ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FRL–5615–8]

RIN 2050–AE24

Solid Waste Disposal Facility Criteria; Re-Establishment of Ground-Water Monitoring Exemption for Small Municipal Solid Waste Landfills Located in Either Dry or Remote Areas

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today, the Environmental Protection Agency (EPA) is revising the criteria for municipal solid waste landfills (MSWLFs)by re-establishing an exemption from ground-water monitoring for owners or operators of certain small landfills. In order to qualify for the exemption, the landfill must accept less than 20 tons of municipal solid waste per day (based on an annual average), have no evidence of ground-water contamination, and be located in either a dry or remote location. This action codifies Sec. 3 of the Land Disposal Program Flexibility Act of 1996 (LDPFA, P.L. 104–119, March 26, 1996), which provides explicit authority for this ground-water monitoring exemption. This action will ease burdens on certain small landfill owners and local governments, without compromising groundwater quality.

EFFECTIVE DATE: This rule is effective on September 25, 1996.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC), located in Crystal Gateway I, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The Docket Identification Number is F–96–SDRF–FFFFF. The RIC is open from 9:00 am to 4:00 pm, Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general questions on this rule, contact the RCRA Hotline at 800 424–9346, TDD 800 553–7672 (hearing impaired), or 703 412–9810 (Washington, DC metropolitan area).

For technical questions, contact Ms. Dana Arnold of the Office of Solid Waste at 703 308–7279, or at U.S. Environmental Protection Agency (5306W), 401 M Street, S.W., Washington, DC 24060.

SUPPLEMENTARY INFORMATION:

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I. Authority

This regulation is promulgated under the authority of sections 1008(a)(3), 2002(a), 4004(a), and 4010(c) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6907(a)(3), 6912(a), 6944(a), and 6949a(c).

II. Regulated Entities

Entities potentially regulated by this action are public or private owners or operators of municipal solid waste landfills (MSWLFs) that accept less than 20 tons of municipal solid waste and are located in dry or remote areas. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Owners or operators of small MSWLFs in dry or remote locations.
Municipal Government.	Owners or operators of small MSWLFs in dry or remote locations.

III. Summary of Today's Action

Today, EPA is revising the 40 CFR Part 258 criteria for MSWLFs by re-establishing an exemption from ground-water monitoring for owners or operators of small landfills that have no known ground-water contamination and that are located in dry or remote areas. This rule codifies Sec. 3 of the Land Disposal Program Flexibility Act of 1996 (P.L. 104–119, March 26, 1996), which amended section 4010(c) of RCRA to exempt certain small MSWLFs from ground-water monitoring requirements. This rule applies to owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions of existing MSWLF units.

IV. Background

A. Prior EPA Ground-Water Monitoring Requirements for Small MSWLFs

On August 30, 1988, EPA proposed municipal solid waste landfill criteria under Subtitle D of RCRA (53 FR 33314), which included minimum federal criteria for location restrictions, facility design and operation, ground-water monitoring, corrective action, financial assurance, and closure and post-closure care requirements.

In the final MSWLF criteria (56 FR 50978, October 9, 1991), EPA included an exemption for owners and operators of certain small MSWLF units located in dry or remote areas (hereafter referred to as ''qualifying small MSWLFs'') from the design and ground-water monitoring requirements. To qualify for the exemption, the landfill must have met the following criteria: accepted less than 20 tons of municipal solid waste per day (based on an annual average), had no evidence of ground-water contamination, and either: (1) served 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) been located in an area that annually receives 25 inches or less of precipitation and serve a community that has no practicable waste management alternative. In adopting this limited exemption, the Agency believed that it had complied with the statutory requirement to protect human health and the environment, taking into account the practicable capabilities of landfill owners and operators, in this case owners or operators of small MSWLFs.

This exemption was successfully challenged by the Sierra Club and the Natural Resources Defense Council (NRDC). In *Sierra Club* v. *United States Environmental Protection Agency,* 992 F.2d 337 (D.C. Cir. 1993), the U.S. Court of Appeals held 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 exemption for qualifying small MSWLFs 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 from the design requirements.

On October 1, 1993, EPA rescinded the exemption from ground-water monitoring for qualifying small MSWLFs (58 FR 51536). The Agency also 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.

The U.S. Court of Appeals decision did 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 ensured that any ground-water contamination would be detected. Therefore, EPA intended to use the additional two-year period to determine if there were practical and affordable alternative monitoring systems or approaches that would be adequate to detect contamination. The Agency determined that there are alternative methods and proposed alternative ground-water monitoring regulations in 1995 (60 FR 40799, August 10, 1995). The Agency subsequently extended the effective date for qualifying small MSWLFs until October 9, 1997 to provide EPA with time to finalize the alternative monitoring requirements (60 FR 52337, October 6, 1995).

B. The Land Disposal Program Flexibility Act of 1996

On March 26, 1996, President Clinton signed into law the Land Disposal Program Flexibility Act of 1996 (LDPFA), P.L. 104–119, which, among other things, amended RCRA section 4010(c) to exempt certain small MSWLFs located in either dry or remote areas from the ground-water monitoring requirements. The LDPFA specifies that the ground-water monitoring requirements do not apply to the owner or operator of a new MSWLF unit, an existing MSWLF unit, or a lateral expansion of a MSWLF unit, that disposes of less than 20 tons of MSW daily, based on an annual average, if there is no evidence of ground-water contamination from the unit or expansion and the unit or expansion serves either a remote community (i.e., one that experiences an annual interruption of at least 3 consecutive months of surface transportation that prevents access to a regional MSW facility) or a dry community (i.e., one that receives 25 inches or less of precipitation annually) that has no practicable waste management alternative.

Today, EPA is implementing this amendment to RCRA section 4010(c) by re-establishing in the Part 258 MSWLF criteria the exemption from the ground-water monitoring requirements for owners or operators of qualifying small MSWLFs. To do so, EPA is revising the introductory text to § 258.1(f)(1), which currently provides that qualifying small MSWLFs are also exempt from the design requirements found in subpart D of Part 258. The revision provides that the qualifying small MSWLFs are exempt from the ground-water monitoring requirements of subpart E. The rest of the exemption (i.e., § 258.1(f)(1) (i) and (ii)) is unchanged. EPA also is revising § 258.1(f)(3) to specify that, if the owner or operator of a qualifying small MSWLF has knowledge of ground-water contamination, then the owner or operator must notify the state Director and comply with the subpart E ground-water monitoring and correction criteria, as well as the subpart D design criteria.

The LDPFA also authorizes States to require MSWLF owners or operators of qualifying small MSWLFs to conduct ground-water monitoring in the specified instances described below. Under the LDPFA, a State may require the owner or operator of a small MSWLF located in a dry or remote area to conduct ground-water monitoring if necessary to protect ground-water resources and ensure compliance with a State ground-water protection plan. If the State finds a release from a solid waste landfill unit, the State must require corrective action as appropriate. The LDPFA also authorizes States to allow owners or operators of qualifying small MSWLFs to use alternatives to ground-water monitoring wells to detect releases.

In addition, the LDPFA authorizes a State to suspend the ground-water monitoring requirements for any MSWLF, if the landfill operator demonstrates that there is no potential for migration of hazardous constituents from the unit to the uppermost aquifer during the active life of the unit and the post-closure care period. The opportunity to demonstrate that there is no migration applies to the operators of all MSWLFs, not just to the operators of qualifying small MSWLFs. The MSWLF rule already contains this ''no migration'' exemption provision. See 40 CFR 258.50(b). As required by the LDPFA, EPA intends to issue guidance to facilitate small community use of this no migration exemption.

V. Good Cause Exemption From Notice-and-Comment Rulemaking Procedures

The Administrative Procedure Act generally requires agencies to provide prior notice and opportunity for public comment before issuing a final rule. 5 U.S.C. § 553(b). Rules are exempt from this requirement if the issuing agency finds good cause that notice and comment are unnecessary. 5 U.S.C. § 553(b)(3)(B).

EPA has determined that providing prior notice and opportunity for comment on the promulgation of this rule is unnecessary. As discussed in Part IV of this preamble, the LDPFA amended RCRA section 4010(c) to reinstate the small community landfill exemption and to authorize states to require ground-water monitoring and corrective action at small MSWLFs that otherwise would qualify for the exemption. The statutory exemption and other provisions took effect when the President signed the LDPFA on March 26, 1996. Promulgation of today's rule simply implements the Congressional intent of section 3(b) of LDPFA to ''immediately reinstate'' the small community MSWLF exemption that was once codified in 40 CFR § 258.1(f). Because EPA is making no changes to the exemption specifically provided by the LDPFA, it is unnecessary to again provide notice and accept public comment.

For the same reasons, EPA believes there is good cause for making the reinstatement of the small community MSWLF exemption in Part 258 immediately effective. See 5 U.S.C. § 553(d).

VI. Withdrawal of Proposed Rule on Alternative Ground-Water Monitoring

On August 10, 1995 (60 FR 40799), EPA proposed requirements for alternative ground-water monitoring systems or approaches to provide owners and operators of qualifying small MSWLFs with flexibility in meeting the ground-water monitoring requirements of RCRA section 4010(c) and EPA's implementing regulations. As a result of today's re-establishment of the ground-water monitoring exemption into the Part 258 MSWLF criteria, many small landfills will no longer need this flexibility because they will not be subject to the ground-water monitoring requirements. Even if ground-water monitoring is necessary at a qualifying small MSWLF, under the LDPFA, it is the State (or Tribe), rather than EPA, that can allow the landfill operator to use alternative ground-water monitoring techniques. Thus, it is not necessary for EPA to promulgate alternative ground-water

monitoring requirements, and the Agency is withdrawing the proposed alternative ground-water monitoring regulations published on August 10, 1995.

VII. Impact Analysis

Under the LDPFA, the ground-water monitoring exemption for qualified small MSWLFs are in effect regardless of EPA action. In today's final rule, EPA is simply codifying this LDPFA provision in order to enable affected entities to find all relevant requirements in the Part 258 MSWLF criteria in the Code of Federal Regulations. Therefore, any potential regulatory impacts have already been created by Congressional action in enacting the LDPFA. Because the ground-water monitoring exemption for qualified small MSWLFs is deregulatory in nature, however, it provides regulatory relief to small entities.

A. Executive Order 12866

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and therefore subject to OMB review and the other provisions of the Executive Order. A significant regulatory action is defined 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.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of E.O. 12866 and therefore is not subject to OMB review. In the proposed rule to establish alternative ground-water monitoring requirements, EPA estimated the national annual costs of ground-water monitoring requirements at qualifying small MSWLFs to range from $7.2 million to $26.6 million per year (60 FR 40810, August 10, 1995). Today's action is deregulatory in nature and will provide certain small entities with relief from the costs of ground-water monitoring without adversely impacting human health or the environment.

B. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare 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). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 605(b), I hereby certify that today's final rule will not have a significant adverse impact on a substantial number of small entities. Today's rule is deregulatory in nature and does not impose any new burdens on small entities. The effect of today's final rule is to provide certain small entities with relief from ground-water monitoring requirements and the costs associated with those requirements. Therefore, this rule does not require a regulatory flexibility analysis.

C. Paperwork Reduction Act

EPA's 1991 MSWLF regulations provided that owners or operators that meet the criteria for exemptions from the ground-water monitoring and design criteria must place documentation in the facility operating record demonstrating that they qualified for the exemptions. The information collection requirements for all of Part 258, including this documentation requirement for small, dry or remote landfills, were submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The OMB approval number for compliance with the Part 258 MSWLF criteria recordkeeping and reporting requirements is 2050–0122.

D. Executive Order 12875 and Unfunded Mandates Reform Act

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. E.O. 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 provides for increasing flexibility for State, Tribal, and local governments through waivers.

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for federal agencies to assess the effects of regulatory actions on State, local, and Tribal governments, and the private sector. UMRA requires agencies to prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

EPA has determined that today's final rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, Tribal, and local governments in the aggregate, or to the private sector. As previously discussed in this preamble, the exemption from ground-water monitoring for qualifying small MSWLFs reduces a regulatory burden and associated costs that these small entities otherwise would be required to incur.

Prior to passage of the LDPFA, EPA had maintained dialogue with States, Tribes, and local governments regarding ways of ensuring appropriate flexibility while maintaining protection of human health and the environment for small MSWLFs, particularly those in dry or remote locations. The Agency believes that this consultation with States, Tribes, and local governments satisfies the requirement of Executive Order 12875.

E. Considerations of Issues Related to Environmental Justice

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

The Agency believes that today's rule will not have a disproportionately high or adverse environmental or economic impact on any minority or low-income group, or on any other type of affected community. The Agency believes that this rulemaking will enable some minority and/or low-income communities to continue to be served by a local landfill that otherwise would

close because it could not afford the cost of ground-water monitoring. The Agency further believes that this rulemaking will not create adverse impacts on human health and the environment because the ground-water monitoring exemption is only available if there is no evidence of ground-water contamination from the landfill, and States can require both ground-water monitoring and corrective action as necessary to protect ground-water resources.

VIII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 258

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

Dated: September 19, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations, Part 258, is 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 the introductory text of paragraph (f)(1) and by revising paragraph (f)(3) to read as follows:

§ 258.1 Purpose, scope, and applicability.

* * * * *

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

* * * * *

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

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