

Dated: August 4, 1995.

**George T. Frampton, Jr.,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 95-19730 Filed 8-9-95; 8:45 am]

BILLING CODE 4310-70-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[PA56-1-7086b; FRL-5253-1]

#### Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania: Reasonably Available Control Technology for Stroehmann Bakeries, Inc., Lycoming and Bradford Counties

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the purpose of establishing and requiring the use of reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from two Stroehmann Bakeries, Inc. (Stroehmann) facilities located in Sayre Borough, Bradford County and Old Lycoming Township, Lycoming County. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule and in the Technical Support Document prepared for that rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. **DATES:** Comments must be received in writing by September 11, 1995.

**ADDRESSES:** Written comments on this action should be addressed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the

documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Henry, (215) 597-0545.

**SUPPLEMENTARY INFORMATION:** See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

#### List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401-7671q.

Dated: June 22, 1995.

**James W. Newsom,**

*Acting Regional Administrator, Region III.*

[FR Doc. 95-19743 Filed 8-9-95; 8:45 am]

BILLING CODE 6560-50-P

### 40 CFR Part 258

[FRL-5275-3]

RIN 2050-AE24

#### Alternatives for Ground-Water Monitoring and Delay of General Compliance Date for Small Municipal Solid Waste Landfills Located in Either Dry or Remote Areas

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rulemaking and request for comment.

**SUMMARY:** On October 9, 1991, the Environmental Protection Agency (EPA) promulgated final solid waste disposal facility criteria (40 CFR Part 258), setting in place national minimum standards for municipal solid waste landfills (MSWLFs). In that rulemaking, the Agency provided an exemption from ground-water monitoring for small MSWLF units located in dry or remote locations. The Agency provided this relief as it sought to balance the protection of human health and the environment with the practicable capability of these small community landfill owners and operators.

In 1993, the U.S. Court of Appeals for the District of Columbia vacated this

ground-water monitoring exemption. The Agency today is proposing to provide to approved States and Tribes the flexibility to determine alternative ground-water monitoring requirements, on a site-specific basis, for small MSWLFs that are located in either dry or remote areas (hereafter referred to as "qualifying small MSWLFs"). Under this proposal, approved States and Tribes may consider site-specific alternatives to conventional ground-water monitoring that are relatively low in cost and are still capable of detecting contamination. Through the use of ground-water monitoring alternatives, the Agency estimates potential annual national cost savings of between \$5.9 million to \$22.2 million. The Agency is providing a 90-day comment period for this portion of today's proposal.

Today's rulemaking also solicits comment on a delay of the general compliance date of the MSWLF criteria for qualifying small MSWLFs. The Agency is providing a 30-day comment period for this separate portion of today's proposal.

**DATES:** The Agency is accepting public comments on the proposed rule changes related to the delay of the compliance date for small MSWLFs located in dry and remote areas in §§ 258.1(d)(3), 258.1(e)(4), 258.2, and 258.50(e) for a 30-day period beginning on August 10, 1995. The Agency also is accepting public comments on a separate proposed rule change allowing the use of alternative ground-water monitoring methods in § 258.50(a) for a 90-day period beginning on August 10, 1995.

**ADDRESSES:** The public should submit an original and two copies of their comments on this proposed rule to the Docket Clerk (5305), U. S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. All written comments received by EPA regarding the delay of the compliance date will be placed in public docket number F-95-AGDP-FFFFF. Please place the docket number F-95-AGDP-FFFFF on the comments submitted to the Agency on this issue. Written comments received by EPA regarding the use of alternative ground-water monitoring methods will be placed in public docket number F-95-AGAP-FFFFF. Please place the docket number F-95-AGAP-FFFFF on the comments submitted to the Agency on this issue.

Background information collected in support of today's proposed rule may be found in public docket number F-95-AGAP-FFFFF. All dockets are available for viewing in the RCRA Information Center (RIC), located in Room M2616, U.S. EPA, 401 M Street SW.,

Washington, DC 20460. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. The public must make an appointment to view docket materials. Call 202-260-9327 for an appointment. Copies cost \$0.15 per page for materials exceeding 100 pages.

**FOR FURTHER INFORMATION CONTACT:** For general questions on this proposed rule, contact the RCRA/Superfund Hotline at 1-800-424-9346, TDD 1-800-553-7672 (hearing impaired); in the Washington, DC metropolitan area the number is 703-412-9810, TDD 703-412-3323. For technical questions, contact Mr. Andrew Teplitzky (703-308-7275) or Mr. Allen Geswein (Phone 703-308-7261): Office of Solid Waste, U.S. Environmental Protection Agency, Mail Code 5306W, 401 M St. SW., Washington, DC 20460.

#### SUPPLEMENTARY INFORMATION:

##### Preamble Outline

- I. Authority
- II. Background
  - A. 40 CFR Part 258 and Small Landfill Exemption
  - B. Special Circumstances of Small Communities and Related Public Comments
    - 1. Influence of Certain Hydrogeologic and Climatic Factors on Leachate Generation and Potential Ground-Water Contamination at Small Landfills
    - 2. Limited Financial Resources
    - 3. Obstacles to Regional Solid Waste Management Practices
    - 4. Likelihood of Increased Illegal Dumping
  - C. Additional Public Comments
    - 1. Comments on Alternatives
    - 2. Comments on 40 CFR 258.50(b), Demonstration of No Potential for Migration
    - 3. Proposal for Extension to General Compliance Date
- III. Alternatives to Ground-Water Monitoring
- IV. Proposed Rule for Alternatives to Ground-Water Monitoring
  - A. Overview
  - B. Proposed Approach for Using Alternatives
    - 1. Consideration of Site-Specific Factors in Selection of an Alternative Monitoring Technique
    - 2. Phased Approach to Alternative Ground-Water Monitoring
- V. Role of States and Tribes
- VI. Consideration of Issues Related to Environmental Justice
- VII. Impact Analysis
  - A. Executive Order 12866
  - B. Regulatory Flexibility Act
  - C. Paperwork Reduction Act
  - D. Executive Order 12875
  - E. Unfunded Mandates

##### I. Authority

The Agency is proposing today's regulations under the authority of section 4010(c) of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6949a(c). Section

4010(c) requires EPA to establish appropriate ground-water monitoring, location, and corrective action criteria for MSWLFs that may receive household hazardous wastes or hazardous waste from small quantity generators. Section 4010(c) States that: "At a minimum such revisions for facilities potentially receiving such wastes should require ground-water monitoring as necessary to detect contamination, establish criteria for the acceptable location of new or existing facilities, and provide for corrective action as appropriate."

##### II. Background

###### A. 40 CFR Part 258 and Small Landfill Exemption

On August 30, 1988, the Agency published proposed landfill criteria under Subtitle D of RCRA (53 FR 33314), including minimum federal criteria for location restrictions, facility design and operation, ground-water monitoring, corrective action, financial assurance, and closure and post-closure care requirements. The Agency received over 350 public comments in response to the proposed criteria.

The Agency received a significant number of public comments on the impact the proposal would have on small communities that own and operate small landfills. Commentors were concerned that: (1) Small communities face shortages of technical professionals trained in landfill design and operating practices; (2) small communities have insufficient financial resources to be able to comply with the most costly requirements of the criteria (i.e., the design and ground-water monitoring requirements); and (3) a resurgence in illegal dumping would occur if the proposed criteria resulted in closures of small landfills.

Responding to these concerns in the landfill criteria final rule, published on October 9, 1991 (56 FR 50978), EPA included an exemption for owners and operators of certain small MSWLF units from the design and ground-water monitoring requirements of the criteria. To qualify for the exemption, the small landfill could only accept less than twenty tons of municipal solid waste per day (based on an annual average), have no evidence of existing ground-water contamination, and either: (1) Serve 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 (2) be located in an area that annually receives less than or equal to 25 inches of precipitation and serve a community

that has no practicable waste management alternative. In adopting this limited exemption, the Agency believed it had complied with the statutory requirement to protect human health and the environment, taking into account the practicable capabilities of small landfill owners and operators.

In January, 1992, the Sierra Club and the Natural Resources Defense Council (NRDC) filed a petition with the U.S. Court of Appeals, District of Columbia Circuit, for review of the Subtitle D criteria. The Sierra Club and NRDC alleged, among other things, that EPA exceeded its statutory authority when it provided for an exemption for certain landfills from the ground-water monitoring requirements. On May 7, 1993, the Court of Appeals issued its opinion in *Sierra Club v. United States Environmental Protection Agency* 992 F.2d 337 (D.C. Cir. 1993). The Court determined that under RCRA section 4010(c), the only factor EPA could consider in determining whether facilities must monitor ground-water was whether such monitoring was "necessary to detect contamination," not whether such monitoring is "practicable." Thus, the Court vacated the small landfill exemption as it pertains to ground-water monitoring, and remanded that portion of the final rule to the Agency for further consideration. The Court did not require EPA to remove the exemption for design requirements, since the Sierra Club and NRDC did not challenge the final rule's exemption from the design requirement.

Consequently, as part of the Agency's October 1, 1993 final rule delaying the effective date of the MSWLF criteria (58 FR 51536; October 1, 1993), EPA rescinded the exemption from ground-water monitoring for qualifying small MSWLFs. At the same time, however, EPA delayed the effective date of the MSWLF criteria for qualifying small MSWLFs for two years (until October 9, 1995), to allow owners and operators of such small MSWLFs adequate time to decide whether to continue to operate in light of the Court's ruling, and to prepare financially for the added costs if they decided to continue to operate. This additional two-year period also was intended to provide time for EPA to determine if there are practical and affordable alternative monitoring systems or approaches that are adequate to detect contamination.

The U.S. Court of Appeals decision does not preclude EPA from issuing separate ground-water monitoring standards for these landfills, taking into account size, location, and climate, as long as these separate standards ensure that any ground-water contamination

would be detected. The Agency, therefore, solicited comments on alternative ground-water monitoring requirements in the publication of the proposed rule to extend the effective date of the MSWLF criteria (56 FR 40568, July 28, 1993), and later, held a series of related public meetings.

The Agency announced on May 9, 1994, that it would hold a series of four public meetings to provide an additional opportunity for interested parties to present the Agency with information regarding the costs of monitoring ground water at qualifying small MSWLF units, and on any cost-effective alternatives to conventional ground-water monitoring (59 FR 23857). These four meetings were held in June, 1994, in Midland, Texas; Salt Lake City, Utah; Anchorage, Alaska; and Washington, DC. Approximately 60 commentators representing State and local governments, landfill owners and operators, geologists, engineers, and other parties involved in waste management presented testimony at those meetings. A copy of these comments may be found in public docket number F-95-AGAP-FFFFF.

Based on the public comments submitted in response to the 1988 proposed rule, the additional comments received at these public meetings, and on related Agency research, the Agency continues to believe that certain qualifying small MSWLFs warrant special consideration with respect to their ground-water monitoring requirements.

#### *B. Special Circumstances of Small Communities and Related Public Comments*

In the preamble (56 FR 50989 through 50991, October 9, 1991) to the Solid Waste Disposal Facility Criteria Final Rule codified under 40 CFR part 258, the Agency discussed the particular circumstances of small remote communities and the hardships those communities would face if they had to comply with all of the ground-water monitoring requirements of part 258. These circumstances were, in part, the basis for the small landfill exemption described in the previous section of this preamble. Although the ground-water monitoring portion of the exemption has been deleted, the Agency still believes that it may not be necessary or appropriate to require qualifying small MSWLFs in arid or remote areas to comply with the full ground-water monitoring requirements in part 258.

As indicated in the preamble to part 258, circumstances that characterize small communities and their landfills may include: (a) Certain mitigating

hydrogeologic and climatic factors, and their influence on impacts to ground water; (b) limited financial resources and technical expertise to comply with the design and ground-water monitoring provisions; (c) financial and practical obstacles to providing regionalized solid waste management practices, such as large geographic distances between communities, or geographic isolation for extended periods of time due to winter weather conditions; and (d) the potential for increased illegal dumping if small landfills are no longer available or regionalization of solid waste is impractical or excessively expensive. The next section of the preamble describes these circumstances in more detail and discusses additional information provided by commentators at the four public meetings.

#### *1. Influence of Certain Hydrogeologic and Climatic Factors on Leachate Generation and Potential Ground-Water Contamination at Small Landfills*

The risks of contamination posed by qualifying small MSWLFs vary from location to location and depend on an array of climatic, geologic, and hydrogeologic factors. It was asserted by most commentators that MSWLF units meeting the criteria of 258.1(f)(1) pose a relatively low risk of contamination to ground water. The reasons for this, the commentators noted, are that qualifying small, dry MSWLFs (and many of the remote MSWLFs in Alaska) are situated in areas receiving very small amounts of precipitation, and in such "dry" areas where evapotranspiration often exceeds precipitation annually, the amounts of leachate generated would be minimal. Several commentators reflected that, in general, lower levels of precipitation decrease the probability for leachate generation at MSWLFs, corresponding to a decreased potential for adverse environmental impacts. Commentors stated that the time of year and the frequency and intensity of a precipitation event may significantly affect the potential for leachate generation. Commentors also remarked that in many arid western locations, ground-water is located hundreds of feet below the surface and may be separated from the landfill by rock formations with relatively low permeabilities. Commentors contended that migration of leachate to the ground-water table in such climatic and geologic conditions would be unlikely.

When the D.C. Circuit Court of Appeals remanded the ground-water monitoring exemption in the final MSWLF criteria back to the Agency in *Sierra Club v. U.S. EPA*, the Court stated that the "record provides no basis to

conclude that \* \* \* the aridity of a facility's climate suffices to establish that ground-water monitoring is not 'necessary to detect contamination.' " 992 F.2d at 345. Today's proposal, rather than using the aridity of a facility's climate to provide a ground-water monitoring exemption, uses aridity as a basis for allowing approved States and Tribes to permit the use of alternative monitoring techniques. The Agency is proposing to grant this authority to approved States and Tribes because it believes that small landfills located in arid areas of the U.S. are less likely to present a threat of contamination due to the dry climate and often great distance to ground water. It is important to note that this is not an exemption, but rather it enables approved States and Tribes to tailor monitoring programs based on site-specific characteristics.

The Agency continues to believe that ground-water monitoring plays an important role in ensuring protection of human health and the environment. However, the Agency believes that the relative public health and environmental risks posed by very small landfills located in arid areas is quite low, based on several reasons.

First, as noted by the commentators, lower levels of precipitation decrease the probability for leachate generation at MSWLFs. Agency water balance studies used to predict leachate generation from MSWLFs indicate that landfills located in dry areas generate very little leachate available for release to the ground water. In addition, the Agency's Subtitle D Risk Model used to predict human health risk resulting from landfills based on a variety of factors, showed that while no single factor is responsible for determining overall risk (i.e., risk results from a complex interaction of factors), a much lower risk of contamination exists from landfills located in dry areas of the country experiencing low net infiltration of precipitation versus wet areas with high net infiltration.

The Agency's choice of 25 inches of precipitation per year as a cut-off for the small landfill exemption contained in the original final MSWLF criteria was based, in part, on case studies on ground-water contamination from MSWLFs developed from State data. (A copy of these case studies may be found in public docket F-95-AGAP-FFFFF. The 25 inch cut-off was selected because, in part, under these conditions, evapotranspiration exceeds precipitation, making very little precipitation available to infiltrate the soil. Evapotranspiration is the portion of precipitation returned to the atmosphere by direct evaporation, by transpiration

of vegetation, or by sublimation from snow and ice. In addition, many of the locations characterized by net evapotranspiration also have ground water located at great depths, further reducing the risk of a small amount of leachate that could be generated by these small landfill from ultimately reaching the ground water. For these reasons, the Agency believes that the 25 inch annual precipitation criterion in the original small landfill exemption represents a reasonable cut-off for qualifying for the ground-water monitoring flexibility in today's rule. The Agency specifically requests data (for docket number F-95-AGAP-FFFFF) that either supports the 25 inch cut-off or provides the basis for establishing another criterion as a qualifier for today's flexibility.

Second, in addition to the low precipitation, the size of the landfill plays another factor in the potential for leachate generation. Agency water balance studies used to predict leachate generation from MSWLFs indicate a relationship between the area of a landfill surface and the quantity of leachate generated over time, whereby the smaller the surface area of the landfill, the lower the quantity of leachate generated. In general, landfills receiving small amounts of waste occupy less surface area than landfills receiving larger amounts of waste. The Agency's Subtitle D Risk Model was used to predict risk as a function of landfill size. Again, while no single factor is responsible for overall risk from a landfill, the model generally predicted a much lower risk of contamination from the smallest class of landfills modelled (approximately less than 20 TPD) relative to larger facilities. The Agency believes that the 20 TPD cut-off in the original small landfill exemption continues to represent a reasonable limit for qualifying as a small landfill for today's rule. Additional explanation of the 20 TPD limitation is contained in the preamble to the final MSWLF criteria (56 FR 50989-50991, October 9, 1991).

While a landfill may be small and dry, it may not always be a candidate for today's ground-water monitoring flexibility. Therefore, today's rule would require Directors of approved programs to assess the viability of alternative monitoring techniques on a site-specific basis. For example, the Agency recognizes that sources of moisture in addition to precipitation, such as ground-water intrusion into the landfill and the release of ambient waste moisture through waste degradation and compression, should be considered on a site-specific basis along with the

influences of size, climate, and geology when determining the ground-water monitoring requirements for a particular landfill.

The Agency continues to be aware of constraints on small community landfills located in geographically isolated areas where it is economically impracticable for the community to take advantage of a regional waste management facility. While today's proposal is limited to arid landfills (i.e., those located in areas receiving less than 25 inches of precipitation annually), the Agency recognizes that some small landfills located in areas receiving greater than 25 inches of annual precipitation also may face economic hardships associated with getting access to a regional waste management facility and therefore would also desire to take advantage of cost-efficient alternative monitoring methods, where conditions are appropriate.

Thus, it may be appropriate for landfills serving small populations in geographically isolated areas receiving greater than 25 inches of annual precipitation to take advantage of alternative monitoring methods where the local hydrogeology of the site minimizes, to a large extent, the migration of leachate to ground water. For example, areas with deep water tables and an adequate thickness of low permeability soil or rock between the landfill and water table could be candidates for using alternative monitoring methods. Other such landfills may be located in areas where bedrock (or permafrost in Alaska) exists at or near the base of the landfill, causing any potential leachate to migrate laterally over the bedrock rather than vertically to ground water below. Here again, a simplified alternative monitoring strategy may provide a more cost-effective and equally accurate method of detecting a release from the landfill.

Small communities in areas receiving greater than 25 inches of annual precipitation face many of the same financial problems that exist in arid areas. Therefore, the Agency also is requesting comment (for docket number F-95-AGAP-FFFFF) on the appropriateness of extending today's flexibility to any small landfill that has no practicable waste management alternative. The Agency solicits comment (for docket number F-95-AGAP-FFFFF) on whether alternative monitoring methods will detect contamination in more humid environments.

Because higher annual precipitation could lead to additional leachate

generation at a landfill, the Agency believes that site-specific conditions (e.g., hydraulic conductivity, depth to the uppermost aquifer) become increasingly important factors when considering whether to extend today's flexibility to non-arid small landfills. At this time, the Agency does not have sufficient data to identify those situations where it would be appropriate for small landfills in non-arid areas to use alternative ground-water monitoring methods to detect contamination. Therefore, the Agency requests comments (for docket number F-95-AGAP-FFFFF) and data on an appropriate set of hydrogeologic conditions that should exist at a small landfill before it could qualify for today's proposed flexibility to use alternative monitoring techniques.

## 2. Limited Financial Resources

A number of States and local governments have submitted cost data regarding ground-water monitoring demonstrating the high cost of ground-water monitoring at a landfill serving smaller communities where economies of scale are not available to decrease per capita or per household costs.

- The Texas Natural Resource Conservation Commission (TNRCC) reported that as many as 110 communities in west Texas (served by qualifying small MSWLFs) would be significantly impacted by existing part 258 ground-water monitoring requirements. TNRCC reports that if part 258 ground-water monitoring requirements are fully implemented, they would increase average monthly household waste disposal costs in the 110 communities by 285 percent.

- The New Mexico Environment Department indicated that application of all part 258 ground-water monitoring requirements would increase waste disposal costs per household by approximately \$44.00 per month in communities served by qualifying small MSWLFs.

- The Alaska Department of Environmental Conservation (ADEC) reports that for the 289 qualifying small MSWLFs in Alaska, a total capital cost of approximately \$6.5 million would be incurred just for the cost of installing monitoring wells (which is cited to be about one-third of the annual construction budget for village sanitation facilities in Alaska). ADEC reports annual cost estimates of \$10,600 per facility for sample collection, shipping, and analysis, assuming the landfill has four monitoring wells sampled twice annually. ADEC states that the average community operating budget (for a population of about 800

individuals) is \$50,000 to \$80,000 per year for all services, not just solid waste; therefore, ground-water monitoring alone would consume on average about 13–20% of a community's budget.

As discussed in the Preamble to the final part 258 MSWLF criteria (56 FR 50989), the Agency recognized that the landfill criteria could have a significant economic impact on those small landfills that could not regionalize to benefit from the economies of scale available to larger MSWLFs. RCRA § 4010(c) directed the Agency to promulgate MSWLF criteria "necessary to protect human health and the environment \* \* \* [taking] into account the *practicable capability* of such facilities (emphasis added)." The Agency, when it developed the MSWLF criteria, interpreted the phrase "practicable capability" to allow for the consideration of the cost of the criteria to MSWLF owners and operators (see 56 FR 509830). Therefore, the Agency included a small landfill exemption in the original MSWLF criteria to exempt lower risk small MSWLFs from the two highest cost components of the rule: ground-water monitoring (27 percent of the total costs) and liners/leachate collection systems (40 percent of the total costs).

Based on the low risk associated with the qualifying small MSWLFs (as discussed in the previous section of today's preamble) and the high costs associated with full ground-water monitoring for qualifying small MSWLFs, the Agency continues to believe that some relief is warranted for these MSWLFs. Cost information developed by the Agency (discussed in Section VII of this Preamble), and similar information submitted in public comments and summarized above, indicates a significant financial burden would be placed on small communities due to implementation of all of the part 258 ground-water monitoring requirements. In particular, the Agency remains concerned about communities with exceptionally low operating budgets that are unable to participate in regional arrangements with neighboring communities to lower their cost of compliance. The ground-water monitoring flexibility provided in today's proposal is designed to alleviate some of the cost burden on affected small landfills, while still ensuring detection of contamination to ground water.

### 3. Obstacles to Regional Solid Waste Management Practices

In some areas of the U.S., the cost of compliance with the MSWLF criteria can be shared among a number of

communities through the use of a regional disposal facility. However, the preamble of part 258 final rule (56 FR 50989) discusses why regionalization of solid waste management is not feasible for many small communities. The preamble states that, in addition to economic constraints, significant geographic obstacles exist particularly in remote areas of the country where communities are separated by great distances or where surface transportation is not available for extended periods of time during the year (such as in Alaska).

The Agency has performed an analysis to determine the costs for closing small landfills, opening a transfer station, and hauling a community's waste to a regional facility. The analysis concludes that for a 10 ton per day (TPD) landfill, the total annual cost is about \$160,000 (\$160 per household). For a 1 TPD landfill, the total annual cost is about \$18,000 (\$180 per household). This analysis assumes a one-way land traveled distance of 65 miles as discussed in the docket for this rulemaking (F-95-AGAP-FFFFF). The higher annual household cost for the 1 TPD landfill versus the 10 TPD facility arises from a smaller number of households being served by the 1 TPD facility. This cost analysis is discussed further in technical background document located in docket number F-95-AGAP-FFFFF.

Small remote communities also may experience practical obstacles to regional solid waste management. Commentors at the public meetings related the difficulties associated with transporting waste where communities are separated by large geographic distances, or are served only by unimproved roads that are not likely to be adequate for heavy truck traffic. In certain areas of Alaska, road systems may not be available at all.

### 4. Likelihood of Increased Illegal Dumping

Many commentors have asserted that the number and extent of illegal dump sites will increase dramatically if small landfills are no longer available or if the regionalization of solid waste is impractical or excessively expensive. This assertion is supported by data provided by the Texas Natural Resource Conservation Commission (TNRCC) and contained in docket number F-95-AGAP-FFFFF, that suggest a positive correlation between landfill closures and illegal dumping in Texas for the years 1988–1994.

## C. Additional Public Comments

### 1. Comments on Alternatives

When the Agency announced the public meetings on alternatives to ground-water monitoring (59 FR 23857, May 9, 1994), it asked for commentors to provide ideas regarding potential alternatives and their costs and limitations. This section describes various technical approaches to alternatives to ground-water monitoring that were mentioned at these public meetings.

Commentors strongly encouraged EPA to provide States and Tribes with greater flexibility to determine ground-water monitoring requirements for qualifying small MSWLFs, including the flexibility to allow alternatives to conventional ground-water monitoring on a site-specific basis. Commentors indicated that in determining alternatives to ground-water monitoring that were able to detect ground-water contamination, consideration must be given to site-specific factors such as rock and soil types, hydrogeology, and climate, and to other general factors such as equipment availability and cost of operation.

Commentors focused on alternatives that monitor conditions in the unsaturated zone, in the saturated zone (i.e., ground water), in surface waters, in the surrounding soils, and in the landfill itself. Commentors addressed situations when early detection monitoring used in the unsaturated zone would be advantageous over conventional ground-water monitoring. The Agency believes that in geologic settings where ground water lies hundreds of feet below the MSWLF, appropriately installed unsaturated zone monitoring devices placed just below the MSWLF and above the uppermost aquifer would have the capability to detect releases of leachate from the MSWLF before leachate contacts ground water. The docket for today's proposal (F-95-AGAP-FFFFF) contains several compilations of information on a variety of alternative monitoring techniques, including a description of the techniques and a discussion of the site-specific conditions that are appropriate for each.

Commentors offered specific "early detection" methods, that include the measurement of moisture content within the soil or rock formations just beneath the landfill by using gypsum blocks, geophysical electrical resistivity surveys, and/or lysimeters. For further explanation of these methods, the reader is referred to two technical background documents: "Examples of Alternatives to Conventional Ground-Water Monitoring Wells at Small, Dry or

Remote Landfills" and "Subsurface Characterization and Monitoring Techniques, Volumes I and II." Both documents may be found in the docket for this rulemaking (F-95-AGAP-FFFFF).

While many of these early detection methods, such as gypsum blocks and resistivity surveys, do not measure any of the specific chemical parameters listed in Appendix I and II of Part 258, the Agency agrees with commentors that they are well-established, reliable indicators of moisture that are affordable for many small MSWLFs to employ. Detection of moisture by an early detection system can be a way to predict potential leachate movement from a MSWLF unit. The Agency recognizes that the presence of moisture does not necessarily mean that there is contamination leaving the MSWLF unit, but detection of moisture can be an effective first step in a phased approach to detecting contamination. EPA believes that these systems can be cost effective in such applications and believes that the States and Tribes can use site-specific information to determine when to use these systems.

Commentors were in agreement that a phased approach would be the most feasible and cost-effective method of implementation. In such an approach, an effective low cost technology could be used to detect moisture movement beneath a MSWLF unit. The ground water would be sampled to determine ground-water quality in a second phase. Later, should ground-water contamination be detected, an expanded monitoring system would be employed to provide greater detail on the nature and extent of contamination.

The Agency agrees with this approach for implementing the ground-water monitoring requirements of RCRA Section 4010(c). The Agency believes that if low-cost moisture detection devices (such as gypsum blocks) were used as the initial monitoring technique and moisture was detected beneath or near the landfill, expanded monitoring would be implemented to confirm whether an actual release from the landfill had occurred or if the moisture detection devices were reacting to infiltrating water from another source. One example of an expanded monitoring technique for this situation could be the use of small diameter sampling tools that are temporarily driven into the ground by hydraulically powered hammers to recover subsurface solids, liquids, or gases for laboratory analysis.

In cases where the recovery and analysis of ground water is necessary, several commentors pointed out that the

Agency should allow limited saturated zone monitoring for a narrow set of indicator elements and/or parameters in place of the Appendix I constituents. The Agency agrees that alternative parameters used in lieu of current Appendix I constituents may be appropriate for these facilities on a site-specific basis. A further discussion regarding the use of alternative parameters may be found in Section IV.B.1 of today's preamble.

Several commentors provided case studies on the use of existing agricultural and drinking water supply wells in ground-water monitoring. The Agency believes that the use of existing agricultural and drinking water supply wells may be acceptable where the wells are located so that they detect potential contamination from the MSWLF unit. An owner/operator could determine the suitability of existing wells for detecting a release by conducting a characterization of the site hydrogeology, including analysis of existing well logs.

For MSWLF units in Alaska, commentors indicated that conditions are so unique in the State that alternative monitoring techniques in Alaska would not usually be considered appropriate for the 48 contiguous States. For example, commentors stated that, in many instances, surface-water monitoring would be more appropriate than ground-water monitoring. This is because lateral migration of leachate is more probable and is of greater concern than migration to ground water, due to low permeability subsurface soils and the presence of permafrost in some areas. Commentors recommended monitoring surface/subsurface temperatures at frozen landfills located in permafrost areas. Commentors from Alaska also recommended modifying the frequency of ground-water monitoring such that monitoring occurs when leachate and water contamination problems are most likely to be detected. The Agency believes that conditions in Alaska are so unique that the State regulatory authority, once approved, would be in the best position to understand the local conditions and corresponding monitoring techniques appropriate for those conditions.

## 2. Comments on 40 CFR 258.50(b), Demonstration of No Potential for Migration

The final MSWLF criteria in 40 CFR part 258 contained two types of exemptions from ground-water monitoring: (1) the small landfill exemption that was later vacated by the U.S. Court of Appeals and (2) an exemption that can be granted by the

Director of an approved State or Tribe based on a demonstration that there is no potential for migration of hazardous constituents from the MSWLF unit to the uppermost aquifer during the facility's active life and post-closure care period. This no-migration exemption was not vacated by the U.S. Court of Appeals decision, and is available to all MSWLFs, regardless of size, where authorized by approved State regulations. The requirements for this demonstration are established in 40 CFR 258.50(b) and call for: (1) "site-specific field collected measurements, and sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport" and (2) "contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and the environment."

In EPA's announcement of the public meetings, the Agency, in addition to requesting comments on ground-water monitoring alternatives, requested any information on the ability of owners and operators of qualifying small MSWLFs to demonstrate no potential for migration. Although the Agency was not re-proposing 40 CFR 258.50(b) in that request for comment, the Agency was trying to evaluate the extent to which § 258.50(b) would accommodate qualifying small MSWLFs. In response, commentors indicated that the Agency should establish guidance to simplify and streamline this process for small communities. Commentors also suggested that the Agency provide guidance on the type and quality of data that are necessary to substantiate a "no-migration" demonstration for small landfills located in arid locations.

The Agency believes that the regulatory standard for demonstrating no potential for migration should not be changed, and that any variance from ground-water monitoring based on this standard should be granted only after the site-specific conditions of 40 CFR 258.50(b) are satisfied. The Agency plans to issue a technical guidance document to provide additional information to assist owners and operators of qualifying small MSWLFs in making a demonstration of no-migration, where such an exemption is available from approved States and Tribes. The Agency plans to make this guidance readily available to qualifying small MSWLFs. Additional discussion on the demonstration of no potential for migration is contained in the October 9, 1991 Solid Waste Disposal Facility Criteria final rule (56 FR 51061).

### 3. Proposal for Extension to General Compliance Date

As a separate matter in today's proposal, the Agency is requesting comment on two alternatives regarding an extension of the general compliance date for meeting the criteria in 40 CFR part 258. As noted earlier, the Agency has established a separate docket for this aspect of today's proposal (docket number F-95-AGDP-FFFFF) and has provided only a 30-day comment period. The shorter comment period is necessary to allow the Agency to put an extension in place by the time the current compliance date expires on October 9, 1995.

For qualifying small MSWLFs, the general compliance date for meeting the requirements of the solid waste disposal facility criteria specified in 40 CFR part 258, currently is October 9, 1995. Unless the qualifying small MSWLF ceases receipt of waste by this date, the qualifying small MSWLF must comply with all of the part 258 regulations including location, operation, ground-water monitoring and corrective action, closure and post-closure care, and financial assurance.

This October 9, 1995 compliance date does not apply in several circumstances, however. First, the effective date for ground-water monitoring for qualifying small MSWLFs located greater than two miles from a drinking water intake is October 9, 1996. Second, qualifying small MSWLFs are exempt from the design requirements of part 258 unless ground-water contamination that can be attributed to that MSWLF is discovered. Finally, in a separate rulemaking, the Agency extended the effective date for the financial assurance requirements (Subpart G) for all MSWLF units, regardless of size, until April 9, 1997 (see 60 FR 17649, April 7, 1995).

Since the Agency announced that it was investigating the possibility of providing approved States/Tribes with the flexibility to allow qualifying small MSWLFs to use alternatives to ground-water monitoring, the Agency believes (based on public comments) that a number of these MSWLFs have delayed plans for investing resources towards compliance with the requirements in 40 CFR part 258 until the Agency publishes a final rule governing the use of ground-water monitoring alternatives. The Agency believes that qualifying small MSWLFs, in determining whether to remain in operation past the general compliance date of October 9, 1995, should be able to consider any site-specific flexibilities allowed under a final rule on alternatives to ground-water monitoring.

The Agency anticipates publication of a final rule regarding ground-water monitoring alternatives by October, 1996. Therefore, as part of today's proposed rule, the Agency is proposing to extend the general compliance date for qualifying small MSWLFs from October 9, 1995 to October 9, 1997. This should provide qualifying small MSWLFs with sufficient time to come into compliance. Should public comment support today's proposal to extend the general compliance date for qualifying small MSWLF units, the Agency would publish a final rule for the general compliance date extension prior to October 9, 1995. The Agency recognizes that time is short for this action and has taken steps that will allow the decision to be made prior to October 9, 1995. For this reason, the Agency has set a 30-day public comment period for the proposed rule changes that relate to extending the compliance date and has established a separate public docket (F-95-AGDP-FFFFF) for comments on the extension.

If finalized, qualifying small MSWLF units would not become subject to compliance with any of the part 258 requirements until October 9, 1997. At that time, these MSWLF units must be in compliance with all of the part 258 requirements, including the ground-water monitoring (or alternative ground-water monitoring) requirements and financial assurance requirements. Should a qualifying small MSWLF unit cease receipt of waste prior to October 9, 1997, the owner/operator of that unit need only comply with the final cover requirements as specified in § 258.60(a). The final cover would have to be installed by October 9, 1998.

As a result of today's proposal to extend the general compliance date for qualifying small MSWLFs from October 9, 1995 to October 9, 1997, the Agency is proposing to make corresponding changes in the regulatory language in 40 CFR part 258. First, § 258.1(d)(3) and (e)(4) would be revised to reflect the new compliance date of October 9, 1997. Second, the definition of "New MSWLF unit" under § 258.2 would be modified to account for the new general compliance date of October 9, 1997. Finally, the applicability section under § 258.50(e) would be revised by removing paragraphs (1) and (2), which allowed for two different effective dates for the ground-water monitoring requirements based on the distance of the MSWLF unit to a drinking water intake. Today's proposal would create one effective date (i.e., October 9, 1997) for ground-water monitoring for all qualifying small MSWLFs, regardless of its distance to a drinking water intake.

The Agency believes that the new proposed effective date will provide sufficient time for all qualifying small MSWLFs to comply.

During development of today's proposal to extend the general compliance date for qualifying small landfills to October 9, 1997, the Agency received comments that situations existed where another extension of the effective date for *all* of the requirements of 40 CFR part 258 may not be appropriate.

First, the Agency learned that certain qualifying small landfill owners/operators have already made arrangements to close their facilities and have established alternative means of waste management, particularly through the development of regionalized facilities. The Agency understands that the establishment of regional commitments amongst numerous small communities that heretofore have independently managed their own waste, can be a time-consuming and, at times, delicate process. The Agency was informed that an extension of the general compliance date could undermine these commitments by creating an incentive for these owners/operators to reopen their closed facilities.

The Agency also learned that a number of the qualifying small landfills closed in advance of the October 9, 1995 compliance date due to the expense of compliance. The Agency understands that another delay of the general compliance date might serve to penalize those facilities that are trying to work within the rules by either deciding to close or make other arrangements and reward those communities that have done little or nothing. Finally, the Agency was informed that another delay of the general compliance date could allow the reopening of poorly designed and operated facilities that have already closed in anticipation of the October 9, 1995 compliance date.

The Agency does not have information on the extent to which the aforementioned problems may arise should a two-year delay of the general compliance date be promulgated. Therefore, the Agency requests comment (addressed to docket number F-95-AGDP-FFFFF) on these and any other concerns that may result from a two-year delay of the general compliance date.

In addition to soliciting comment on the implications of a two-year general compliance date delay, the Agency invites comments (also addressed to docket number F-95-AGDP-FFFFF) on an alternative to the proposed two-year delay. The alternative approach would

maintain a general compliance date for qualifying small landfills of October 9, 1995, but would extend the effective date of ground-water monitoring and financial assurance until October 9, 1997. Under this alternative approach, such an owner/operator that accepts waste after October 9, 1995 would have to comply with the location restrictions and operating requirements. Should that

owner/operator cease receipt of waste by October 9, 1997 and place final cover on the landfill by October 9, 1998, that facility would be exempt from ground-water monitoring. Under this approach, the owner/operator also would be exempt from the financial assurance requirements for closure since closure would be completed within one year of last receipt of waste. In addition,

because most of the costs of post-closure care are attributed to ground-water monitoring, the Agency also would exempt the owner/operator from demonstrating financial assurance for the post-closure care period. Table I provides a summary of the proposed delay of the general compliance date and the alternative approach.

TABLE I.—PROPOSED APPROACHES FOR EXTENDING THE EFFECTIVE DATES FOR SMALL LANDFILL LOCATED IN DRY OR REMOTE LOCATIONS

Approach	Requirements effective on October 9, 1995	Requirements effective on October 9, 1997
Proposed Approach: Delay of General Compliance Date.	No requirements take effect .....	All requirements take effect.
Alternative Approach: Delay of Groundwater monitoring and financial assurance.	All requirements other than groundwater monitoring and financial assurance take effect.	If cease receipt of waste by October 9, 1997: placement of final cover required by October 9, 1998. [Note: owner/operator exempt from groundwater monitoring and financial assurance requirements.] If continue receipt of waste after October 9, 1997: all other requirements take effect, including groundwater monitoring and financial assurance.

**III. Alternatives to Ground-Water Monitoring**

In addition to reviewing the comments described in section II.C.1 of this preamble, the Agency conducted a literature review to assess the types of equipment and techniques that can function as alternatives to the full ground-water monitoring requirements of Part 258. This literature may be found in the docket for today's rule (F-95-AGAP-FFFFF). The following discussion presents a summary of this review. While this discussion does not contain an exhaustive description of all possible alternatives, it does discuss several of the technologies available and in use today for a variety of geological and hydrogeological purposes. Based on this literature review, the Agency believes that ground-water monitoring well alternatives, such as those described in this section, can, on a site-specific basis, detect contamination and determine the nature and extent of contamination.

Alternatives to conventional ground-water monitoring include various types of equipment and measurement techniques that are capable of recovering physical samples of ground water or soil and are capable of detecting changes in subsurface conditions that are indicative of a release from a landfill. In general, alternatives to ground-water monitoring wells can be placed into two categories depending on the type of measurements made and the data collected. One category, geochemical alternatives, includes samples of soil, water, rock, or

other materials for laboratory analysis. A second category, geophysical alternatives, involves methods that rely on the measurement of electrical properties, such as conductivity or resistivity. Both unsaturated zone monitoring and saturated zone monitoring are possible with geochemical and geophysical alternatives, depending on the particular characteristics of a landfill and the capabilities of the alternative chosen.

Common sampling devices are readily available and may be used for collecting geochemical sample material. Hand-held soil samplers can be used for sampling at depths of several feet, and power-driven augers may be needed to penetrate and sample consolidated subsurface material. The use of a rotary drill may be necessary if geochemical samples must be collected from relatively great depths. Small diameter sampling tools may be pushed into the subsurface with hydraulic equipment for the collection of soil or ground-water samples beneath the landfill. Small diameter sampling tools are capable of reaching depths of about 50 feet in loosely consolidated soil or sediment, but are not designed to penetrate thick rock formations. During sample collection, geochemical samples must be handled and stored to avoid accidental sample contamination.

Under appropriate conditions, soil pore liquid from the unsaturated zone may be collected for laboratory analysis. This procedure involves a porous cup that is placed into the subsurface and is connected to a vacuum-pressure source.

The vacuum draws liquid into the cup, and the liquid is transported through a tube to the surface where it is collected.

Alternatives that employ geophysical principles generally provide an indirect method for detecting contamination. Electrical geophysical methods can measure the contrasting electrical properties of subsurface features. By injecting an electrical current into the ground with electrodes and measuring the resulting potential field, a geophysical electrical resistivity survey can delineate conductive contaminant plumes, vertical and lateral extent of geological features, and fresh/salt water interfaces. Electrical resistivity measurements are normally correlated with geology from subsurface borings to validate survey results.

Another method relying on geophysical measurements involves moisture detection blocks or electrical resistance sensors. Electrical resistance sensors measure the electrical potential between two wires spaced a few centimeters apart. The two wires are embedded in a porous matrix (typically gypsum-based), forming a block a few inches in diameter with wire leads. The blocks are embedded in the subsurface and the wires extend to the surface where they are attached to a portable resistivity meter. Because the block matrix is porous, soil pore liquids can freely enter and leave. When the soils and the electrical resistance blocks are dry, the resistance to electrical current flow is high, and conversely, when the soil and blocks become wet, a low resistance is measured on the meter. These blocks represent a point

measurement of soil moisture content. Electrical resistance sensors have an effective life span of up to several years, at which time they must be replaced.

A full discussion of other types of equipment and techniques possibly serving as alternatives to ground-water monitoring wells is beyond the scope of this preamble discussion. For further information on alternatives to ground-water monitoring, the reader is referred to two technical background documents "Examples of Alternatives to Conventional Ground-Water Monitoring Wells at Small, Dry or Remote Landfills" and "Subsurface Characterization and Monitoring Techniques, Volumes I and II," which may be found in docket number F-95-AGAP-FFFFF for this proposed rule. The Agency is assessing the need for additional technical guidance to provide regulators and landfill owners and operators with further information regarding ground-water monitoring well alternatives.

In conjunction with the types of alternatives described above and in the docket for this rulemaking, the Agency fully supports the use of beneficial modified operating practices that may serve to reduce the potential for leachate generation in certain situations. Examples of such operating practices may include the use of movable covers to prevent rainfall infiltration into the working face and body of the landfill, early final closure of the landfill cell, and careful contouring and drainage design of the final cover to route precipitation away from the closed MSWLF unit.

#### **IV. Proposed Rule for Alternatives to Ground-Water Monitoring**

##### *A. Overview*

Based on the information contained in docket number F-95-AGAP-FFFFF and on comments received at the public meetings, the Agency today is proposing to allow alternatives to the full part 258 ground-water monitoring requirement for qualifying small MSWLFs, where approved by the Director of an approved State or Tribe. This proposed rule covers only those MSWLFs meeting the criteria of 40 CFR 258.1(f)(1). The Agency estimates that approximately 750 MSWLFs would qualify as a small landfill meeting the conditions of § 258.1(f)(1). The Agency estimates that between 300 to 500 of these 750 MSWLF units would be able to use alternative ground-water monitoring systems; however, the final decision to allow the use of alternative ground-water monitoring systems would be

made by the approved State or Tribe and not by the Agency.

Under today's proposal, all landfills that are not qualifying small MSWLFs would be subject to the full ground-water monitoring requirements of 40 CFR part 258, subpart E, unless they could demonstrate no potential for migration under 40 CFR 258.50(b). This proposed rule does not provide any additional exemption or "no-action" alternative to the ground-water monitoring requirements in 40 CFR part 258. An approved State or Tribe may only waive ground-water monitoring requirements if the MSWLF unit meets the conditions established in 40 CFR 258.50(b).

Today's proposal, if finalized, would allow approved States and Tribes the flexibility to determine the most appropriate alternative to ground-water monitoring for qualifying small MSWLFs based on site-specific data as long as the alternative ensures the detection of contamination. Monitoring may be conducted with a variety of relatively low-cost geochemical and geophysical technologies capable of detecting contamination and assessing the nature and extent of contamination. Some alternatives may detect contamination by directly measuring the levels of constituents in ground water, while other alternatives may monitor the unsaturated zone or saturated zone for the properties of solids, gases, or liquids that are determined to be indicative of releases from the MSWLF unit.

When the Agency proposed the MSWLF criteria in August, 1988, it discussed the reasons for requiring ground-water monitoring at all MSWLFs, indicating that ground-water monitoring is "an essential measure to ensure protection of human health and the environment \* \* \* [and] \* \* \* the most reliable method for determining whether a landfill is in compliance with the overall performance standard" of the MSWLF criteria. See 53 FR 33366. The Agency believes that the approach adopted in today's proposal, allowing the use of alternative methods to detect ground-water contamination (other than monitoring wells), will continue to satisfy the statutory requirements in RCRA section 4010(c) that ground-water monitoring be implemented at all MSWLFs "as necessary to detect contamination."

By providing flexibility to approved States and Tribes to establish the best tailored alternative ground-water monitoring regime for each qualified small MSWLF, today's proposal is designed to ensure detection of contamination in an effective manner

that best takes into account the numerous, complex characteristics that are encountered on a site-specific basis. Today's proposal does not exempt qualifying small MSWLFs from ground-water monitoring, but instead allows a stepwise approach for detecting a release from the landfill that could result in ground-water contamination. Today's proposed rule provides the flexibility to approved States or Tribes to allow qualifying small MSWLFs to use cost-effective screening techniques rather than requiring immediate use of a full ground-water monitoring well program. Should the screening techniques indicate the possibility of ground-water contamination, the approved State or Tribe would then require that owners and operators establish more precise techniques that could quantify the contamination, including the installation of monitoring wells when warranted.

Alternative ground-water monitoring methods (e.g., monitoring in soil or in the unsaturated zone) are intended to detect the escape of contaminants from the MSWLF and thereby accomplish the same purpose as the ground-water monitoring well program pursuant to 40 CFR 258.51 through 258.55. While the alternative methods may not always include the collection of actual ground-water samples, they will indicate if a release from the landfill has occurred, at which point the alternative ground-water monitoring method may need to be supplemented by the installation of ground-water wells to ascertain whether the ground-water below the MSWLF has been contaminated.

The Agency understands that numerous methods and techniques exist for sampling and monitoring the saturated and unsaturated zones at qualifying small MSWLFs and that existing field methods are often refined and new methods are continually being developed. Therefore, the Agency believes it would be inappropriate to delineate in today's regulations all of the specific alternatives that may be authorized by approved States and Tribes. Approved State and Tribal authorities would decide which of the available alternatives to ground-water monitoring will ensure detection of contamination from the qualifying small MSWLF. These decisions will be made in a public forum, since the programs administered by States and Tribes provide opportunities for public participation during the permit issuance process (40 CFR part 256). Thus, members of the public will have an opportunity to comment on the selection of an appropriate and reliable

alternative ground-water monitoring technique at that time.

### *B. Proposed Approach for Using Alternatives*

#### 1. Consideration of Site-Specific Factors in Selection of an Alternative Monitoring Technique

The Agency believes site-specific factors need to be considered in determining which, if any, alternative(s) may be appropriate to detect contamination. To ensure that appropriate decisions regarding the use of alternatives to ground-water monitoring are made, the Agency believes that the following factors should be considered, as warranted and appropriate, on a site-specific basis:

- The geology and hydrogeology of the site;
- The impact of manmade and natural features on the effectiveness of an alternative technology;
- Precipitation amounts, temperature, and other climatic factors; and
- The effectiveness of indicator parameters in detecting a potential release from the MSWLF unit.

The following discussion serves to illustrate, in general, why these site-specific factors should be considered when choosing an appropriate monitoring alternative.

a. The geological and hydrogeological characteristics of the site.

The ground-water monitoring requirements in the final MSWLF criteria provide that the number, spacing, and depths of monitoring well systems should be determined based upon site-specific technical information that must include a site characterization of the geology and hydrogeology (40 CFR 258.51(d); see also preamble discussion in 56 FR 51066). The Agency believes that a similar understanding of the geology and hydrogeology also is desirable when deciding whether it is appropriate to use alternative monitoring technologies.

For example, the Director of an approved State or Tribe, when considering the use of gypsum blocks as an alternative, would need to determine if the presence of shallow ground water could lead to false indications of releases from the landfill through seasonal fluctuations in ground-water depth and how wet-dry periods and soil chemistry would affect the useful life of the gypsum blocks. Additionally, knowledge of site geology is important where an owner or operator is considering the use of small diameter sampling tools to sample around and beneath the landfill for detecting a release. This technology is influenced

by the ability of the tool to penetrate subsurface materials. For example, this technique is most likely to be workable where the geology consists of loosely consolidated sediment down to the depth at which samples are required.

b. The impact of manmade and natural features on the effectiveness of an alternative technology.

Manmade and natural features at a particular site may be important factors in influencing the capability of an alternative technology to detect contamination. For example, as discussed earlier, some alternatives may employ the use of electrical geophysical principles to provide an indirect method for detecting contamination by measuring the contrasting electrical properties of subsurface features to delineate contaminant plumes. However, when conducting geophysical electrical resistivity surveys, measurement errors may result from electrical currents in the ground that interfere with the current being measured. Therefore, before employing these surveys, potential subsurface interferences should be considered, such as naturally-occurring sulfide deposits, the presence of electrical power lines, or buried metal objects that are corroding. Additionally, electrical resistivity surveys are not recommended for use in paved areas.

Natural features of a site may impede access necessary to bring certain equipment on site. For example, ground penetrating radar radiates short pulses of high-frequency radio waves into the ground to delineate a leachate plume. The bulkiness of the equipment, however, may limit its use in rough and inaccessible terrain.

c. Climatic factors that may influence the selection, use, and reliability of alternative ground-water monitoring procedures.

The MSWLF owner or operator must have knowledge of precipitation amounts in order to determine whether the MSWLF qualifies for today's flexibility. In addition, an understanding of the local climatic conditions is important in understanding the effectiveness of possible alternative monitoring methods. For example, ground penetrating radar is best applied in areas with very dry soil conditions. Seismic refraction, an alternative technology that relies on an artificial seismic source (hammer, controlled explosive charge) to create underground seismic waves that are read with a seismograph to delineate soils/geology and leachate, might be limited by cold or relatively wet weather. Finally, where soil pore liquid is collected from the unsaturated

zone through the use of porous cup lysimeters, the effectiveness of the lysimeter will be hindered in areas where soils are frozen, extremely dry, or where subjected to freeze-thaw.

d. The effectiveness of indicator parameters in detecting a release.

A number of qualifying small MSWLFs may be able to use alternative technologies to detect contamination in the unsaturated zone. Where these unsaturated zone monitoring methods are allowed by an approved State or Tribe, the owner/operator would be monitoring for parameters that can be detected by application of that specific technology (e.g., gypsum blocks would monitor for the presence of moisture in the zone underlying the MSWLF). Some qualifying small MSWLFs, however, may not be able to use alternative technologies and may need to use traditional monitoring wells to sample and analyze ground water.

In these situations, the current detection monitoring program in § 258.54 requires sampling and analysis at each well for 15 metals and 47 volatile organic compounds (VOCs); however, approved States and Tribes currently are permitted to (1) replace some or all of the metals with geochemical parameters (e.g., ammonia, total dissolved solids) and (2) delete any metal or VOC if that constituent is not in or cannot be derived from the waste in the landfill.

At the June, 1994 public meetings, many of the commentors suggested that the MSWLF owner/operator should have the flexibility to use a shorter, less costly list of monitoring parameters for ground-water monitoring wells (primarily geochemical parameters) so long as these parameters would indicate a release from the MSWLF. Such flexibility would be designed to allow an owner/operator to use geochemical parameters in place of both metals and VOCs without having to demonstrate that each of the 47 VOCs is not in or cannot be derived from the waste in the MSWLF.

For the reasons discussed earlier in today's preamble (Section II.B.1), the Agency believes that approved States and Tribes should have the flexibility to establish an alternative list of indicator parameters for qualifying small MSWLFs, where appropriate given site-specific circumstances. These reasons include low precipitation, low net infiltration, and great depth to ground water at many of these sites, the relatively small amounts of waste received at these MSWLFs, and the practicable capability (i.e., economic) considerations of qualifying small MSWLFs. The Agency's technical

background document ("Examples of Alternatives to Conventional Ground-Water Monitoring Wells at Small, Dry or Remote Landfills") and cost analysis for today's rule suggests that the use of indicator parameters (e.g., Ph, specific conductance, total organic carbon, total organic halogen), where appropriate, may be a cost-effective means for owners/operators of a qualifying small MSWLF to detect contamination from their unit. Again, this could be the first step in a phased approach that eventually could lead to full ground-water monitoring pursuant to the final MSWLF criteria.

Thus, today's proposal would allow approved States and Tribes to permit the use of a set of parameters tailored to a site-specific location. The appropriate use of this flexibility again would be tied to the site-specific conditions at the particular qualifying small MSWLF. For example, the effectiveness of an alternative set of parameters depends, in part, on having an adequate understanding of the geochemistry of underlying rock, soil, and ground water, to ensure that natural variability in concentrations of elements or parameters in the ground water can be distinguished from concentrations that are indicative of a release from the MSWLF.

As illustrated in the above discussion, the selection, use, and reliability of alternative monitoring technologies or parameters depends on a number of site-specific factors. Additional information on the types of site-specific factors that should be considered for various alternative monitoring techniques and how to apply them may be found in the technical background documents entitled "Examples of Alternatives to Conventional Ground-Water Monitoring Wells at Small, Dry or Remote Landfills" and "Subsurface Characterization and Monitoring Techniques, Vols. I and II."

## 2. Phased Approach to Alternative Ground-Water Monitoring

Today's proposal uses an approach that would allow approved States or Tribes to implement the proposed ground-water monitoring flexibility in phases. Thus, today's proposal would allow approved States or Tribes to authorize the use of alternatives to full part 258 ground-water monitoring requirements for initially "detecting" contamination. If contamination is detected, the approved State or Tribe could then allow use of further alternatives for "expanded monitoring" to assess the nature and extent of "detected" contamination. Alternatives, or combinations of alternatives, could

be used for both detection and expanded monitoring. Expanded monitoring, however, might require the use of conventional ground-water monitoring wells, or other aspects of the full part 258 ground-water monitoring requirements.

As used in this proposed rule, "detection" would refer to the moment when data, instrument readings, analyses, or other information collected by an alternative to full part 258 ground-water monitoring requirements indicates a change in surface or subsurface conditions that could be caused by a release from an MSWLF. "Expanded monitoring" would refer to the steps taken to determine whether the "detected" release is an actual release from the MSWLF and to determine the nature and extent of the release.

Under today's proposal, if expanded monitoring using alternatives indicates that a release from the MSWLF unit has contaminated the saturated zone, then the owner/operator would be required to install ground-water monitoring wells and comply with the full range of ground-water monitoring requirements of 40 CFR part 258 (§§ 258.50 through 258.58). If expanded monitoring indicates that a release from the MSWLF unit exists, but has not yet contaminated the saturated zone, the Director of an approved State or Tribe would establish a schedule for the owner/operator to propose, as necessary, measures to prevent further contaminant migration and to remediate contamination in a manner that ensures protection of human health and the environment.

## V. Role of States and Tribes

Section 4005(c) of RCRA requires that each State (or Tribe) adopt and implement a "permit program or other system of prior approval and conditions" adequate to assure that each facility that may receive household hazardous waste or small quantity generator waste will comply with the revised MSWLF criteria. The statute also requires each State (or Tribe) to adopt and implement a permit program not later than 18 months after promulgation of EPA's final criteria (October 9, 1991).

The issue of whether Tribes should be approved to administer programs under RCRA Subtitle D is about to be proposed generically as part of the State and Tribal Implementation Rule (STIR). The Agency is seeking comment on the issue of Tribal permit program approval as part of the STIR and not as part of today's proposed rule. References to potential Tribal approvals in today's

proposed rule are being made to be consistent with the STIR proposal.

The Agency believes that an approved State or Tribal permit program plays an important role in the proper implementation of today's rule to allow alternative ground-water monitoring requirements. Approved State or Tribal permit programs provide opportunities for public participation during the permit issuance process, at which time alternative ground-water monitoring procedures would be considered.

The STIR proposal will establish adequacy determination requirements and procedures for State and Tribal MSWLF permit programs, including submission of an MSWLF permit program application. The statute, however, does not require that the STIR be in place before EPA assesses the adequacy of any State or Tribal program. In fact, while the EPA has not yet promulgated the STIR, the Agency has already reviewed and approved over 40 State programs.

The STIR proposal also will include procedures for submitting revised applications for State and Tribal program adequacy determinations, should a State or Tribe revise its permit program after it has been deemed adequate. Program revision may be necessary when the pertinent Federal statutory or regulatory authority or relevant guidance changes, or when responsibility for the State or Tribal program is shifted within the lead agency or to a new or different State or Tribal agency or agencies. Final promulgation of today's proposed changes to part 258 may require revision to a State's or Tribe's permit program application, as well.

The statute does not establish any mandatory timeframes for revising approved programs, submitting revised applications, or re-examining adequacy determinations. Schedules for States and Tribes to submit revised applications to the Regional Administrator, where needed, are to be negotiated by the State or Tribal Director and the Regional Administrator. This arrangement should minimize potential disruption to on-going program activities.

States and Tribes may receive approval of their permit programs prior to the final promulgation of today's rule and later elect to adopt the revised regulatory language regarding alternatives to ground-water monitoring. These States and Tribes should work with their respective Regional EPA offices as they proceed to revise their permit programs.

## VI. Consideration of Issues Related to Environmental Justice

The Agency believes that this proposed rule, if finalized, would not have a disproportionately high and adverse environmental or economic impact on any minority or low-income group, or on any other type of affected community. Rather, the Agency believes that this rulemaking will bring the cost of ground-water monitoring to an affordable level for some eligible communities that otherwise would have to bear the cost of full ground-water monitoring under 40 CFR part 258. As a result, the Agency believes that this rule will enable some minority and/or low-income communities to be served by a local landfill, and will reduce the potential for open burning and illegal dumping. Because this rule would reduce the financial impacts of ground-water monitoring, such communities may be able to allocate some funding to other priority issues affecting their local environments.

## VII. Impact Analysis

### A. Executive Order 12866

Under Executive Order 12866, EPA must determine whether a regulatory action is significant. A significant regulatory action is defined by Executive Order 12866 as one that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Pursuant to the terms of the Executive Order, it has been determined that this rule is a "significant regulatory action" because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Changes made in response to OMB suggestions will be documented in the public record.

The Agency estimated the annual effect on the economy by comparing the costs of alternatives to ground-water monitoring with the costs of full ground-water monitoring. The Agency

estimates the national annual costs of baseline ground-water monitoring requirements at qualifying small facilities to range from \$7.2 million to \$26.6 million per year. National annual costs of the lowest-cost alternative range from \$1.3 million to \$4.4 million per year, resulting in a \$5.9 million to \$22.2 million savings over baseline ground-water monitoring requirements. Actual regulatory savings from this proposal are likely to be less because site-specific factors and/or State regulatory decisions may preclude the use of the lowest cost alternative. Because appropriately selected alternatives to ground-water monitoring will be able to detect contamination, the Agency anticipates that there will be no decrease in environmental benefits as a result of the proposed rule. The full cost analysis may be found in the docket (F-95-AGAP-FFFFF) to this rulemaking.

For estimating costs of alternatives to ground-water monitoring, the Agency selected several alternatives for cost modeling purposes. These alternatives include: (A) collection and analysis of ground-water samples from existing drinking water/agricultural wells and springs; (B) collection of ground-water samples from monitoring wells and analysis for a reduced list of constituents; (C) annual sampling and analysis of geologic (solid/liquid) materials from the unsaturated zone; (D) collection and analysis of soil gas samples from the unsaturated zone; (E) performing an electrical resistivity survey, and; (F) installing moisture-detection gypsum blocks.

The lowest cost alternative differed depending on the size and the remaining life of the landfill. In most cases, the lowest-cost alternatives involved unsaturated zone monitoring techniques. It is also important to note that for this analysis the Agency assumed that no contamination occurred or was detected. If contamination is detected, further analysis is required and the cost savings over baseline ground-water monitoring requirements would be reduced, or even eliminated.

### B. Regulatory Flexibility Act

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

significant economic impact on a substantial number of small entities.

The proposed amendment to 40 CFR part 258 would reduce the regulatory burdens of the part 258 criteria, thereby imposing no additional economic impact to small entities. Therefore, in accordance with 5 U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have a significant adverse economic impact on a substantial number of small entities (as defined by the Regulatory Flexibility Act).

### C. Paperwork Reduction Act

The Agency has determined that there are two reporting requirements associated with today's proposed rule. Under this proposal, MSWLF owners/operators subject to these provisions are required to report to the Directors of approved States and Tribes: (a) the nature and extent of any contamination detected, and (b) proposed corrective measures to prevent further contamination or to remediate contamination. These reporting requirements will not cause any additional burden over existing similar requirements of 40 CFR part 258; they are merely different because they are generated by alternative monitoring programs. These requirements have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

### D. Executive Order 12875

Under Executive Order 12875, Federal agencies are charged with enhancing intergovernmental partnerships by allowing State and local governments the flexibility to design solutions to problems the citizenry is facing. Executive Order 12875 calls on Federal agencies to either pay the direct costs of complying with Federal mandates or to consult with representatives of State, local, or tribal governments prior to formal promulgation of the requirement. The executive order also relates to increasing flexibility for State, Tribal, and local governments through waivers.

For this rulemaking, the Agency met with representatives of State and local governments, and other members of the regulated community, to provide them with an opportunity to present the Agency with information regarding the costs of monitoring ground water at qualifying small MSWLFs, and on any cost-effective alternatives to full part 258 ground-water monitoring requirements. The extent of the Agency's consultation with affected parties is discussed earlier in this preamble. Through this consultation

with State and local governments and members of the regulated community, the Agency believes that it has complied with the requirements of Executive Order 12875, and that this proposed rule will not lead to an unfunded Federal mandate. In fact, this proposal is expressly designed to increase the flexibility available to approved States and Tribes.

*E. Unfunded Mandates*

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a statement to accompany any rule where the estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, will be \$100 million or more in any one year. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule.

EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

**List of Subjects in 40 CFR Part 258**

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: August 3, 1995.

**Carol M. Browner,**  
*Administrator.*

For reasons set out in the preamble, part 258 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS**

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

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

2. Section 258.1 is amended by revising paragraphs (d)(3) and (e)(4) to read as follows:

**§ 258.1 Purpose, scope, and applicability.**

\* \* \* \* \*

(d) \* \* \*

(3) MSWLF units that meet the conditions of paragraph (f)(1) of this section and receive waste after October 9, 1991 but stop receiving waste before October 9, 1997, are exempt from all the

requirements of this part 258, except the final cover requirement specified in § 258.60(a). The final cover must be installed by October 9, 1998. Owners or operators of MSWLF units described in this paragraph that fail to complete cover installation by October 9, 1998 will be subject to all the requirements of this part 258, unless otherwise specified.

\* \* \* \* \*

(e) \* \* \*

(4) For a MSWLF unit that meets the conditions for the exemption in paragraph (f)(1) of this section, the compliance date for all applicable requirements of part 258, unless otherwise specified, is October 9, 1997.

\* \* \* \* \*

3. Section 258.2 is amended by revising the definition of a "new MSWLF unit" to read as follows:

**§ 258.2 Definitions.**

\* \* \* \* \*

*New MSWLF unit* means any municipal solid waste landfill unit that has not received waste prior to October 9, 1993, or prior to October 9, 1997 if the MSWLF unit meets the conditions of § 258.1(f)(1).

\* \* \* \* \*

4. Section 258.50 is amended by revising paragraphs (a) and (e) and by adding paragraph (i) to read as follows:

**§ 258.50 Applicability.**

(a) The requirements in this subpart apply to MSWLF units, except as provided in paragraphs (b) and (i) of this section.

\* \* \* \* \*

(e) Owners and operators of all MSWLF units that meet the conditions of § 258.1(f)(1) must comply with all applicable ground-water monitoring requirements of this part by October 9, 1997.

\* \* \* \* \*

(i) Directors of approved States and Tribes may allow any MSWLF unit meeting the criteria established by § 258.1(f)(1) to use alternatives to the ground-water monitoring system prescribed in §§ 258.51 through 258.55 so long as the alternatives will detect and, if necessary, assess the nature or extent of contamination from the MSWLF unit on a site-specific basis; or establish and use, on a site-specific basis, an alternative list of indicator parameters for some or all of the constituents listed in Appendix I to part 258. Alternative indicator parameters approved by the Director of an approved State or Tribe under this section must ensure detection of contamination from the MSWLF unit.

(1) If contamination is detected through the use of any alternative to the ground-water monitoring system prescribed in §§ 258.51 through 258.55, the MSWLF unit owner or operator must perform expanded monitoring to determine whether the detected contamination is an actual release from the MSWLF unit and, if so, to determine the nature and extent of the contamination. The Director of the approved State or Tribe shall establish a schedule for the MSWLF unit owner or operator to submit results from expanded monitoring in a manner that ensures protection of human health and the environment.

(i) If expanded monitoring indicates that contamination from the MSWLF unit has reached the saturated zone, the owner or operator must install ground-water monitoring wells and sample these wells in accordance with §§ 258.51 through 258.55.

(ii) If expanded monitoring indicates that contamination from the MSWLF unit is present in the unsaturated zone or on the surface, the Director of an approved State or Tribe shall establish a schedule for the owner or operator to submit a description of any necessary corrective measures. The schedule shall ensure corrective measures, where necessary, are undertaken in a timely manner that protects human health and the environment. The proposed corrective measures are subject to revision and approval by the Director of the approved State or Tribe. The owner or operator must implement the corrective measures according to a schedule established by the Director of the approved State or Tribe.

(2) When considering whether to allow alternatives to a ground-water monitoring system prescribed in §§ 258.51 through 258.55, including alternative indicator parameters, the Director of an approved State or Tribe shall consider at least the following factors:

(i) The geological and hydrogeological characteristics of the site;

(ii) The impact of manmade and natural features on the effectiveness of an alternative technology;

(iii) Climatic factors that may influence the selection, use, and reliability of alternative ground-water monitoring procedures; and

(iv) The effectiveness of indicator parameters in detecting a release.

(3) The Director of an approved State or Tribe can require an owner or operator to comply with the requirements of §§ 258.51 through 258.55, where it is determined by the Director that using alternatives to ground-water monitoring approved

under this subsection are inadequate to detect contamination and, if necessary, to assess the nature and extent of contamination.

[FR Doc. 95-19666 Filed 8-9-95; 8:45 am]

BILLING CODE 6560-50-P

---

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 93-245; RM-8316]

#### Radio Broadcasting Services; Hayneville, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

**SUMMARY:** This document dismisses a petition filed by R. J. Miller, requesting the allotment of FM Channel 300A to Hayneville, Alabama, as that community's first local aural transmission service, based upon the petitioner's withdrawal of interest, and the absence of any other acceptable expression in pursuing the allotment request in response to the *Notice*. See 58 FR 50313, September 27, 1993. With this action, this proceeding is terminated.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MM Docket No. 93-245, adopted July 26, 1995, and released August 4, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**Andrew J. Rhodes,**

*Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 95-19753 Filed 8-9-95; 8:45 am]

BILLING CODE 6712-01-F

### 47 CFR Part 73

[MM Docket No. 95-128, RM-8672]

#### Radio Broadcasting Services; Carthage, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Sharon K. Bryan, requesting the allotment of Channel 230A to Carthage, Illinois, as that community's second local FM service. Channel 230A can be allotted to Carthage in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 230A at Carthage are North Latitude 40-24-48 and West Longitude 91-08-00.

**DATES:** Comments must be filed on or before September 25, 1995, and reply comments on or before October 10, 1995.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John S. Neely, Miller & Miller, P.C., P.O. Box 33003, Washington, DC 20033, (Attorney for Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95-128, adopted July 28, 1995, and released August 4, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.

See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**Andrew J. Rhodes,**

*Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 95-19750 Filed 8-9-95; 8:45 am]

BILLING CODE 6712-01-F

---

### 47 CFR Part 73

[MM Docket No. 95-129, RM-8673]

#### Radio Broadcasting Services; Colchester, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Sharon K. Bryan, requesting the allotment of Channel 281A to Colchester, Illinois, as that community's first local FM service. Channel 281A can be allotted to Colchester in compliance with the Commission's minimum distance separation requirements, with a site restriction of 12.2 kilometers (7.6 miles) northwest of the community, in order to avoid a short-spacing to the licensed site of Station WMOS (FM), Channel 280A, Quincy, Illinois. The coordinates for Channel 281A at Colchester are North Latitude 40-31-26 and West Longitude 90-51-08.

**DATES:** Comments must be filed on or before September 25, 1995, and reply comments on or before October 10, 1995.

**ADDRESSES:** Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John S. Neely, Miller & Miller, P.C., P.O. Box 33003, Washington, DC 20033, (Attorney for Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95-129, adopted July 28, 1995, and released August 4, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M