monthly average during the time period of October 9, 1993 until April 9, 1994 to qualify for an extension.

Finally, the proposed rule requested comment on methods of calculating the tons per day accepted by facilities. EPA suggested two methods: (1) divide the total annual amount of waste received by 365 days or (2) conduct a one-time measurement of a day's typical full trash-hauling vehicles, then estimate the weight from volume of trash-hauling vehicles by using a conversion factor (e.g., one ton equal to three cubic yards of waste) or using sales/acceptance receipts from trash haulers. Commentors generally agreed that both of these methods to calculate the acceptance of waste would suffice for the majority of their situations. Several commentors suggested the use of a conversion factor of one ton equal to five cubic yards of noncompacted waste. Rather than set strict calculation methods, the Agency believes that the approach should remain flexible whereby the owner/

operator use reasonable and defensible assumptions in calculating their tonnage.

3. Lateral Expansions

The proposed rule limited the extension to existing units and to lateral expansions of existing units to accommodate trench and area fills. A few commentors were concerned that landfills qualifying for the extension would laterally expand over a larger area than actually needed, thus greatly increasing the size of their existing unit by the new April 9, 1994 effective date. The commentors proposed that EPA limit the capacity of MSWLF unit lateral expansions to not exceed six-months of capacity for the entire MSWLF unit. The Agency feels that this type of limitation would create an unnecessary complication for owners and operators in implementation of this extension and that this issue already is addressed in the current definition of an existing unit. The definition of "existing MSWLF unit" in § 258.2, defines such a unit as one that is receiving solid waste as of the effective date of the landfill criteria with the caveat that waste placement in the unit be consistent with past operating practices or modified practices to ensure good management. The Agency has interpreted this to mean that an existing unit is defined by the areal extent of waste (sometimes referred to as the waste "footprint") placed as of the effective date of the criteria and that the spreading of waste over a large area to avoid the liner requirements is not acceptable (see 56 FR 51041, October 9, 1991).

A commentor suggested that EPA should only have granted an exemption to landfills that were undertaking vertical expansions, and not extend the exemption to lateral expansions. As noted earlier, the major difficulties in meeting the criteria deadline appear to fall mainly on smaller community landfills and the extension therefore is largely directed at such landfills. Many of these smaller landfills use trench and area fill practices. For example, in a trench fill operation, a small trench is excavated, filled, and covered in a relatively short period of time. As the old trench is filled, it is extended to accommodate additional waste. This extension is by definition a lateral expansion. Limiting the extension to vertical expansions would therefore disrupt these customary practices and limit the extension to considerably fewer landfills than EPA intended. Therefore, today's final rule continues to allow existing units and lateral expansions of existing units to receive the six-month extension.

4. State Submittal of a Permit Program Application

The proposed rule limited the six-month extension only to owners and operators of MSWLFs in states that have submitted an application for permit program approval by October 9, 1993 or are located on Indian Lands. Some commentors questioned the need for the state to have submitted an application in order for the owner/operator to qualify for the extension. The Agency continues to work toward its goal of approving all states and Tribes (to the extent they apply). Approval of State/Tribal permit programs is a high priority and the Agency does not want the extension to detract from this goal. EPA believes that the linkage of the extension to submission of an application will serve as impetus for states to submit their applications by October 9, 1993 and for advancing the Agency's goal of approving all states by April 9, 1994. In fact, the Agency now believes that every state except Iowa will submit an application by October 9, 1993.

In the proposed rule, the Agency indicated that when it published the final rule, it would include a list of states who have submitted an application by the date on which the final rule was signed. 58 FR 40572. Because most states have now submitted an application, for purposes of simplicity, the following is a list of those states who have not submitted an application as of the date of signature: Alaska, American Samoa, Arizona, Guam, Hawaii, Iowa, Maine, New Jersey, Northern Marianas, Ohio, Puerto Rico, Rhode Island, and the Virgin Islands. Because most of these states are expected to apply between the date of signature and October 9, 1993, owners and operators of MSWLF units located in these states are encouraged to contact their state to find out whether the State has submitted an application by October 9, 1993.

Due to the time and resources required to deal with the effects of the Great Flood of 1993, the state of Iowa has indicated that it will not be able to apply for approval of its permit program by October 9, 1993, although the state had originally planned to do so. In an effort not to penalize those small landfills in need of relief located in the state of Iowa, the final rule does not include the requirement that Iowa submit a permit program application by October 9, 1993 for owners and operators in that state to take advantage of the six-month delay. Owners and operators in Iowa, however, will be required to meet all other requirements to qualify for the six-month extension in today's final rule.

In the proposal, the Agency provided that owners and operators of MSWLFs located on Indian lands would be eligible for the six month extension even if the Tribe had not submitted an application for permit program approval by October 9, 1993. As discussed in the proposal, RCRA does not require Indian Tribes to develop a permit program for MSWLFs. Because many of the landfills on Indian lands could qualify for today's six-month extension by virtue of the fact that they accept less than 100 TPD and are not on the National Priorities List, the Agency proposed to allow MSWLF units on Indian lands to take advantage of the six-month extension, even if the Indian Tribe has not submitted an application for permit program approval by October 9, 1993. Commentors agreed with this provision as long as all other requirements for the extension are fulfilled. Therefore, today's final rule allows owners/operators located on Indian Lands to be granted the six-month extension as long as all of the other requirements of this rule are met.

No comments were received that suggested changes to the proposed definitions of "Indian land or Indian country" and "Indian Tribe or Tribe." Therefore, these definitions are retained in today's final rule. While the definition of Tribes in today's final rule does not explicitly include Alaska Native Villages, EPA believes that, to the extent these entities exercise substantial governmental duties and powers, they would be eligible to apply for permit program approval. For purposes of today's rule, as with Indian lands in other States, EPA is allowing landfills on Native Village Lands to be eligible for the six-month extension whether or not the Village has submitted an application for permit program approval.

Some commentors suggested that EPA delegate to states who have submitted a permit program application by October 9, 1993 more flexibility in implementation of the delay. Commentors suggested, for example, that such states should have the flexibility to: Determine the need for a delay on a site-by-site basis, to grant longer than a six-month extension, or to waive the 100 TPD limit. As discussed throughout this preamble, the Agency set the length of the extension and size criteria so as to target limited relief for those MSWLF units in greatest need—small landfills. Therefore, in order to maintain this focus, the Agency will continue to require that these criteria be used as the minimum national criteria.

However, other commentors were concerned that a delay of the criteria would undermine states' efforts in implementing the MSWLF criteria (e.g., oppose state's existing closure schedules for substandard landfills). As stated in the proposal, a state/Tribe, regardless of its permit program approval status, may impose more stringent effective dates and/or more stringent criteria for qualifying for an extension (e.g., maintain current closure schedules) if they so choose. Therefore, the extension should not have the negative effect predicted by these commentors.

5. National Priorities List

The proposed rule did not extend the six-month extension to MSWLFs currently on the Superfund National Priorities List as published in appendix B to 40 CFR part 300. Commentors agreed with this exclusion; therefore, the final rule retains this provision. Some commentors suggested that the extension be further restricted by disallowing any MSWLF that is on a state Superfund list or in violation of another state environmental regulation. As discussed in the previous section, states may always be more stringent (e.g., prevent MSWLFs on their state Superfund lists from gaining an extension) in their approach to the extension.

6. Other Limitations Suggested by Commenters

A few commentors requested that EPA limit the extension to prohibit MSWLFs that qualify from accepting non-hazardous industrial waste. Under the criteria as promulgated on October 9, 1991, MSWLFs may accept non-hazardous industrial waste to be co-disposed with household waste. The Agency did not limit today's extension in the manner suggested for the following reasons: (1) The prohibition of non-hazardous industrial waste would be difficult to implement and enforce; (2) this waste stream typically represents a small fraction of the entire waste sent to a MSWLF; (3) for some generators, the local MSWLF represents the only economical method of disposal of their non-hazardous industrial waste; and (4) this is a one-time extension for a short period of time (i.e., six months). Therefore, the final rule will allow MSWLFs qualifying for the extension to accept non-hazardous industrial waste for co-disposal with household waste.

Finally, some commentors suggested that in order to qualify for the extension, the MSWLF must be in compliance with all of the location restrictions of subpart B of the criteria by the effective date. EPA did not limit the extension based on a facility meeting the location restrictions because many of the restrictions (e.g., wetlands, fault areas, seismic zones) do not apply to existing units, the major target of the extension. In addition, under the criteria as promulgated, existing units that cannot meet the requirements for airports, floodplains, or unstable areas already have until October 9, 1996 to close (unchanged by today's rule). Limiting the extension for these facilities would not have much of an effect. Therefore, today's final rule does not place location restrictions on MSWLFs eligible for the extension.

B. Delaying the Financial Assurance Effective Date

The proposed rule provided for a one-year extension of the financial assurance requirements (from April 9, 1994 to April 9, 1995) for all MSWLFs, regardless of size. The majority of commentors supported the need to extend the financial assurance requirements. Commentors noted that the one-year delay provides time for the owners and operators to budget and to acquire the appropriate financial assurance mechanism for their MSWLFs. The Agency, in setting the original April 9, 1994 effective date for the financial assurance requirements, believed that this date would allow adequate time to promulgate a financial test for local governments and another test for corporations (see 56 FR 50978). However, the Agency currently estimates that neither financial test will be promulgated within the time frame anticipated. The Agency believes that local governments should have these financial tests available to them before the financial responsibility provisions become effective. The delay of one year provided in this rule should enable EPA to finish promulgation of these tests and should ensure that owners and operators will have the opportunity to evaluate their needs based on these financial tests. As a result, many local governments will be able to realize a significant decrease in the cost of compliance with the financial responsibility requirements, while assuring that the costs associated with closure, post-closure, and known corrective action at the MSWLFs will be met.

A few commentors suggested that EPA extend the effective date of the financial assurance requirements beyond the proposed one-year delay. The Agency anticipates that the one year extension will be sufficient time to complete the proposal and promulgation of the financial tests. EPA also believes that one year should provide adequate notice to affected parties so they may determine whether they satisfy the applicable financial test criteria for all of the obligations associated with their facilities or whether they need to obtain an alternate instrument for some or all of their obligations. The Agency notes that approved states/Tribes have the flexibility to develop alternative financial mechanisms that meet the criteria specified in § 258.74(f) for use by their owners and operators. This may include development of a state financial test. Therefore, today's final rule retains the one year extension for financial assurance.

C. Very Small Arid and Remote MSWLF Extension

1. Commentor-Suggested Limitations to Qualify for the Two-Year Extension

The October 9, 1991 Final Rule for the MSWLF Criteria included an exemption for owners and operators of certain small MSWLF units from the design (subpart D) and ground-water monitoring and corrective action (subpart E) requirements of the Criteria. See 40 CFR 258.1(f). To qualify for the exemption, the small landfill had to accept less than 20 tons per day, on an average annual basis, exhibit no evidence of ground-water contamination, and serve either:

(i) A community that experiences an annual interruption of at least three consecutive months of surface transportation that prevents access to a regional waste management facility, or

(ii) A community that has no practicable waste management alternative and the landfill unit is located in an area that annually receives less than or equal to 25 inches of precipitation.

In adopting this limited exemption, the Agency maintained that it had complied with the statutory standard to protect human health and the environment, taking into account the practicable capabilities of small landfill owners and operators. See discussion in 56 FR 50991.

In January 1992, the Sierra Club and the Natural Resources Defense Council (NRDC) filed a petition with the U.S. Court of Appeals, District of Columbia Circuit, for review of the subtitle D criteria. The Sierra Club and NRDC suit alleged, among other things, that EPA acted illegally when it exempted these small landfills from the ground-water monitoring requirements. On May 7, 1993, the United States Court of Appeals for the District of Columbia Circuit issued an opinion pertaining to

the Sierra Club and NRDC challenge to the small landfill exemption. *Sierra Club v. United States Environmental Protection Agency*, 992 F.2d 337 (DC Cir. 1993).

The Court held that under section 4010(c), the only factor EPA could consider in determining whether facilities must monitor their ground water was whether such monitoring was "necessary to detect contamination," not whether such monitoring is "practicable." The Court noted that while EPA could consider the practicable capabilities of facilities in determining the extent or kind of ground-water monitoring that a landfill owner/operator must conduct, EPA could not justify the complete exemption from ground-water monitoring requirements. Thus, the Court vacated the small landfill exemption as it pertains to ground-water monitoring, directing the Agency to "* * * revise its rule to require ground-water monitoring at all landfills." (The Court decision did not affect the small landfill exemption as it pertains to the design requirements.)

Therefore, today's final rule, as required by the Court, modifies the small landfill exemption whereby, owners and operators of MSWLF units that meet the qualifications outlined in § 258.1(f) are no longer exempt from ground-water monitoring requirements in 40 CFR 258.50–258.55.

The proposed rule, while removing the exemption from ground-water monitoring for these very small landfills, provided a two-year extension of the effective date for those landfills in order for them to rethink and act on their waste management options in light of the Court ruling. Some commentors proposed limiting the two-year extension to only the ground-water monitoring requirements of part 258. The Agency believes that many of those facilities that qualified for the small landfill exemption made a decision to remain open based on the costs of operation without ground-water monitoring. These landfills acted in good faith, and should therefore be allowed to reconsider their overall decision now that the costs have fundamentally changed. These facilities should be given a similar amount of time that other facilities have had to make such decisions. (All MSWLFs were originally given two years notice following promulgation of the criteria during which time they could decide whether to remain in operation when the criteria take effect.) Therefore, the final rule provides for an extension for all of the MSWLF criteria requirements, for a period of two years, for all MSWLF units that qualify for the small landfill exemption (§ 258.1(f)). (It is important to note that this extension is independent of, and not in addition to, the six-month extension for MSWLF units accepting less than 100 TPD.)

2. Alternatives for Ground-Water Monitoring

The U.S. Court of Appeals, in its decision, did not preclude the possibility that the Agency could establish separate ground-water monitoring standards for the small dry/remote landfills that take such factors as size, location, and climate into account. Therefore, in the proposal, EPA requested comments on alternative ground-water monitoring requirements for these facilities.

While the Agency received a number of comments supporting alternative ground-water monitoring requirements for these very small landfills, several commentors requested additional time to provide suggested alternatives. Therefore, the Agency will continue to maintain an open dialogue with all interested parties to discuss whether alternative ground-water monitoring requirements should be established and will continue to accept information on alternatives. Information and suggestions on alternative ground-water monitoring requirements can be sent to "Alternative Ground-Water Monitoring", Office of Solid Waste (OS–301), U.S. Environmental Protection Agency Headquarters, 401 M Street, SW., Washington, DC 20460.

Commentors also suggested that the Agency set an effective date for the ground-water monitoring requirements for these very small landfills two years after the promulgation of regulations regarding alternative ground-water monitoring for these facilities. The point of today's action is to respond to the Court's mandate. At this time, the Agency is still investigating this issue and cannot be certain that practicable alternatives for detecting ground-water contamination will exist for MSWLF units that would qualify for the exemption under § 258.1(f). Therefore, today's final rule does not tie the effective date of ground-water monitoring for landfills that qualify for the small/arid and remote exemption to promulgation of alternative ground-water monitoring requirements.

D. Modification of Closure Provisions for Owners/Operators Ceasing Receipt of Waste by Their Respective Effective Date

The proposed rule modified the closure requirements for MSWLFs ceasing receipt of waste before the effective date by requiring these owners and operators to complete cover installation by October 9, 1994 rather than six months after last receipt of waste. Commentors agreed with the assessment of the problems associated with completion of closure activities within six months of last receipt of waste. Some commentors restated their view that the requirement to finish closure during the late fall/winter months of October through March would be most difficult and subject their facilities to delays, if not rendering it impossible to complete within the six month time frame.

A few commentors suggested that the Agency extend the completion date for closure activities beyond the proposed October 9, 1994 to accommodate their specific situation. EPA believes that the October 9, 1994 deadline provides sufficient time for owners and operators of closing landfills to complete cover installation. This would mean that owners/operators that are subject to the October 9, 1993 effective date would have at least one year to install a cover, while owners and operators of landfills subject to the April 9, 1994 effective date would have at least six months to install a cover. Both time frames should provide at least six months of moderate weather during which to plan and install a landfill cover.

Therefore, the final rule retains the requirement that owners and operators ceasing receipt of waste before their effective date (either October 9, 1993 or April 9, 1994) complete cover installation by October 9, 1994. Owners/operators of very small landfills that qualify for the extension in 258.1(f) who cease receipt of waste prior to the new effective date of October 9, 1995 must complete cover installation by October 9, 1996. As in the October 9, 1991 final rule, owners and operators failing to install a cover by these new dates will subject the MSWLF unit to all of the requirements of part 258.

E. MSWLFs Receiving Flood Debris

A tremendous volume of debris from the Great Flood of 1993 in the Midwest is expected to strain the capacity of certain MSWLFs in that region as well as interfere with their efforts to comply with the criteria. On July 28, 1993, EPA asked for comments in the proposal on how to accommodate landfills that will be affected by this flood-related debris, given the original October 9, 1993 effective date for the MSWLF criteria and the extensions proposed at that time. The comments received generally acknowledge the need to provide some relief to such landfills. While some commentors requested a special two-year or open-ended extension, others

indicated that six months would generally suffice, based on past experience in dealing with floods and on existing landfill capacity. Several commentors requested that states be delegated the authority to grant targeted relief to MSWLFs within their state that were in need.

After reviewing and considering comments, the Agency developed a regulatory scenario that meets the Agency's dual goals of granting relief to those MSWLF units affected by the flood of '93 while maintaining simplicity for the purpose of implementation. The final rule contains a two-stage approach for extending the effective date for such landfills, which is independent of the extensions discussed earlier in this preamble (e.g., for MSWLFs receiving less than 100 TPD).

First, existing MSWLF units and lateral expansions of existing MSWLF units may continue to receive waste up to April 9, 1994, without being subject to part 258 (except the final cover requirement), if the state determines that they are needed to receive flood-related waste from a Federally-designated disaster area resulting from the Great Flood of 1993. This provision responds to EPA's belief that in most cases, six months will be adequate to handle flood-related waste especially for historically smaller landfills that ordinarily would have qualified for the six-month extension for landfills receiving less than 100 TPD, but now exceed the tonnage limit due to acceptance of flood debris. As with today's six-month extension for MSWLF units accepting 100 TPD or less, the extension for MSWLF units accepting flood-related waste is limited only to existing units and lateral expansions of existing units; it is not intended for new units.

Second, existing MSWLF units and lateral expansions of existing MSWLF units that have received a six (6) month extension, may continue to receive waste without being subject to part 258 (except the final cover requirements), for an additional period of time up to six (6) months beyond April 9, 1994, if the state determines that the MSWLF unit is needed to receive flood-related waste from a Federally-designated disaster area resulting from the Great Flood of 1993. This second provision will allow those states that believe that their owners and operators may need to operate for an additional period of time after April 9, 1994, to continue to operate up to another six months without being subject to part 258, only on an as-needed basis determined by the state. EPA encourages states to limit the use of this additional six month extension only to situations where local hardships will occur if the site is not available for continued flood cleanup activities. EPA does not intend this flood-related extension to delay compliance any longer than is necessary to meet clean-up needs, especially for larger facilities that are not subject to the general six-month extension discussed earlier. In no case, however, may a state extend the effective date for these landfills beyond October 9, 1994.

Owners and operators of MSWLF units who receive an extension to receive flood waste and cease receipt of waste at the end of that extension, must complete cover installation within one year of the date on which the extension ended, but in no case shall the cover installation extend beyond October 9, 1995. Owners and operators of MSWLF units that continue to accept waste after their extension expires must comply with all of the part 258 requirements, including: (1) The ground-water monitoring requirements in accordance with the schedule in 258.50(c) or in accordance with an approved state/tribe schedule and (2) the financial assurance requirements by April 9, 1995.

F. Other Issues Pertaining to the July 28, 1993 Proposal

1. Sewage Sludge Disposal

Commentors agreed that EPA should not grant removal credits authority to a POTW unless the POTW sends its sewage sludge to a MSWLF unit that complies with the full panoply of the part 258 rule requirements. Hence, EPA will not grant removal credits authority to POTWs if they send their sludge to landfills using one of today's extensions (e.g., small landfills that choose to take advantage of the six-month extension, or very small landfills that qualify for the two-year extension), since such landfills will not be in full compliance with part 258.

2. Effects of the Extension on Source Reduction and Recycling

One commentor felt that an extension to the MSWLF criteria effective date would undercut recycling and source reduction due to continuation of "cheap" landfill tipping fees. EPA promotes an integrated waste management approach favoring source reduction and recycling as the preferred options. EPA does not believe that this rule will create significant negative effects on the Agency's goal of increasing cost-effective source reduction and recycling. This is a limited extension, in most cases lasting only for a six month time frame and as discussed earlier, affecting only 15 percent of all waste. In addition, many states have already closed or are in the process of closing their inadequate landfills that would fail to meet the MSWLF criteria requirements. The overall effect of the criteria continues to be supportive of both safer disposal and more incentives for alternatives to disposal.

IV. Summary of This Rule

Table I provides a summary of the changes to the effective dates of the MSWLF criteria as outlined in today's final rule.

TABLE I.—SUMMARY OF CHANGES TO THE EFFECTIVE DATES OF THE MSWLF CRITERIA

	MSWLF units accepting greater than 100 TPD	MSWLF units accepting less than 100 TPD; are not on the NPL; and are located in a state that has submitted an application for approval by 10/9/93	MSWLF units that meet the small landfill exemption in 40 CFR § 258.1(f)	MSWLF units receiving flood-related waste
General effective date[1]	October 9, 1993	April 9, 1994	October 9, 1995	Up to October 9, 1994 as determined by State in six month intervals.

TABLE I.—SUMMARY OF CHANGES TO THE EFFECTIVE DATES OF THE MSWLF CRITERIA—Continued

	MSWLF units accepting greater than 100 TPD	MSWLF units accepting less than 100 TPD; are not on the NPL; and are located in a state that has submitted an application for approval by 10/9/93	MSWLF units that meet the small landfill exemption in 40 CFR § 258.1(f)	MSWLF units receiving flood-related waste
This is the effective date for location, operation, design, and closure/post-closure.				
Date by which to close if cease receipt of waste by the general effective date.	October 9, 1994	October 9, 1994	October 9, 1996	Within one year of date determined by State; no later than October 9, 1995.
Effective date of groundwater monitoring and corrective action.	Prior to receipt of waste for new units; October 9, 1994 through October 9, 1996 for existing units and lateral expansions.	October 9, 1994 for new units; October 9, 1994 through October 9, 1996 for existing and lateral expansions.	October 9, 1995 for new units; October 9, 1996 for existing and lateral expansions.	October 9, 1994 for new units; October 9, 1994 through October 9, 1996 for existing and lateral expansions.
Effective date of financial assurance requirements.	April 9, 1995	April 9, 1995	October 9, 1995	April 9, 1995.

[1] If a MSWLF receives waste after this date the unit must comply with all of Part 258.

V. Economic and Regulatory Impacts

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a new regulation is a "major" rule and prepare a Regulatory Impact Analysis (RIA) in connection with a major rule. A "major" rule is defined as one 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/Tribal, and local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The amendments to the regulations outlined in this rule will, except for the provision requiring dry/remote very small landfills to perform ground-water monitoring, have the effect of reducing requirements imposed by the 40 CFR part 258 criteria. While the Agency estimates that increased costs to households for the ground-water monitoring requirements added as a result of the Court's decision may be significant for some of the very smallest communities, the Agency does not believe that this is a major rule for the purposes of determining whether to conduct an RIA. Moreover, under today's final rule, owners and operators of MSWLF units that meet the small landfill exemption of § 258.1 (f) are provided regulatory relief by a delayed effective date.

EPA has updated and revised the cost estimates reported in the preamble for the proposal for today's rule. A detailed explanation of unit costs and methodology can be found in a technical memorandum to the docket.

In estimating the national annualized costs attributable to the removal of the ground-water monitoring exemption for dry/small landfills, the Agency defined small landfills as those accepting less than 20 tons per day (TPD), and dry landfills as those located in areas receiving less than 25 inches of precipitation per year. (The Agency does not have complete data on the number of very small landfills that qualify for the exemption because they are remote; that is, because they experience three consecutive months with no surface transportation. However, the Agency believes that most of these landfills are captured in the assumptions used to develop the estimated number of small arid landfills.) EPA assumed a universe of 750 dry/small landfills will be operating in 1995 (approximately 517 1 TPD landfills and 232 10 TPD landfills). This estimate is derived from the municipal landfill survey of 1986, and is based upon the closure dates reported by landfills at that time. EPA assumed landfills which reported closure dates prior to 1995 will have closed and those communities have turned to larger landfills which would not be affected by today's rule. For landfills which reported closure dates after 1995, EPA estimated ground-water monitoring costs.

EPA developed national costs estimates using most of the assumptions used in the Regulatory Impact Analysis (RIA) developed for the revised Criteria. For the purposes of this analysis, EPA assumed that landfills would monitor ground water during the operating life and for a thirty year post-closure care period (the post-closure care period requirement may vary in an approved state). EPA estimated costs for two representative sizes under 20 TPD: A 10 TPD landfill and a 1 TPD landfill. The Agency assumed that for a 10 TPD landfill, five well clusters, with three wells each would be used. For a one TPD landfill, EPA assumed three well clusters with three wells each would be used. EPA used average unit capital costs for ground-water monitoring, assuming a well depth of 140 feet. The Agency recognizes that these average costs may underestimate costs to some individual landfills which, due to remoteness or site-specific characteristics (e.g., high depth to ground water), may have higher well construction costs than estimated. For example, the depth to ground water in some dry areas can be several hundred feet. Digging the wells deeper will likely result in additional costs of approximately $35 to $50 for each additional foot. This means that the difference in cost of a well cluster extending to 140 feet versus a well cluster extending to 300 feet would be approximately 25% more for the well construction costs, which would increase the initial hydrogeologic study and construction costs incurred in one year by approximately 8 percent for a 1 TPD landfill and 11 percent for a 10 TPD landfill. Additional well depths would likewise continue to increase costs. One commentor from Nevada indicated that the depth to ground water

can be over 1,000 feet. Clearly the costs of digging a well in this situation will be higher than estimated here.

Additionally, the costs of well construction in remote areas could be higher if an expense to transport equipment to the site is incurred. This may be a significant cost to communities which are very remote and have limited access.

EPA assumed it will cost less to comply with the ground-water monitoring requirements in today's rule for landfills located in states already requiring ground-water monitoring (39 states required ground-water monitoring in 1991).

EPA assumed that landfills with short remaining lives would distribute the costs of the ground-water monitoring over the life of the new replacement landfill.[1] This is a reasonable assumption for municipalities which control tipping fees for residents and have the ability to spread the costs of ground-water monitoring over a longer time period. It will not always be possible for private landfill owners to annualized these costs over post-closure years.

EPA estimates that the national annualized costs of requiring ground-water monitoring for all dry/small landfills is approximately $13 million per year (in 1992 dollars). This estimate represents potential costs resulting from the court decision to require ground-water monitoring for all dry/small landfills. EPA expects, however, that some dry/small landfills would have joined a regionalized waste management system prior to the implementation date, and thus will not incur these ground-water monitoring costs.

Costs to individual landfills will vary greatly. Landfills located in states which already require ground-water monitoring may not experience any additional costs. Landfills located in states with no ground-water requirements may incur the full cost of ground-water monitoring.

Size will affect landfill cost. EPA estimates that the annualized cost (for thirty years) for ground-water monitoring at a 10 TPD landfill, with a ten year operating life, would be approximately $32,000 or $32 per household per year. The annualized cost for ground-water monitoring at a 1 TPD landfill, with a ten year operating life, would be approximately $22,000 or $222 per household per year. Clearly, costs to the very small landfills (e.g., 1 TPD) may be high per household.

The Agency does not believe a significant number of MSWLFs will experience corrective action costs due to the Court's decision for several reasons. First, it is unlikely that continued operation of these small landfills will result in ground-water contamination that requires corrective action. Because these landfills generally are located in dry areas receiving less than 25 inches of precipitation per year, very little leachate will be available for release to the ground water. Additionally, many of these dry/small landfills are situated above aquifers that typically are located several hundred feet below the ground surface, thereby creating a significant natural barrier to threat of contamination. Second, even if these landfill owners and operators detected contamination that would trigger corrective action, the MSWLF criteria currently allow the Director of a state with an EPA-approved permit program to waive corrective action under the circumstances outlined in 40 CFR 258.57(e). Third, of the small landfills that would have qualified for the small landfill exemption, it is difficult to estimate the number of these landfills that will continue to operate now that they are required to perform ground-water monitoring. Many will choose to close because of these new requirements.

Thus, given these factors, it is difficult to estimate the national cost impact of corrective action on these small landfills. The Agency believes that few would contaminate ground water and be required to perform these clean-up activities. However, if a landfill did trigger corrective action in a state that required clean-up, the Agency estimates that the average total annualized cost (over 20 years) of corrective action for that landfill would range from approximately $160,000 to $350,000 per year. These costs assume pump and treat clean-up technology and a 40-year post-closure care period.

Again, most of the cost assumptions in this estimate are based on unit cost assumptions from the Regulatory Impact Analysis for the Revised Subtitle D Criteria found in docket number F-91-CMLF-FFFFF.

The Agency believes that the final rule does not meet the definition of a major regulation. Thus, the Agency is not conducting a Regulatory Impact Analysis at this time. Today's final rule has been submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

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B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires an agency to prepare, and make available for public comment, a regulatory flexibility analysis that describes the impact of a proposed or final rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have significant economic impact on a substantial number of small entities.

The estimates of potential total annualized costs for specific landfills are discussed above in Section V-A. However, not all landfills will experience these costs. Many landfills are located in states that already require ground-water monitoring and/or corrective action and thus there would be little incremental cost to these landfills due to the court decision. In addition, EPA believes there will be a reduction in small landfills over time as these landfills close and communities regionalize.

The amendments to 40 CFR part 258, except for the provision requiring dry/remote small landfills accepting less than 20 TPD to perform ground-water monitoring, have the general effect of reducing the requirements of the part 258 criteria, thereby imposing no additional economic impact to small entities.

The provision requiring dry/remote landfills accepting less than 20 TPD to perform ground-water monitoring could have a significant economic impact on some of these small entities. Agency data indicate that economic impact will vary with size, with larger landfills experiencing a relatively moderate cost increase per household when compared to smaller landfills where economies of scale are not available. Agency data indicate that the average annualized costs of ground-water monitoring for a MSWLF unit accepting approximately 10 TPD operating for 10 years would cost about $30 per household when annualized over 30 years ($65 per household when annualized over only the 10 year operating life). For landfills accepting less than one TPD (the Agency estimates that over one-half of all MSWLF units that qualify for the

[1] For example, a landfill which is expected to close in five years would distribute the costs across the five years plus the twenty years a new replacement landfill would operate. This ability to average costs of existing landfills and new replacement landfills was assumed in the RIA. Because the cost analysis in the RIA indicates that, except in the most remote or unaccessible areas, costs per ton for using a larger regional landfill is less expensive than for small landfills, EPA assumed communities would use regional waste facilities upon closure of small landfills. Since requirements for large landfills are not being affected by today's very small landfill ground-water monitoring requirements, no costs of the replacement landfill are included in cost estimates presented today.

exemption are in this size category), the average annualized cost would be about $220 per household when annualized over 30 years ($450 per household if annualized over only the 10 year operating life).

The Agency believes that estimated costs of $220 per household for the very smallest communities are significant. In the RIA for the revised criteria, the Agency used a threshold of $100 per household to identify moderate impacts. For the RIA, the Agency also looked at a second threshold; the Agency considered incremental costs that were greater than one percent of median household income as being "significant." 1990 Census data indicates that median household income across the United States is $30,000. However, EPA recognizes that several communities have median household incomes below the national median. 1989 Census data indicate that 13.1 percent of all persons live below poverty level. Poverty level for a three person household is defined as $9,900 income per year. In communities where household incomes are below the national median, a $100 or higher cost per household could be close to one percent of household income and thus have a significant impact. Again, cost figures presented here are rough estimates using national unit costs; labor and equipment costs will vary per site and may be more expensive in rural, remote areas of the country. Also, the Agency assumed a specific ground-water monitoring system of 3 or 5 wells clusters depending on the size of the landfill. To the extent that landfills use different systems, costs will vary.

The Agency does not have a precise count of small landfills that will be affected by this rule. According to the 1986 landfill survey, many of the small landfills had plans to close by 1995. Others have closed as communities participate in regionalized waste management. Therefore, while EPA estimates, according to information from the 1986 survey, that there may be approximately 750 landfills that could be affected by today's rule, it is unclear how many actually are in this universe today.

While the Agency believes that the costs described above may have substantial impacts on some of the very smallest communities, the court decision leaves the Agency no choice but to promulgate these changes to ground-water monitoring requirements for dry/small landfills. However, as mentioned earlier, the Agency continues to solicit information on alternative ground-water monitoring procedures that could accommodate the practicable capability of small landfills through consideration of size, location, and climate, while ensuring that the program is adequate to detect contamination. It is the Agency's goal to identify alternative monitoring methods that would reduce the cost impacts described above.

C. Paperwork Reduction Act

The Agency has determined that there are no new reporting, notification, or recordkeeping provisions associated with today's final rule.

List of Subjects in 40 CFR Part 258

Corrective action, Ground-water monitoring, Household hazardous waste, Liner requirements, Liquids in landfills, State/Tribal permit program approval and adequacy, Security measures, Small quantity generators, Waste disposal, Water pollution control.

Dated: September 27, 1993.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

1. The authority citation for part 258 is revised to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a), 6944(a) and 6949(c); 33 U.S.C. 1345 (d) and (e).

2. Section 258.1 is amended by revising paragraphs (d), (e), (f)(1) introductory text, (f)(3), and (j) to read as follows:

§ 258.1 Purpose, scope, and applicability.

* * * * *

(d)(1) MSWLF units that meet the conditions of 258.1(e)(2) and receive waste after October 9, 1991 but stop receiving waste before April 9, 1994, are exempt from all the requirements of this part 258, except the final cover requirement specified in § 258.60(a). The final cover must be installed by October 9, 1994. Owners or operators of MSWLF units described in this paragraph that fail to complete cover installation by October 9, 1994 will be subject to all the requirements of this part 258, unless otherwise specified.

(2) MSWLF units that meet the conditions of § 258.1(e)(3) and receive waste after October 9, 1991 but stop receiving waste before the date designated by the state pursuant to 258.1(e)(3), are exempt from all the requirements of this part 258, except the final cover requirement specified in § 258.60(a). The final cover must be installed within one year after the date designated by the state pursuant to 258.1(e)(3). Owners or operators of MSWLF units described in this paragraph that fail to complete cover installation within one year after the date designated by the state pursuant to 258.1(e)(3) will be subject to all the requirements of this part 258, unless otherwise specified.

(3) MSWLF units that meet the conditions of 258.1(f)(1) and receive waste after October 9, 1991 but stop receiving waste before October 9, 1995, are exempt from all the requirements of this part 258, except the final cover requirement specified in 258.60(a). The final cover must be installed by October 9, 1996. Owners or operators of MSWLF units described in this paragraph that fail to complete cover installation by October 9, 1996 will be subject to all the requirements of this part 258, unless otherwise specified.

(4) MSWLF units that do not meet the conditions of 258.1 (e)(2), (e)(3), or (f) and receive waste after October 9, 1991 but stop receiving waste before October 9, 1993, are exempt from all the requirements this part 258, except the final cover requirement specified in 258.60(a). The final cover must be installed by October 9, 1994. Owners or operators of MSWLF units described in this paragraph that fail to complete cover installation by October 9, 1994 will be subject to all the requirements of this part 258, unless otherwise specified.

(e)(1) The compliance date for all requirements of this part 258, unless otherwise specified, is October 9, 1993 for all MSWLF units that receive waste on or after October 9, 1993, except those units that qualify for an extension under (e)(2), (3), or (4) of this section.

(2) The compliance date for all requirements of this part 258, unless otherwise specified, is April 9, 1994 for an existing MSWLF unit or a lateral expansion of an existing MSWLF unit that meets the following conditions:

(i) The MSWLF unit disposed of 100 tons per day or less of solid waste during a representative period prior to October 9, 1993;

(ii) The unit does not dispose of more than an average of 100 TPD of solid waste each month between October 9, 1993 and April 9, 1994;

(iii) The MSWLF unit is located in a state that has submitted an application for permit program approval to EPA by October 9, 1993, is located in the state of Iowa, or is located on Indian Lands or Indian Country; and

(iv) The MSWLF unit is not on the National Priorities List (NPL) as found in Appendix B to 40 CFR part 300.

(3) The compliance date for all quirements of this part 258, unless otherwise specified, for an existing MSWLF unit or lateral expansion of an existing MSWLF unit receiving flood-related waste from federally-designated areas within the major disasters declared for the states of Iowa, Illinois, Minnesota, Wisconsin, Missouri, Nebraska, Kansas, North Dakota, and South Dakota by the President during the summer of 1993 pursuant to 42 U.S.C. 5121 *et seq.*, shall be designated by the state in which the MSWLF unit is located in accordance with the following:

(i) The MSWLF unit may continue to accept waste up to April 9, 1994 without being subject to part 258, if the state in which the MSWLF unit is located determines that the MSWLF unit is needed to receive flood-related waste from a federally-designated disaster area as specified in (e)(3) of this section.

(ii) The MSWLF unit that receives an extension under paragraph (e)(3)(i) of this section may continue to accept waste up to an additional six months beyond April 9, 1994 without being subject to part 258, if the state in which the MSWLF unit is located determines that the MSWLF unit is needed to receive flood-related waste from a federally-designated disaster area specified in (e)(3) of this section.

(iii) In no case shall a MSWLF unit receiving an extension under paragraph (e)(3) (i) or (ii) of this section accept waste beyond October 9, 1994 without being subject to part 258.

(4) The compliance date for all requirements of this part 258, unless otherwise specified, is October 9, 1995 for a MSWLF unit that meets the conditions for the exemption in paragraph (f)(1) of this section.

(f)(1) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions that dispose of less than twenty (20) tons of municipal solid waste daily, based on an annual average, are exempt from subpart D of this part, so long as there is no evidence of ground-water contamination from the MSWLF unit, and the MSWLF unit serves:

* * * * *

(3) If the owner or operator of a new MSWLF unit, existing MSWLF unit, or lateral expansion has knowledge of ground-water contamination resulting from the unit that has asserted the exemption in paragraph (f)(1)(i) or (f)(1)(ii) of this section, the owner or operator must notify the state Director of such contamination and, thereafter, comply with subpart D of this part.

* * * * *

(j) Subpart G of this part is effective April 9, 1995, except for MSWLF units meeting the requirements of paragraph (f)(1) of this section, in which case the effective date of subpart G is October 9, 1995.

* * * * *

3. Section 258.2 is amended by revising the definitions of "Existing MSWLF unit" and "New MSWLF unit" and by adding definitions for "Indian lands" and "Indian tribe" to read as follows:

258.2 Definitions.

* * * * *

Existing MSWLF unit means any municipal solid waste landfill unit that is receiving solid waste as of the appropriate dates specified in § 258.1(e). Waste placement in existing units must be consistent with past operating practices or modified practices to ensure good management.

* * * * *

Indian lands or *Indian country* means:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running throughout the reservation;

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of the State; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights of way running through the same.

Indian Tribe or *Tribe* means any Indian tribe, band, nation, or community recognized by the Secretary of the Interior and exercising substantial governmental duties and powers on Indian lands.

* * * * *

New MSWLF unit means any municipal solid waste landfill unit that has not received waste prior to October 9, 1993, or prior to October 9, 1995 if the MSWLF unit meets the conditions of § 258.1(f)(1).

* * * * *

4. Section 258.50 is amended by revising paragraph (c) introductory text, by redesignating paragraphs (e), (f) and (g) as paragraphs (f), (g), and (h); and by adding paragraph (e) to read as follows:

258.50 Applicability.

* * * * *

(c) Owners and operators of MSWLF units, except those meeting the conditions of 258.1(f), must comply with the ground-water monitoring requirements of this part according to the following schedule unless an alternative schedule is specified under paragraph (d) of this section:

* * * * *

(e) Owners and operators of all MSWLF units that meet the conditions of 258.1(f)(1) must comply with the ground-water monitoring requirements of this part according to the following schedule:

(1) All MSWLF units less than two miles from a drinking water intake (surface or subsurface) must be in compliance with the ground-water monitoring requirements specified in 258.51 through 258.55 by October 9, 1995;

(2) All MSWLF units greater than two miles from a drinking water intake (surface or subsurface) must be in compliance with the ground-water monitoring requirements specified in 258.51 through 258.55 by October 9, 1996.

* * * * *

5. Section 258.70 is amended by revising paragraph (b) to read as follows:

§ 258.70 Applicability and effective date.

* * * * *

(b) The requirements of this section are effective April 9, 1995 except for MSWLF units meeting the conditions of 258.1(f)(1), in which case the effective date is October 9, 1995.

6. Section 258.74 is amended by revising paragraph (a)(5) to read as follows:

§ 258.74 Allowable mechanisms.

* * * * *

(a) * * *

(5) The initial payment into the trust fund must be made before the initial receipt of waste or before the effective date the requirements of this section (April 9, 1995, or October 9, 1995 for MSWLF units meeting the conditions of 258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of 258.58.

* * * * *

7. Section 258.74 is amended by revising the third sentence of paragraph (b)(1); by revising the second sentence of paragraph (c)(1); and by revising the second sentence of paragraph (d)(1) to read as follows:

§ 258.74 Allowable mechanisms.

* * * * *

(b) * * *

(1) * * * The bond must be effective before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1995, or October 9, 1995 for MSWLF units meeting the conditions of 258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.

* * * * *

(c) * * *

(1) * * * The letter of credit must be effective before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1995, or October 9, 1995 for MSWLF units meeting the conditions of 258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.

* * * * *

(d) * * *

(1) * * * The insurance must be effective before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1995, or October 9, 1995 for MSWLF units meeting the conditions of 258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.

* * * * *

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