Part VII

Environmental Protection Agency

40 CFR Part 258
Solid Waste Disposal Facility Criteria; Delay of Compliance and Effective Dates; Final Rule
ENVIRONMENTAL PROTECTION AGENCY
40 CFR Parts 153
FR 56337-56338, 6-9-1977
Safety Waste Disposal Facilities: Criteria; Delay of Compliance and Effective Dates
AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.
SUMMARY: On October 5, 1971, EPA promulgated proposed Federal criteria for Municipal Solid Waste Landfills (MSWLFs) under subtitle B of the Resource Conservation and Recovery Act (RCRA). Today’s final rule establishes these criteria by delaying the general date for compliance with the criteria until April 7, 1980 for certain small landfills and by delaying the effective date of subpart G, Financial Assurance, until April 7, 1980 for all MSWLFs. In addition, the MSWLF criteria are amended to require the removal of 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 unit and remote areas that meet the qualification of the small municipal criteria in the MSWLF Criteria. Additionally, the effective date of this final rule is extended to ensure that current owners and operators of MSWLF units that cease receipt of waste by their compliance date, finally, the compliance date is delayed for certain MSWLFs in the midwest receiving flood-related waste from a federally designated disaster area. Recipients of flood-related waste may have positive effective dates or other requirements in their state’s RCRA regulations and certain MSWLF units are encouraged to consult with their state’s Title VI.
EFFECTIVE DATE: The amended date is effective on October 9, 1979.
The final rule is effective on October 9, 1979.
ADDITIONAL INFORMATION: The public record for this rulemaking is located in the RCRA Docket Information Center, (DOT-933), U.S. Environmental Protection Agency Headquarters, 421 M Street SW, Washington, DC 20460.
1. Authority
EPA is promulgating these regulations under the authority of sections 204 and 402(d) of the Resource Conservation and Recovery Act (RCRA). The EPA Administrator is required by RCRA to promulgate criteria for facilities that may receive hazardous household waste (HHW) or small quantities generated (SQG) waste. These 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 practicability of facilities that may receive HHW or SQG waste. 42 U.S.C. 6926(a). EPA has interpreted “practicable capability” to include both: (a) the waste which facilities will handle in compliance with the revised criteria and the technical capability of facilities that must comply with the regulations. 40 FR 35097, 35098-99 (October 9, 1979). 52 FR 3352, 3355 (August 30, 1982). EPA has taken practicability of MSWLF criteria owners and operators into account in modifying the effective date of the revised criteria as set forth in this Federal Register notice.
2. Background
a. Clarification of Effective Dates
By delaying the compliance date of the MSWLF criteria in number of ways, this rule relaxes restrictions that part 258 would have imposed on those facilities that would have otherwise had to meet with the criteria by the effective date set forth in the rule published on May 7, 1979. 44 FR 27047, Because this rule relaxes, rather than improved, regulatory controls, delaying the effective date of this rule is necessary in order to allow time for those who may be affected by this rule to comply. In addition, EPA believes that it has good causes to make today’s rule effective in less than 30 days. If the rule’s effective dates were delayed until 30 days after today’s publication, the owners and operators of MSWLFs that fall within the rule’s effective date would have to meet the standards already established in part 258, which had a general effective date of October 9, 1979. 40 FR 258-9 (Oct. 9). Such a result would be contrary to the purposes of the rule, which is to provide some regulatory authority for facilities and operators of MSWLFs that are finding a extremely difficult to deal with a variety of concerns (including those in the
Midwest) to comply with the official effective dates in
the framework for 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, 1993
On October 9, 1993, EPA promulgated a rule under sub-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 (50 FR
50070 (October 9, 1993)). 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,
1992 were not required to comply with the regulations. Those landfill
owners and operators that stopped accepting waste between October 9, 1992 and October 9, 1993 were exempt from all of the regulatory requirements
except for the final cover (located in 40
CFR 258.60(b)), which had to be applied
within six months of last receipt of receipt of waste. Thus, the
continued to receive waste beyond the October 9, 1993 effective in less
required to comply with the remainder of the
landfill regulations (including location restrictions, operation, design,
ground-water monitoring and corrective action
requirements). The regulations took effect on October 9, 1993 through October 9, 1996. Finally, the regulations
allowed for an exemption for the design, ground-water monitoring and corrective action
requirements for remote facilities and remote landfills that met the criteria of
258.11d.
C. Implementation of the MSWLF
Criteria
Section 405(c)(1)(D) 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. Title III, Subtitle D of SARA gives the 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 develop and implement MSWLF permit
programs, while not a statutory requirement in RCRA or SARA, 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/Tribal
must have the capability of issuing
permits or some other form of prior
approval for all MSWLFs in the state/
Tribes, and must establish requirements adequate to ensure that owners
and operators will comply with the federal
landfill criteria. A state/Tribal
must also be able to ensure compliance through monitoring and enforcement actions and
must provide 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 in
jurisdictional states that have 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
new units to meet the applicable
exposure standards of existing units with a composite liner in
compliance with 40 CFR 258.60(b), whereas approved state/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
allowed to an approved state permit
program, and because state permit
program approval is mandated by
section 405(c)(1)(D) 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 at various stages
of the program approval process. Some
states have received full program
approval, while several states have
received "partial" program approval,
which only allows approval for Indiana
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
volumes of a program are not
approved (in the case of a partial
approver), the MSWLF criteria (as
unapproved portions of criteria) are
implemented by the owner and
operator, with no Federal permitting
program or interaction. In such
situations, the MSWLF criteria are
"self-implementing," such owner /
operator must document compliance
and maintain this documentation in
the operating record.
D. Summary of Proposed Rules
When the municipal solid waste
landfill criteria were developed, EPA
included a number of features that serve to
facilitate owner's and operator's ability
to come into compliance by the
promulgated effective dates. These
features include phased-in effective
dates, certain exceptions for very small
area 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
found the effective date to be
unreasonable, (1) inability to meet the
effective date, (2) lack of flexibility in
unapproved states; and (3) delays in
obtaining access to new waste
management facilities. Therefore, on
June 29, 1989, the Agency proposed to
amend the municipal solid waste
landfill criteria (50 FR 30566) to align the
effective date of the Criteria. The
proposal was not intended to change the
conservative 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 sought comments on the
effective date of the criteria until April
9, 1994 for certain small landfills that
depose of tons of waste per day or are
located in a state that has
submitted an application for permit
program approval by October 9, 1993
governed by the Indian Leech and are not
currently on the National Priorities List. Second, EPA proposed to delay the
MSWLF criteria requirement for Financial Assurance, until April 9, 1994 for all
MSWLFs. Third, in response to the U.S. Court of Appeals decision, Sierra Club
v. United States Environmental
Protection Agency, 972 F.2d 337 (D.C.)
Ch 1989, the Agency proposed to remove the exemption from the groundwater monitoring requirements in 40 CFR 258.55–258.55, for owners and operators of MSWLFs in and around remote areas that meet the qualifications of the small landfill exemption as defined in 40 CFR 258.11f. Additionally, EPA proposed to extend the effective date for all requirements of the MSWLF criteria for a period of two years, until October 4, 1990, for the small and remote areas that qualify for the small landfill exemption under 258.11f.

Lastly, the Agency proposed to amend the final cover requirements by requiring certain owners of MSWLFs that cause waste to be treated with their effective date to complete final cover installation by October 4, 1990, except for very small MSWLFs. Very small MSWLFs in and around remote areas that qualify for the small landfill exemption (under 258.11f) and cause waste to be treated with their effective date of October 4, 1989, must complete final cover installation by October 4, 1990.

III. Responses to Comments and Analysis of Issues

The 30-day comment period for the July 26th proposed rule ended on August 27, 1989. The Agency received over 200 comments on the proposal.

The Agency reviewed and responded to the major comments as they relate to the four major amendments in the July 26, 1989 proposal. The Agency reviewed 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 26th proposal. A discussion of the remaining comments can be found in a background document available in the U.S. DDBK Information Center.

A. Delaying the General Effective Date

In the July 26th proposal, EPA proposed to amend a proposed six-month delay of the effective date (in April 1990), to implement 100 TDU or less of any combination of household, commercial, or industrial solid waste as a waste management facility. The Agency did not find these arguments to delay the effective date beyond six months to be persuasive.

Other commentators proposed that EPA should delay the general effective date for 20 years, or until the Agency submits a proposal that would allow EPA to implement the proposed state permit program. EPA has determined that, as the average, median, and maximum of the state permit programs application can be completed within approximately 12 months. Based on current information from states, EPA believes that all or almost all states will submit an application for approval by October 4, 1990. This lengthy review was based on the assumption that the federal actions would not become effective before the state permit programs

The proposed rule provided for a one- month, six-month delay of the general effective date. Some comment was concerned about the appropriateness of the Agency’s stress of a six-month delay of the effective date. Proponents from commenters ranked from total opposition to any delay to enthusiastic opposition for a longer delay by as much as two years, as they proposed. Some proponents who complicated the execution of many facilities, including the following: (1) instability to comply with the federal regulations; (2) lack of flexibility in unapproved states; and (3) delays in getting access to a new waste management facility.

As for those who supported a longer delay by as much as two years, these commenters 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 redevelop MSWLFs)—who have made good faith efforts to seek alternative disposal facilities and have been delayed additional time to complete their efforts. At FR 40050–71, while delay would not be enough for all owners and operators to comply with all necessary sections, EPA does not want to further delay the implementation of the substantial regulations developed two years ago. This additional time is not designed to solve the problems facing communities that recently started the sitting process or those who are 12 months or years away from spending a new facility. Landfill delays could increase the potential for groundwater protection projects (e.g., falling to close the hazardous landfilling and would penalize those who took the necessary steps to comply with the October 4, 1989 effective date. The Agency did not find these arguments to delay the effective date beyond six months to be persuasive.

Other commentators proposed that EPA should delay the general effective date for 20 years, or until the Agency submits a proposal that would allow EPA to implement the proposed state permit program. EPA has determined that, as the average, median, and maximum of the state permit programs 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 4, 1990. This lengthy review was based on the assumption that the federal actions would not become effective before the state permit programs

were approved, thus allowing many owners and operators to avoid the administrative hassle in states of limited resources. EPA, instead, has expressed its intention to use its authority to take advantage of the flexibility and the potential cost savings available when states are approved.

2. 103 Treat One Day or Less Site 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 commenters suggested an increased treatment limit up to 750 TDU, while others questioned the need to limit the exception based on the amount of waste accepted by the currently and find 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 TDU or less cut-off represents a significant community landfills that have had the most difficulty coming into full compliance by the October 4, 1990 deadline, because it is good conditions, legal challenges, and geographic factors that have created significant obstacles to compliance, often despite good intentions. For example, many of the smaller landfills intend to close, and their costs will instead result in the treatment of hazardous waste in the new waste management facility where they can take advantage of economies of scale. The proposal of this extension, however, is based on the assumption that the extended MSWLF and construction of a new treatment facility, has taken more time than many small communities had originally anticipated. Additionally, the Agency believes that the 100 TDU or less cut-off would allow a "blanket" or unlimited extension, as suggested by some commenters, would not fulfill EPA's goal of granting relief to only those communities, which, in effect, would not have an adverse impact on the communities. By setting the limit at 100 TDU, the Agency targets relief to the greatest extent possible while ensuring that those waste, as of October 4, 1990, will be disposed in accordance with the requirements of 40 CFR part 258. As stated in the proposal, setting the limit at 100 tons per day would provide approximately 475 percent of the required 750 tons per day for the MSWLF's in the country which manage only about 15 percent of the total national waste stream.
One commentator argued that the agency should have allowed to its own definition, in the October 9, 1992 rule, of a small landfill used for the small landfill exemption found in 40 CFR 258.10 (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 exemption at 20 tons per day, because the scope of the problems appeared to extend to smaller, larger landfills, primarily those serving communities with a population up to a range of 45,000 to 85,000 (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 off all of the MSWLF criteria (see subsection H; Very Small Solid and Remote MSWLF Extension). If they meet the criteria of the small landfill exemption in 258.10. Therefore, the Agency is retaining the 100 TPD limit in the final rule. As in the proposed rule, it is important to note that the effective date for the MSWLF units accepting greater than 100 TPD will continue to be October 9, 1993. In the proposed rule, the Agency included comments on whether two calculation methods were reasonable to determine whether an MSWLF unit qualified and continuing comments for the extension. First, to qualify for the extension, an MSWLF unit will have to disprove of 100 tons per day or less of solid waste between October 9, 1992 and October 8, 1993. The "historic" (i.e., October 9, 1992 through October 8, 1992) time frame was suggested mainly to assure that landfills would not alter after the period of waste acceptance in order to take advantage of the extension. In addition, the monthly average calculation was intended to ensure that "many" landfills would remain on the extension period. As discussed in the preceding section, the extension is intended for small landfills already in existence. A few commentators generally supported the need for an historical time frame in order to determine that the MSWLF qualifying for the extension was indeed small. However, numerous comments, from many landfills and operators, cited remarks on why they believed the proposed method of determining the historical time frame (i.e., based on the average from 1991) was unnecessarily restrictive. For example, commenters 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 back-owed the quantity of waste to a landfill during the target period. Commenters also were concerned that a great deal of time and resources could be spent in determining whether or not a landfill, with no scalable past records, qualified for the extension. Commenters 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, not allows such a time period to be readily identified. These commenters felt that such, even more time and money would be spent appealing the landfill or finding waste assessment alternatives. One commentator 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 owners from qualifying for the 1992 extension. Today's rule is intended to grant needed relief to certain MSWLF units and operators in a manner that does not unfairly discourage 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 only to small landfills and the time period during 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 acceptance should be based on the average acceptance of waste over a representative period prior to October 9, 1993, as determined by the owner or 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 8, 1992. This period of time should provide the most current representative "snapshot" of waste receipt at a MSWLF until Waste receipt at MSWLF units after October 1992 may not be as representative due to changes in practices (either downgrading or upgrading) as a result of the upcoming October 9, 1993 effective date. However, it is the instance that the owner/operator does not have records for this period, or believe that this period to not representative of their past receipt of waste, then the owner/operator may choose an alternative period (e.g., the most recent receive consecutive month period not impacted by extreme circumstances). The historical calculation method adopted for today's extension is implicitly the same as the historical measurement method MSWLF owners and operators were using in determining if their MSWLF will meet the small landfill requirements (less than 20 TPD) of 258.12(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/operator's best interest to develop and maintain some indication of the amount of waste accepted given the possibility of citizen suits being filed. Commentators supported the proposed, monthly calculation during the extension period in order to continue to qualify for the extension. Therefore, MSWLFs will continue to require a 100 TPD or less based on a monthly average during the time period of October 9, 1992 until April 9, 1993 to qualify for the extension. Finally, the proposed rule requested comment on methodology of calculating the ton per day of affected facilities. EPA suggested two methods (i) divide the total annual amount of waste received by 365 days or (ii) conduct a one-time measurement of a day's typical full truck-handling vehicle by using a conversion factor (e.g., one ton equal to three cubic yards of waste) or using subsidized waste receptacles from which samples. Commentors generally agreed that both of these methods to calculate the acceptance of waste would suffice for the majority of their situations. Several commentators suggested that the use of a conversion factor of one ton equal to five cubic yards of waste be dropped. However, because there is no single set standard calculation method, the Agency believes that the approach should remain flexible to allow the owner/
operator use reasonable and defensible measures in increasing their
to their

3. Lateral Expansions

The proposed rule limited the extension to existing units and to lateral
from existing units by
accompanying trench and sewer lines. A few commenters were concerned that
landfills qualifying for the extension would laterally expand over a larger
area than actually needed, thus greatly
extending the life of their existing units by the new April 9, 1993 effective date.
The commenters proposed that EPA
limit the capacity of all ISWMLF unit lateral
expansions to not exceed six-months of capacity for the entire ISWMLF unit.
The Agency feels that this type of limitation would create unnecessary
complications 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
ISWMLF unit" in §252.2, defines such
unit as one that is receiving solid waste
as of the effective date of the landfill
authorization with the consent that waste
place in the unit consistent with
past operating practices or modified
practices to ensure good management.
The Agency has interpreted this to mean
the existing unit is defined by the
area 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
FPLA §258.3). A commenter suggested that EPA
should only permit expansion to landfills that are undertaking vertical
expansions, and not extend the extension to landfills that are planned.
Vertical expansion poses many unknowns, the major difficulties in
meeting the criteria deadline appear to be the cost and time for vertical
expansions. Landfills and the extension therefore is
likely desirable at such landfills. Many of
these smaller landfills use trench and
fill units and, for example, in a
trench fill application, a small trench is
dug, filled, and covered in a
relative short period of time. As the
trench is filled, it is extended to
accommodate the additional waste. This
extension is by definition a lateral
expansion; limiting the extension to
vertical expansions would therefore
disadvantage small, financially
limited operators and ASWMLF units. Therefore,
this final rule redefines the extension to
valid for the six-month extension

4. Some Substantial of a Permit Program

The proposed rule limited the six-
month extension only to owners and
operators of ISWMLF units, states that
have submitted an application for permit
program approval by October 9, 1993,
and that they do not want the extension
to extend to six-months of capacity for the entire ISWMLF unit.
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However, other commenters were concerned that a delay of the criteria would undermine states’ efforts in implementing the MSWLF criteria (e.g., oppose state’s extending 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 qualified landfills for an extension (e.g., maintain current closure schedule) if they so choose. Therefore, the extension should not have the negative effect predicted by these commenters.

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 390. Commenters agreed with this exclusion; therefore, the final rule states this provision. Some commenters 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 commenters requested that EPA limit the extension to prohibit the use of non-hazardous industrial waste and non-hazardous industrial waste. Under the original proposal published on September 9, 1992, MSWLFs may accept non-hazardous industrial waste to be co-disposed with household waste. The Agency did not limit today’s extension to just MSWLFs, but suggested for the following reasons: (1) The prohibition of non-hazardous industrial waste would be difficult to implement and enforce; (2) it would raise the costs 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 to accept non-hazardous industrial waste to be co-disposed with household waste. Finally, some commenters suggested that in order to qualify for the extension, the MSWLF must be in compliance with all of the locational restrictions of subpart B of the criteria by the effective date. EPA also believes that one year should provide adequate notice to affected parties so they may determine whether to meet 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 establish alternative financial mechanisms that meet the criteria specified in 42 CFR 774 for use by their owners and operators. This may include development of a state financial test. Therefore, today’s final rule states the one-year extension for financial assurance.

C. Very Small Acid and Remote MSWLF Extension

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

The October 2, 1991 Final Rule for the MSWLF Criteria included an exemption for owners and operators of certain small MSWLFs from the design (subpart D) and groundwater monitoring and corrective action (subpart E) requirements of the Criteria. See 40 CFR 258.10. To qualify for the exemption, the small landfill had to accept less than 20 tons per day, an annual quantity of waste that is not in evidence of groundwater contamination or precipitation.

(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

(b) A community that has no practicable means of removing an economic and the landfill is located in an area that normally receives and accepts the practicable-capabilities of small landfill owners and operators. See discussion in 20 FR 50985.

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 subpart D criteria. The Sierra Club and NRDC also alleged, among other things, that EPA acted in violation of the NMRA by failing to consider small landfills from the groundwater 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 challenges to the small landfill exemption. Sierra
Club v. United States Environmental
Protection Agency, 892 F.2d 337 (D.C.
Cir. 1989).

The Court held that under section 406(j), the only way EPA could consider
in determining whether facilities must monitor their ground
water was whether such monitoring was
“necessary to detect contamination,” not whether such contamination was
“practicable.” The Court noted that
while EPA could consider the practicability of facilities in
determining the extent of kind of
ground-water contaminant must conduct, EPA
could not justify the complete exemption from ground-water
monitoring requirements. Thus, the Court concluded the small landfill
exemption at a portion to ground-water
monitoring at all facilities. The Courts
decision did not affect the small landfill exemption as it pertains to the
design requirements.

Therefore, today’s final rule, as
revised by the Court, modifies the
covered landfill exemptions because
owners and operators of MSWRFs
that meet the qualifications outlined in
§ 226.10, are no longer excepted from
ground-water monitoring requirements in
effect for as long as 25 years. The
revised rule, while removing the exemption from ground-water
monitoring for facilities that meet the qualifications outlined in
§ 226.10, also requires that all
facilities that meet the qualifications be monitored by the sampling and
techniques specified in
§ 226.54.

The rule also extends the enforcement requirements for all
facilities that meet the qualifications for the small landfill exemption for as long as
25 years. Although the enforcement
requirements are much less stringent than those for facilities that do not meet the
qualifications, the rule still requires that all
facilities that meet the qualifications be monitored by the sampling and
monitoring techniques specified in
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facilities that meet the qualifications be monitored by the sampling and
monitoring techniques specified in
§ 226.54.
indicated that six months would generally suffice, based on past experience in dealing with floods and on existing landfill capacity. Several commenters requested that states be delegated the authority to grant targeted relief to MSWLF units 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 '94 while maintaining simplicity for the purpose of implementation. The final rule contains a two-stage approach for extending the effective date for such landfill, which is independent of the extenders 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 wastes up to April 6, 1994, without being subject to part 258 (except the final cover requirements), if the state determines that they are needed to receive flood-related wastes from a Federal- designated disaster area resulting from the Great Flood of 1993. The provision responds to EPA's belief that in most cases, six months will be adequate to handle flood-related wastes especially for historically smaller landfills that ordinarily would have qualified for the state extending for MSWLF units 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 wastes is limited only to those units currently expanding. While the extensions of existing units 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 wastes without being subject to part 258 (except the final cover requirements), for an additional period of time up to six (6) months beyond April 6, 1994, if the state determines that the MSWLF unit is needed to receive flood-related wastes 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 6, 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 sites not available for continued flood-cleanup activities. EPA does not intend this flood-related extension to delay compliance any longer 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 which receive an extension to receive flood waste and cessa-ration of waste at the end of that extension, must complete the cover installation within one year of the date on which the extension expires. 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(f) or in accordance with an approved state/tribe schedule and (2) the financial assurance requirements by April 9, 1995.

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>
<thead>
<tr>
<th>MSWLF units accepting less than 100 TPD</th>
<th>MSWLF units accepting 100 TPD or more</th>
<th>MSWLF units meeting the small landfill exception in CERCLA and being subject to a Basel Convention permit or minimum level of protection to be approved by October 9, 1993</th>
<th>MSWLF units receiving flood-related wastes</th>
</tr>
</thead>
<tbody>
<tr>
<td>General effective date</td>
<td>October 9, 1993</td>
<td>April 6, 1994</td>
<td>October 9, 1993</td>
</tr>
</tbody>
</table>

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

1. Sewage Sludge Disposal

Commentators agreed that EPA should not grant removal credits to a POTW unless the POTW sends the sewage sludge to a MSWLF unit that complies with the final ban of the part 258 rule requirements. Hence, EPA will not grant removal credits to the POTW 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 commentator felt that an extension to the MSWLF criteria effective date would undercut recycling and source reduction due to continued "cheaper" 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 the discussion for alternatives to disposal.

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—Continued

| MSWLF units accepting less than 100 TPD | MSWLF units that meet the start-up requirements (40 CFR § 255.13) | MSWLF units receiving food-
|----------------------------------------|---------------------------------------------------------------|----------------------------------|
| This is the effective date for in- | Prior to receipt of new units, October 6, 1994 for new units, | Within one year of date deter-
| Do not accept waste by the gener- | October 6, 1994 for new units, October 6, 1994 through Octo-
| al effectiveness date. | ber 8, 1996 for existing units and latest extensions. | ber 8, 1996 for new units, Octo-
| Effective date of governments |-April 8, 1996. | ber 8, 1996 for existing units, |-ber 8, 1996 for existing units,
|quirements. | | | | 11 a MSWLF moves waste after this date the waste must comply with Part 255.

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 conjunction 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, productivity, innovation or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The assumptions used in the regulations analyzed in this rule, except for the provision requiring dryvanes to perform ground-water monitoring, have the effect of reducing requirements imposed by the 40 CFR part 255 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 in some cases of the very smallest communities, the Agency does not believe that this is a major rule for the purpose of discerning whether to prepare a RIA. Moreover, under today's rule, owners and operators of MSWLF units that meet the small landfill exemption of 40 CFR § 255.13 are provided regulatory relief by a delayed effective date. EPA has updated and revised the cost estimates reported in the preamble for the proposed rule. A detailed explanation of unit costs and methodology can be found in a technical memorandum to the dockets.

In estimating the savings, EPA estimated the annual cost of complying with the MSWLF regulations for MSWLF units that meet the start-up requirements (40 CFR § 255.13). This estimate is derived from the municipal landfill survey of 1986, and is based upon the closure dates reported by MSWLF units at that time. EPA assumes that the estimated closure dates prior to 1986 will have closed by this time. The Agency believes that these savings may be underestimated because it is assumed that the estimated costs of ground-water monitoring will reflect the efficiency of the states in implementing the regulations. 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 period. This post-closure period requirement may vary in an approved state where EPA estimated costs for two representative areas under 20 TPD (A 10 TPD landfill) and a 1 TPD landfill. The Agency estimated that for a 1 TPD landfill, less than 1% of the total costs 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 geographic and site-specific characteristics (e.g., high water table, steep slopes) may have higher well construction costs than estimated. For example, the depth to ground water in some dry areas can be several hundred feet. Drilling the wells deeper will likely result in additional costs of approximately $39 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 29% more for the well construction costs, which would increase the initial hydrogeologic study and construction costs incurred in one year by approximately a person for a 1 TPD landfill and 11 percent for a 10 TPD landfill. Additional well depth would likewise continue to increase costs. One comment from Nevada indicated that the depth to ground water would

...
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 homeowners 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 1990). 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. 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 amortize these costs over post-closure years.

EPA estimates that the national annualized costs of requiring ground-water monitoring for all dry/salt landfills is approximately $11 million per year (in 1990 dollars). This estimate represents potential costs resulting from the court decision to require ground-water monitoring for all dry/salt landfills. EPA expects, however, that some dry/salt landfills would have joined a baseline monitoring 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 already required by law to have ground-water monitoring may not experience any additional costs. Landfills located in states with no ground-water requirement may incur the full cost of ground-water monitoring.

Section 1 0.5(c) of the Act, EPA estimates that the annualized cost (for thirty years) for ground-water monitoring for all dry/salt landfills, with one ten operating life, would be approximately $32,000 or $32 per household per year. The estimated cost for ground-water monitoring at a TDP landfill, with a ten year operating life, would be approximately $22,000 or $222 per household per year. Clearly, the costs to the very small landfills (e.g., TDP) may be high per household.

The Agency does not believe a significant number of MSW landfills 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 20 inches of precipitation per year, very little leachate will be available for release to the ground water. Additionally, many of these dry/salt landfills estimated above quritiers that 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 MSWFLP criteria would allow the landfill to continue operation at a state or EPA-approved permitted program to achieve corrective action under the circumstances existing in the state. In a state like 258.576, Third, of the small landfills that would have operated for the entire life, 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. Finally, it is difficult to close because of these new requirements.

These, given these factors, it is difficult to estimate the national cost impact of corrective action for all dry/salt landfills. The Agency estimates that few landfills would have ground-water monitoring costs and be required to perform these clean-up activities. However, if landfill did trigger corrective action, the Agency estimates that the average total cost of corrective action (over 30 years) for corrective action for that landfill would range from approximately $160,000 to $200,000 per year. These costs assume pump and clean-up technology and a 40-year post-closure care period.

Again, most of the cost assumptions in this analysis are based on unit cost assumptions from the Regulatory Impact Analysis for the Revision of Subtitle D Criteria found in docket number F-91-01-06-0000.

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 12866.

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 a 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 regroup.

The amendments to 40 CFR part 258, establishing a nationwide reporting and dry remote electronic landfill accounting less than 20 TDP 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 accounting less than 20 TDP to perform ground-water monitoring could have a significant economic impact on some of these small entities. Agency data indicates that a significant percentage will vary with size, with larger landfills experiencing a relatively moderate cost increase per household compared to smaller landfills where economies of scale are not available. Agency data indicate that the annualized costs of ground-water monitoring could be approximately 20% of a MSWFLP unit accounting approximately 10 TDP operating for 10 years would account for 10 TDP per household when annualized over 30 years ($65 per household, given an average operating life of only the 10 year operating life). For landfills accounting less than 20 TDP, the Agency estimates that over one-half of all MSWFLP units that qualify for the
exemption are in this size category, the average annualized cost would be almost $225 per household if operated for over 30 years ($480 per household if operated for only the 30-year operating life).

The Agency believes that estimated costs of $225 per household for the very smallest communities are significant. In the RIA for the revised criteria, the Agency assumed that the costs per household for the very smallest communities would be $200 per household.

The RIA for the revised criteria indicates that the small medium-sized communities would be $200 per household. The Agency believes that the costs per household for the very smallest communities would be $200 per household.

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(b) The compliance date for all requirements of this part 258, unless otherwise specified, for an existing MSWLF unit or lateral expansion or an existing MSWLF unit receiving solid 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 1983 pursuant to 42 U.S.C. 6121 et seq., shall be designated by the date in which the MSWLF unit is located in accordance with the following:

(1) The MSWLF unit may continue to accept wastes up to April 6, 1984, 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 solid waste from a federally-designated disaster area as specified in (a)(1) of this section.

(2) The MSWLF unit that receives an extension under paragraph (a)(1) of this section may continue to accept wastes up to an additional six months beyond April 6, 1984, 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 solid waste from a federally-designated disaster area as specified in (a)(2) of this section.

(3) In no case shall a MSWLF unit receiving an extension under paragraph (a)(1) or (a)(2) of this section accept wastes beyond June 30, 1984, without being subject to part 258.

(c) The compliance date for all requirements of this part 258, unless otherwise specified, is October 9, 1985 for a MSWLF unit that meets the conditions for the exemption in paragraph (b)(1) of this section.

(d) 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, may extend the compliance date of this part, so long as there is no evidence of ground-water contamination from the MSWLF unit, and the MSWLF unit serves:

(1) 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 (b)(3) or (b)(4) of this section, the owner or operator must notify the State Director of such contamination and, thereafter, comply with paragraph D of this section.

(2) Subpart G of this part is effective April 8, 1984, except for MSWLF units meeting the requirements of paragraph (d)(1) of this section, in which case the effective date of subpart G is October 9, 1985.

(d) Owners and operators of all MSWLF units that meet the conditions of 258.10, except those meeting the conditions of 258.10(f), 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 258.61 through 258.55 by October 9, 1985;

(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, 1986.

(e) Owners and operators of MSWLF units, except those meeting the conditions of 258.10(f), must comply with the ground-water monitoring requirements of this part according to the following schedule:

(1) All MSWLF units that meet the conditions of 258.10(f) must comply with the ground-water monitoring requirements of this part, unless otherwise specified, to achieve the requirements of 258.61 through 258.55 by October 9, 1985;

(2) All MSWLF units that meet the conditions of 258.10(f) must comply with the ground-water monitoring requirements of this part, unless otherwise specified, to achieve the requirements of 258.51 through 258.55 by October 9, 1986.

(f) 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, 1985, or October 9, 1995 for MSWLF units meeting the conditions of 258.10(f)), whichever is later, in the case of closed and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with 258.55.

(g) Section 258.74 is amended by revising paragraph (b)(3) to read as follows:

258.74 Allowable mechanisms.

(h) 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, 1985, or October 9, 1995 for MSWLF units meeting the conditions of 258.10(f)), whichever is later, in the case of closed and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with 258.55.

(i) Section 258.74 is amended by revising the third sentence of paragraph (b)(3) to read as follows:

258.74 Allowable mechanisms.
(b) ** "The bond must be effective before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1985, or October 9, 1995 for MSWLF units meeting the conditions of 258.508(1)(e) whether in or before 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 liability must be effective before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1985, or October 9, 1995 for MSWLF units meeting the conditions of 258.508(1)(e)) whether in or before 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.

(3) ** "The insurance must be effective before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1985, or October 9, 1995 for MSWLF units meeting the conditions of 258.10(1)(e)) whether in or before 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."