

US EPA ARCHIVE DOCUMENT

CHAPTER 1

SUBPART A GENERAL

**CHAPTER 1
SUBPART A**

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CHAPTER 1

SUBPART A

GENERAL

1.1 INTRODUCTION

Under the authority of both the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, and Section 405 of the Clean Water Act, the EPA issued "Solid Waste Disposal Facility Criteria" (40 CFR Part 258) on October 9, 1991. These regulations revise the "Criteria for Classification of Solid Waste Disposal Facilities and Practices," found in 40 CFR Part 257. Part 258 was established to provide minimum national criteria for all solid waste landfills that are not regulated under Subtitle C of RCRA, and that:

- Receive municipal solid waste; or
- Co-dispose sewage sludge with municipal solid waste; or
- Accept nonhazardous municipal waste combustion ash.

Part 257 remains in effect for all other non-hazardous solid waste facilities and practices.

Subpart A of the regulations defines the purpose, scope, and applicability of Part 258 and provides definitions necessary for proper interpretation of the requirements. In summary, the applicability of the Criteria is dependent on the operational status of the MSWLF unit relative to the date of publication of Part 258 and the effective date of the rule (October 9, 1993). An exemption from the design requirements is provided for small MSWLF units if specific operating, environmental, and location conditions are present. [The final rule as promulgated on October 9, 1991 exempted the owner/operators of small landfill units from both Subparts D and E. On May 7, 1993 the U.S. Court of Appeals for the District of Columbia Circuit issued an opinion that EPA did not have the authority to exempt these small landfills from the ground-water monitoring requirements (Subpart E), therefore, these small landfills can not be exempted from Subpart E. EPA is delaying the date of compliance for these units until October 9, 1995 (58 FR 51536). In addition, the Agency is investigating alternative ground-water monitoring procedures for these units.]

Owners or operators of MSWLF units that do not meet the Part 258 Criteria will be considered to be engaging in the practice of "open dumping" in violation of Section 4005 of RCRA. Similarly, owners and operators of MSWLF units that receive sewage sludge and do not comply with these Criteria will also be in violation of applicable sections of the Clean Water Act.

**1.2 PURPOSE, SCOPE, AND
APPLICABILITY**
40 CFR §258.1 (a)(b)

1.2.1 Statement of Regulation

(a) **The purpose of this part is to establish minimum national criteria under the Resource Conservation and Recovery Act (RCRA or the Act), as amended, for all municipal solid waste landfill (MSWLF) units and under the Clean Water Act, as amended, for municipal solid waste landfills that are used to dispose of sewage sludge. These minimum national criteria ensure the protection of human health and the environment.**

(b) **These Criteria apply to owners and operators of new MSWLF units, existing MSWLF units, and lateral expansions, except as otherwise specifically provided in this part; all other solid waste disposal facilities and practices that are not regulated under Subtitle C of RCRA are subject to the criteria contained in Part 257.**

1.2.2 Applicability

Owners and operators of MSWLF units that receive municipal solid waste or that receive municipal waste combustion ash and are not currently regulated under Subtitle C of RCRA must comply with the Criteria. Furthermore, MSWLF units that receive and co-dispose sewage sludge must comply with Part 258 to be in compliance with Sections 309 and 405(e) of the Clean Water Act.

1.2.3 Technical Considerations

Criteria that define a solid waste disposal facility are contained within Part 257 of RCRA (Criteria for Classification of Solid Waste Disposal Facilities and Practices). Definitions pertaining to the revised Criteria are included in the definition section of Part 258. A MSWLF unit is defined as a discrete area of land or excavation that receives household waste, and that is not considered a land application unit, surface impoundment, injection well, or waste pile as those terms are defined under §257.2. An existing unit is a solid waste disposal unit that is receiving solid waste as of October 9, 1993. A lateral expansion is a horizontal expansion of the waste boundaries of an existing MSWLF unit. A new unit is a MSWLF unit that has not received waste before October 9, 1993.

In addition to household waste, a MSWLF unit may receive commercial waste, non-hazardous solid waste from industrial facilities including non-hazardous sludges, and sewage sludge from wastewater treatment plants. The terms commercial solid waste, industrial waste and household waste are defined in §258.2 (Definitions).

The types of landfills regulated under Part 257 include those facilities that receive:

- Construction and demolition debris only;
- Tires only; and
- Non-hazardous industrial waste only.

MSWLF units are not intended, nor allowed, to receive regulated quantities of hazardous wastes. Should a MSWLF owner/operator discover that a shipment contains regulated quantities of hazardous waste while still in the possession of the transporter, the owner/operator should refuse to accept the waste from the transporter. If regulated quantities of hazardous wastes are discovered after accepting the waste from the transporter, the owner/operator must return the shipment or manage the wastes in accordance with RCRA Subtitle C requirements.

Subtitle C of RCRA establishes procedures for making a hazardous waste determination. These procedures are summarized in Chapter 3 and Appendix B of this document.

1.3 PURPOSE, SCOPE, AND APPLICABILITY (cont.) 40 CFR §258.1 (c)-(e)

1.3.1 Statement of Regulation*

***[NOTE: EPA finalized several revisions to 40 CFR Part 258 on October 1, 1993 (58 FR 51536) and issued a correction notice on October 14, 1993 (58 FR 53136). These revisions delay the effective date for some categories of landfills. More detail on the content of the revisions is included in the introduction.]**

(c) These Criteria do not apply to municipal solid waste landfill units that do not receive waste after October 9, 1991.

(d) MSWLF units that receive waste after October 9, 1991 but stop

receiving waste before October 9, 1993 are exempt from all the requirements of Part 258, except the final cover requirement specified in Section 258.60(a). The final cover must be installed within six months of last receipt of wastes. Owners or operators of MSWLF units described in this paragraph that fail to complete cover installation within this six month period will be subject to all the requirements of Part 258, unless otherwise specified.

(e) All MSWLF units that receive waste on or after October 9, 1993 must comply with all requirements of Part 258 unless otherwise specified.

1.3.2 Applicability

The applicability of Part 258, in its entirety or with exemptions to specific requirements, is based upon the operational status of the MSWLF unit relative to the date of publication, October 9, 1991, or the effective date of the rule, October 9, 1993 (see Figure 1-1). Three possible operational scenarios exist:

(1) The MSWLF unit received its last load of waste prior to October 9, 1991. These facilities are exempt from all requirements of the Criteria.

(2) The last load of waste was received after October 9, 1991, but before October 9, 1993. The owners and operators must comply only with the final cover requirements of §258.60(a). If the final cover is not installed within six (6) months of the last receipt of wastes, the owners and operators will be required to comply with all requirements of Part 258.

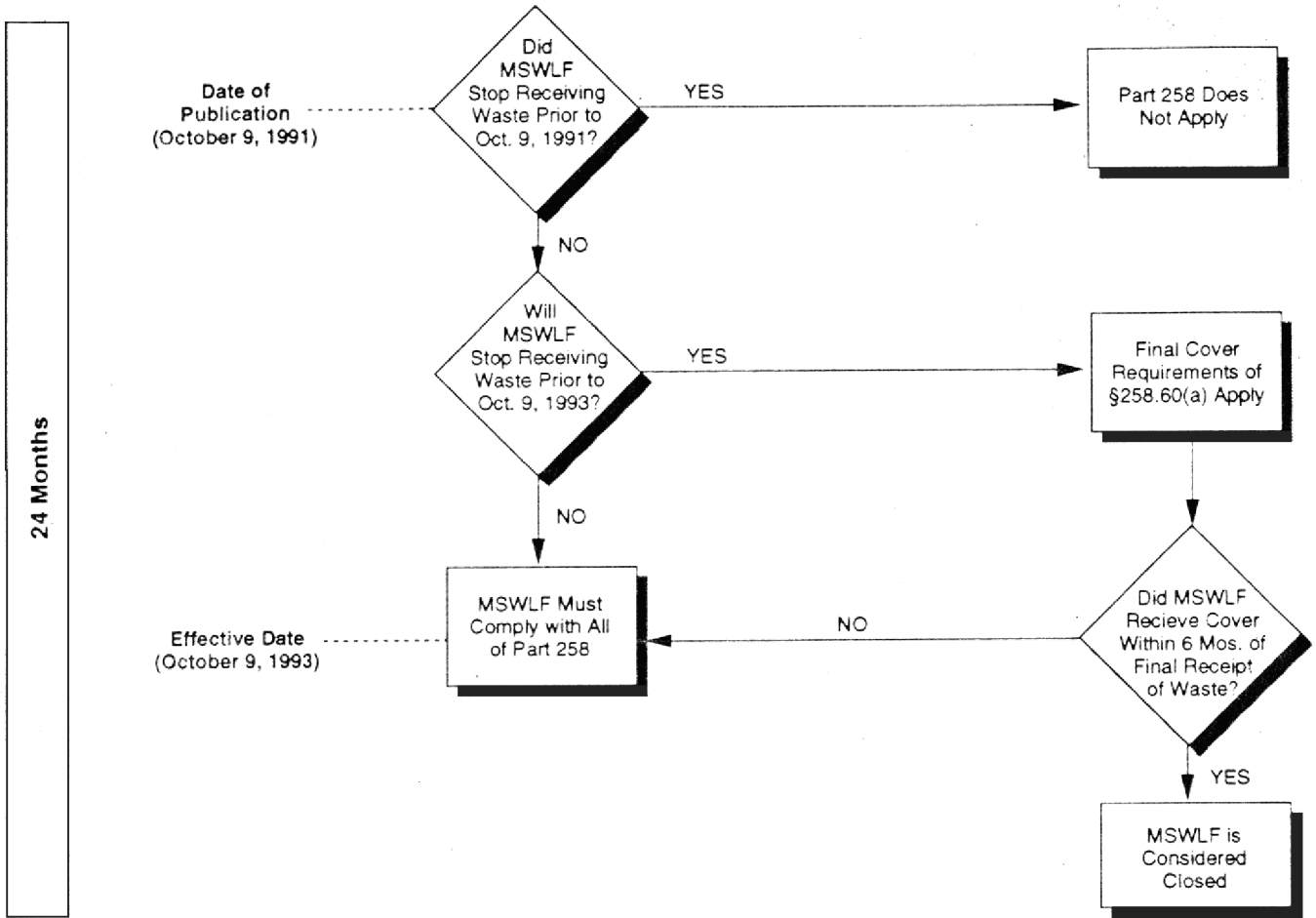


Figure 1-1
Applicability Flow Chart

(3) The MSWLF unit continues to receive waste after October 9, 1993. The owners or operators must comply with all requirements of Part 258, except where specified otherwise.

1.3.3 Technical Considerations

MSWLF units that receive the last load of waste between October 9, 1991 and October 9, 1993, must complete closure within six months of the last receipt of waste. Closure requirements are specified in Subpart F; however, these MSWLF units will be subject only to the closure requirements of §258.60(a) unless they fail to complete closure within the six-month period. The alternative cover design is not an option for MSWLF units in unapproved States.

The final cover system must be designed to minimize infiltration and erosion. The final cover must have a permeability that is less than or equal to the permeability of the bottom liner system or the natural subsoils present, or a permeability no greater than 1×10^{-5} cm/sec, whichever is less. The system must be composed of an erosion layer that consists of at least six inches of an earthen material capable of sustaining native plant growth and an infiltration layer that is composed of at least 18 inches of an earthen material. However, if a MSWLF unit is constructed with a synthetic membrane in the liner system, it is anticipated that the final cover also will require a synthetic liner. Currently, it is not possible to construct an earthen liner with a permeability less than or equal to a synthetic membrane. Detailed technical considerations for the cover requirements under §258.60(a) are provided in Chapter 6.

1.4 SMALL LANDFILL EXEMPTIONS

40 CFR §258.1 (f)

1.4.1 Statement of Regulation

(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 subparts D [~~and E~~]* of this Part, so long as there is no evidence of existing ground-water contamination from the MSWLF unit and the MSWLF unit serves:

(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.

(2) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions that meet the criteria in (f)(1)(i) or (f)(1)(ii) must place in the operating record information demonstrating this.

(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 (f)(1)(i) or (ii), the owner or operator must notify the State

Director of such contamination and, thereafter, comply with Subparts D [and E]* of this Part.

* [Note: On May 7, 1993 the U.S. Court of Appeals for the District of Columbia Circuit issued an opinion that EPA did not have the authority to exempt these small landfills from the ground-water monitoring requirements (Subpart E), therefore, these small landfills can not be exempted from Subpart E. EPA is delaying the date of compliance for these units until October 9, 1995 (58 FR 51536; October 1, 1993).]

1.4.2 Applicability

The exemption from Subpart D (Design) is applicable only to owners or operators of landfill units that receive, on an annual average, less than 20 tons of solid waste per day. The exemption is allowed so long as there is no evidence of existing ground-water contamination from the MSWLF unit. In addition, the MSWLF unit must serve a community that meets one of the following two conditions:

- For at least three consecutive months of the year, the community's municipal solid waste cannot be transported by rail, truck, or ship to a regional waste management facility; or
- There is no practicable alternative for managing wastes, and the landfill unit is located in an area that receives less than 25 inches of annual precipitation.

If either of the above two conditions is met, and there is no evidence of existing ground-water contamination, the landfill unit owner or operator is eligible for the exemption from the design, ground-water monitoring,

and corrective action requirements. The owner or operator must place information documenting eligibility for the exemption in the facility's operating record. Once an owner or operator can no longer demonstrate compliance with any of the conditions of the exemption, the MSWLF facility must be in compliance with Subpart D.

1.4.3 Technical Considerations

The weight criterion of 20 tons does not have to be based on actual weight measurements but may be based on weight or volume estimates. If the daily waste receipt records, which include load weights, are not available for the facility, waste volumes can be estimated by using conversion factors of 1 ton = two to three cubic yards per ton depending on the type of compaction used at the MSWLF unit. Waste weights may be determined by counting the number of trucks and estimating an average weight for each.

To determine the daily waste received, an average may be used. If the facility is not open on a daily basis, the average number should reflect that fact. For example, if a facility is open four days per week (208 days/year) and accepts 25 tons each day, then the average daily amount of waste received can be calculated as follows:

Average Daily Waste Calculation

4 days/week x 52 weeks/year = 208 days/year; and

25 tons/day x 208 days/year = 5200 tons/year; then

5200 tons/year ÷ 365 days/year = 14.25 tons/day.

The facility would meet the criteria for receiving less than 20 tons per day.

Compliance with the 20 tons per day criterion should be based on all waste received, including household waste and agricultural or industrial wastes. As defined in the regulations, household waste includes any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

The exemption from Subpart D requires that there be "no evidence of existing ground-water contamination" as a condition for eligibility. Evidence of contamination may include detected or known contamination of nearby drinking water wells, or physical evidence such as stressed vegetation that is attributable to the landfill.

One of two other conditions must be present for the exemption to apply. The first of these conditions is an annual interruption in transportation for at least three consecutive months. For example, some rural villages in Alaska may be restricted from transporting wastes to a regional facility due to extreme winter climatic conditions. These villages would find it impossible to transport wastes to a regional waste facility for at least three months out of the year due to snow and ice accumulation.

The second condition is composed of two requirements: (1) the lack of a practicable waste management alternative; and (2) a location that receives little rainfall. The exemption applies only to those areas that meet both requirements.

The determination of a "practicable waste management alternative" includes

consideration of technical, economic, and social factors. For example, some small rural communities, especially in the western part of the United States, are located great distances from alternative waste management units (other MSWLF units, composting facilities, municipal waste combustors, transfer stations, etc.) making regionalization of waste management difficult.

Furthermore, many rural communities are located in arid areas that receive 25 inches or less of precipitation annually, which reduces the likelihood of ground-water contamination because of lessened leachate generation and contaminant migration. Rainfall information can be obtained from the National Weather Service, the National Oceanographic and Atmospheric Administration (NOAA), and the United States Geological Survey (USGS) Water Atlases.

1.5 APPLICABILITY

40 CFR §258.1 (g)-(j)

1.5.1 Statement of Regulation

(g) Municipal solid waste landfill units failing to satisfy these criteria are considered open dumps for purposes of State solid waste management planning under RCRA.

(h) Municipal solid waste landfill units failing to satisfy these criteria constitute open dumps, which are prohibited under Section 4005 of RCRA.

(i) Municipal solid waste landfill units containing sewage sludge and failing

to satisfy these Criteria violate sections 309 and 405(e) of the Clean Water Act.

(j) The effective date of this part is October 9, 1993, unless otherwise specified.*

*[NOTE: EPA finalized several revisions to 40 CFR Part 258 on October 1, 1993 (58 FR 51536) and issued a correction notice on October 14, 1993 (58 FR 53136). These revisions delay the effective date for some categories of landfills. More detail on the content of the revisions is included in the introduction.]

1.5.2 Applicability

All MSWLF facilities that receive waste on or after the effective date must comply with all of Part 258 except where otherwise noted. MSWLF facilities that fail to comply with the Part 258 Criteria will be in violation of Section 4005 of RCRA and with Sections 309 and 405(e) of the Clean Water Act if the facility receives sewage sludge.

1.5.3 Technical Considerations

Failure to comply with the Part 258 Criteria will result in a MSWLF unit being categorized as an open dump under Section 4005 of RCRA. The practice of operating an open dump is prohibited.

If a MSWLF unit co-disposes sewage sludge with municipal solid waste and fails to comply with Part 258, it also will be in violation of Section 405(e) of the Clean Water Act (CWA), which requires that sewage sludge be disposed of in accordance with regulations established for such disposal. If found to be in violation, owners or operators may be liable for both civil and

criminal actions enforced under Section 309 of the Clean Water Act.

1.6 DEFINITIONS **40 CFR §258.2**

1.6.1 Statement of Regulation

Unless otherwise noted, all terms contained in this part are defined by their plain meaning. This section contains definitions for terms that appear throughout this Part; additional definitions appear in the specific sections to which they apply.

Active life means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities in accordance with §258.60 of this Part.

Active portion means that part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with §258.60 of this Part.

Aquifer means a geological formation, group of formations, or portion of a formation capable of yielding significant quantities of ground water to wells or springs.

Commercial solid waste means all types of solid waste generated by stores, offices, restaurants, warehouses, and other non-manufacturing activities, excluding residential and industrial wastes.

Director of an approved State means the chief administrative officer of the State agency responsible for implementing the State municipal solid waste permit program or other system of prior approval that is deemed to be adequate by EPA under regulations published pursuant to section 4005 of RCRA.

Existing MSWLF unit means any municipal solid waste landfill unit that is receiving solid waste as of the effective date of this Part. Waste placement in existing units must be consistent with past operating practices or modified practices to ensure good management.

Facility means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.

Ground water means water below the land surface in a zone of saturation.

Household waste means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

Industrial solid waste means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under Subtitle C of RCRA. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: Electric power generation; fertilizer/agricultural chemicals; food and related products/by-

products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

Lateral expansion means a horizontal expansion of the waste boundaries of an existing MSWLF unit.

Leachate means a liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

Municipal solid waste landfill unit means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under §257.2. A MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion.

New MSWLF unit means any municipal solid waste landfill unit that has not received waste prior to the effective date of this Part.

Open burning means the combustion of solid waste without:

- (1) Control of combustion air to maintain adequate temperature for efficient combustion,
- (2) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and
- (3) Control of the emission of the combustion products.

Operator means the person(s) responsible for the overall operation of a facility or part of a facility.

Owner means the person(s) who owns a facility or part of a facility.

Run-off means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

Run-on means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

Saturated zone means that part of the earth's crust in which all voids are filled with water.

Sludge means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

Solid waste means any garbage, or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. 1342, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

State Director means the chief administrative officer of the State agency responsible for implementing the State municipal solid waste permit program or other system of prior approval.

Uppermost aquifer means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

Waste management unit boundary means a vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

1.6.2 Applicability

The definitions are applicable to all new, existing, and lateral expansions of existing MSWLF units regulated under 40 CFR §258. Additional definitions are provided within the body of the regulatory language and will apply to those particular sections. Definitions in Subpart A apply to all Sections of Part 258.

1.6.3 Technical Considerations

Selected definitions will be discussed in the following brief narratives.

Approved State: Section 4005(c) of RCRA requires that each State adopt and implement a State permit program. EPA is required to determine whether the State has developed an adequate program. States have primary responsibility for implementation and enforcement of the Criteria. EPA has the authority to enforce the Criteria in States where EPA has deemed the permit program to be inadequate. The Agency intended to extend to Indian Tribes the same opportunity to apply for permit program approval as is available to States. A federal court ruled, however, in *Backcountry Against Dumps v. EPA*, 100 F.3d 147 (D.C. Cir. 1996), that EPA cannot do so. The Agency therefore developed a site-specific rulemaking process to provide warranted flexibility to owners and operators of MSWLFs in Indian Country. Obtain the draft guidance document *Site-Specific Flexibility Requests for Municipal Solid Waste Landfills in Indian Country* (EPA 530-R-97-016) for further information.

Aquifer: An aquifer is a formation or group of formations capable of yielding a significant amount of ground water to wells or springs. To be an aquifer, a formation

must yield enough water for ground-water monitoring samples. An unconfined aquifer is one where the water table is exposed to the atmosphere through openings in the overlying geologic formations. A confined aquifer is isolated from the atmosphere at the discharge point by impermeable geological units. A confined aquifer has relatively impermeable beds above and below.

Existing unit: Any MSWLF unit that is receiving household waste as of October 9, 1993 must continue to operate the facility in a manner that is consistent with both past operating practices and modified practices that continue or improve good waste management. Changes in operating practices intended to circumvent the purpose, intent, or applicability of any portions of Part 258 will not be considered in conformance with the Criteria. Facilities spreading a thin layer of waste over unused new areas will not be exempt from the design requirements for new units. The portion of a facility that is considered to be an existing unit will include the waste management area that has received waste prior to the effective date of Part 258. Existing units may expand vertically. However, vertical placement of waste over a closed unit would cause the unit to be considered a new unit and would subject the unit to the design requirements in Part 258.

Note: Not all units that have a valid State permit are considered existing units. To be an existing unit, the land surface must be covered by waste by October 9, 1993.

Lateral expansion: Any horizontal expansion of the waste boundary of a unit is a lateral expansion. This means that new

land surface would be covered by waste after October 9, 1993. Expansions to the existing unit have to be consistent with past operating procedures or operating practices to ensure good management.

Spreading wastes over a large area to increase the size of an existing unit, prior to the effective date would not be consistent with good management practices. If a new land surface adjacent to an existing unit first receives waste after October 9, 1993, that area is classified as a lateral expansion and therefore, is subject to the new design standards. However, Part 258 regulations provide the flexibility for approved States to determine what would constitute a lateral expansion.

Municipal solid waste landfill unit: Municipal solid waste landfill units are units that receive household waste, such as that from single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. Other Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, and industrial solid waste, may be disposed of in a municipal solid waste landfill.

New municipal solid waste landfill unit: A new MSWLF unit is any unit that has not received waste prior to October 9, 1993. Lateral expansions are considered new MSWLF units for the purpose of location restrictions and design standards. New MSWLF units are subject to all requirements of Part 258.

1.7 CONSIDERATION OF OTHER FEDERAL LAWS 40 CFR §258.3

1.7.1 Statement of Regulation

The owner or operator of a municipal solid waste landfill unit must comply with any other applicable Federal rules, laws, regulations, or other requirements.

1.7.2 Applicability

Owners and operators of MSWLF units must comply with Federal regulations, laws, rules or requirements that are in effect at the time of publication of Part 258 or that may become effective at a later date.

1.7.3 Technical Considerations

Specific sections of Part 258 reference major Federal regulations that also may be applicable to MSWLF units regulated under Part 258. These regulations include the Clean Water Act (wetlands, sludge disposal, point and non-point source discharges), the Clean Air Act, other parts of RCRA (Subtitle C if the MSWLF unit inadvertently receives regulated hazardous waste), and the Endangered Species Act. Furthermore, additional Federal rules, laws, or regulations may need to be considered. The owner or operator of the MSWLF unit is responsible for determining the conditions present at the facility that may require consideration of other Federal Acts, rules, requirements, or regulations. Careful review of the Part 258 Criteria will help to identify most of the major Federal laws that may be applicable to a particular MSWLF unit.