§ 257.9 Wetlands.

(a) Owners or operators of new units and lateral expansions shall not locate such units in wetlands, unless the owner or operator can make the following demonstrations to the Director of an approved State:

(1) Where applicable under section 404 of the Clean Water Act or applicable State wetlands laws, the presumption that a practicable alternative to the proposed landfill is available which does not involve wetlands is clearly rebutted:

(2) The construction and operation of the unit will not:

(i) Cause or contribute to violations of any applicable State water quality standard;

(ii) Violate any applicable toxic effluent standard or prohibition under Section 307 of the Clean Water Act;

(iii) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973; and

(iv) Violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972 for the protection of a marine sanctuary;

(3) The unit will not cause or contribute to significant degradation of wetlands. The owner/operator must demonstrate the integrity of the unit and its ability to protect ecological resources by addressing the following factors:

(i) Erosion, stability, and migration potential of native wetland soils, muds and deposits used to support the unit;

(ii) Erosion, stability, and migration potential of dredged and fill materials used to support the unit;

(iii) The volume and chemical nature of the waste managed in the unit;

(iv) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of the waste;

(v) The potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(vi) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected.

(4) To the extent required under section 404 of the Clean Water Act or applicable State wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and

(5) Sufficient information is available to make a reasonable determination with respect to these demonstrations.

§ 257.13 Deadline for making demonstrations.

Existing units that cannot make the demonstration specified in §257.8(a) pertaining to floodplains by January 1, 1998, must not accept CESQG hazardous waste for disposal.