ENVIRONMENTAL PROTECTION AGENCY

[FRL–5654–6]

Alaska: Partial Program Adequacy Tentative Determination of State Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative determination on the Alaska Department of Environmental Conservation Application for a Partial Program Adequacy Determination, Public Hearing and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR Part 258). RCRA Section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate ''permit'' programs for MSWLFs, but does not mandate issuance of a rule for such determinations. On January 26, 1996, EPA published in the Federal Register at 61 FR 2584 a proposed State/Tribal Implementation Rule (STIR) that provides procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The EPA has approved and will continue to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to the final promulgation of STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the proposed STIR as an aid in interpreting these requirements. The EPA believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by Part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

The Alaska Department of Environmental Conservation (ADEC), Division of Environmental Health (DEH) applied on February 12, 1996 for a partial determination of adequacy under section 4005 of RCRA. EPA reviewed Alaska's application and made a tentative determination of adequacy for those portions of ADEC's MSWLF permit program that are adequate to assure compliance with the federal MSWLF Criteria. The portions of the Alaska program in today's tentative approval are described later in this notice. ADEC plans to revise the remainder of its permit program all at one time. This will be done once EPA has finalized its proposed rule on financial assurance mechanisms for local government landfills, to assure complete compliance with the revised federal MSWLF Criteria and gain full program approval. Alaska's application for partial program adequacy determination is available for public review and comment.

All municipal solid waste in Alaska must be disposed in a landfill which meets these criteria. This includes ash from municipal solid waste incinerators that is determined to be non-hazardous.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, EPA Region 10 is offering the opportunity for a public hearing on this determination on the date given below in the **DATES** section.

DATES: All comments on Alaska's application for a partial determination of adequacy must be received by EPA Region 10 by the close of business on January 23, 1997. If, and only if, sufficient interest in having a public hearing is requested by Tuesday, December 31, 1996, a public hearing to receive oral and written testimony on EPA's tentative determination will be held on Thursday, January 23, 1997 from 7:00 p.m. until 9:00 p.m. The hearing, if held, will be at the Federal Building, 222 West 7th Avenue, Anchorage, Alaska, 99513, in Room 143. Members of ADEC will attend EPA's public hearing.

Requests for a public hearing must in writing and must be received by the EPA contact listed below before the close of business on Tuesday, December 31, 1996, and should include a statement on the writer's reason for wanting a public hearing. EPA will determine on Monday, January 6, 1997, if a public hearing is warranted. After that date, anyone may contact the EPA person listed in the **CONTACTS** section to find out whether a public hearing will be held.

ADDRESSES: Copies of Alaska's application for partial adequacy determination are available during normal working days at the following addresses for inspection and copying: three offices of the Alaska Department of Environmental Conservation from 8:00 a.m. to 4:30 p.m. at 410 Willoughby Avenue, Juneau, AK 99801, Attn: Ms. Susan Super, (907)–465–5350; at 555 Cordova Street, Anchorage, AK 99501, Attn: Ms. Laura Ogar (907)-269–7500; and at 610 University Avenue, Fairbanks, AK 99709, Attn: Ms. Kris McCumby, (907)–451–2360; and at the office of the Environmental Protection Agency from 9 a.m. to 4 p.m. at: U.S. EPA, Region 10 Library, 1200 Sixth Avenue, Seattle, WA 98101; library telephone 206–553–1259. All written comments on this tentative determination must be sent to U.S. EPA Region 10, 1200 Sixth Avenue, mail code (WCM–128), Seattle, WA 98101, Attn: Mr. Steven B. Sharp.

FOR FURTHER INFORMATION AND TO REQUEST A PUBLIC HEARING, CONTACT: U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA, 98101, Attn: Mr. Steven B. Sharp, mail code (WCM–128), fax (206)–553–8509, telephone (206)–553–6517.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR Part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under Part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the EPA has proposed in the Federal Register on January 26, 1996, the State/Tribal Implementation Rule (STIR). The rule specifies the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA proposed in the STIR to allow partial approvals if: (1) The Regional Administrator determines that the State/Tribal permit program largely meets the requirements for ensuring compliance with Part 258; (2) changes to a limited part(s) of the State/Tribal permit program are needed to meet these requirements; and, (3) provisions not

included in the partially approved portions of the State/Tribal permit program are a clearly identifiable and separable subset of Part 258. These requirements, as in the proposed STIR, will address the potential problems posed by the dual State/Tribal and Federal regulatory controls following the October 9, 1993 effective date of the Federal regulations. On that date, Federal rules covering any portion of a State/Tribe's program that had not received EPA approval became enforceable through the citizen suit provisions of RCRA 7002. Owners and operators of MSWLFs subject to such dual programs must understand the applicable requirements and comply with them. In addition, those portions of the Federal program that are in effect must mesh well enough with the approved portions of the State/Tribal program to leave no significant gaps in regulatory control of MSWLF's. Partial approval would allow the EPA to approve those provisions of the State/Tribal permit program that meet the requirements and provide the State/Tribe time to make necessary changes to the remaining portions of its program. As a result, owners/operators will be able to work with the State/Tribal permitting agency to take advantage of the Criteria's flexibility for those portions of the program which have been approved.

As provided in the October 9, 1991 municipal landfill rule, EPA's Subtitle D standards took effect nationwide in October 1993. Extensions to certain portions were subsequently postponed, with most all of the EPA standards becoming effective during or before 1997. Consequently, any portions of the Federal Criteria which are not included in an approved State/Tribal program by October 1993, or applicable later dates, would apply directly to the owner/operator without any approved State/Tribal flexibility. On April 7, 1995, EPA issued a Federal Register Notice extending the effective date of the 40 CFR Part 258 Subpart G requirements relating to Financial Assurance until April 9, 1997.

EPA intends to approve portions of State/Tribal MSWLF permit programs prior to the promulgation of the final STIR. EPA interprets the requirements for States or Tribes to develop ''adequate'' programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an ''adequate'' program based on the interpretation outlined above. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

EPA also is requesting States/Tribes seeking partial program approval to provide a schedule for the submittal of all remaining portions of their MSWLF permit programs. EPA cites in the proposed STIR rule that submission of a schedule is mandatory.

B. State of Alaska

Over the past several years and earlier, Alaska has developed an extensive and practicable approach to management of many types of non-hazardous solid waste including municipal waste—and to increased protection of human health and the environment. During 1993 through 1995 the state broadly revised its regulations. Concurrently, ADEC reorganized in a manner that is already showing results in terms of greater communication with small landfills. The Division of Environmental Health of ADEC has the lead role in solid waste management and oversees the entire program. It also receives assistance from the statewide Public Service Office of ADEC for improving waste management in small and remote communities. An element of the regulatory upgrades was extensive revision of the criteria for municipal solid waste disposal facilities and also addition of requirements that apply to conditionally exempt small quantity generator (CESQG) hazardous waste disposal. Alaska went public with its proposed regulations in September 1993 and, after the public comment period, issued a revised proposal in September 1994 with a second comment period. ADEC's new rule became effective on January 28, 1996. Today's tentative approval is an endorsement by EPA of the proficiency of Alaska's program.

On February 12, 1996, Region X received Alaska's application for a partial program adequacy determination. EPA responded within the required 30 days that Alaska's application for approval of its municipal solid waste landfill permit program was administratively complete. EPA subsequently began its in-depth review and has tentatively determined that most portions, as noted in the discussions which follow, of the State's municipal solid waste landfill (MSWLF) program will ensure compliance with the revised Federal Criteria. The MSWLF program is a component of the Solid Waste Management Program of ADEC that covers a wide range of non-hazardous solid wastes. Portions of the Alaska MSWLF program that do not currently meet the Federal requirements and can only be revised through their regulation revision process, which may require action by the State legislature, are not being requested for EPA approval at this time.

Alaska's Department of Environmental Conservation (ADEC) informed EPA in the cover letter of its application that its solid waste regulations presently do not include the financial assurance provisions of 40 CFR Part 258, Subpart G, for municipal solid waste landfills (MSWLFs) because EPA has not yet finalized its proposed financial assurance alternatives that will allow local government financial tests. Therefore, Alaska has requested partial approval (instead of full approval) of its solid waste program at this time so that it may benefit from the flexibility in the federal criteria that Part 258 allows only to approved States/Tribes.

In addition, during the review process, EPA and ADEC have concluded that a small number of portions of the ADEC program requirements do not mirror the federal solid waste program criteria of 40 CFR 258 or the STIR manual and rule. These portions are discussed in following paragraphs of this notice. The state's practices or policies on these portions meet the goals and standards of the STIR guidance and Part 258 on a performance basis. Therefore, they are not being excluded from today's tentative approval.

Federal law requires that all municipal solid waste (MSW), including non-hazardous MSW incinerator ash, must be disposed in a landfill which meets the 40 CFR Part 258 criteria. The portions of the Alaska Program in today's tentative approval are described later in this notice. Alaska's application for partial program adequacy determination is available for public review and comment.

Alaska's schedule is to achieve final full approval of its solid waste program within two years of EPA's promulgation of a final partial approval. In the covering letter of its application, ADEC cites that it will revise its regulations

and apply for full approval soon after EPA has promulgated the final version of its Local Government Financial Assurance rule. EPA expects to finalize this rule by the end of 1996, which Alaska believes would allow time for ADEC to change its 18 AAC 60 criteria to include financial assurance mechanisms as a requirement for MSW landfills—and meet this schedule. In addition, the planned minor regulatory changes that are discussed in this notice should also have been completed by ADEC before the state applies for full approval. EPA believes that the state's schedule is reasonable.

Sewage and Biosolids

In today's tentative partial approval of Alaska's Solid Waste Program, EPA is not proposing approval under the Clean Water Act, with respect to the treatment, storage, landspreading, or disposal of sewer solids, biosolids, sludge, and other wastes that are addressed in EPA's regulations under Part 503 and related parts, if any, of Title 40 of the Code of Regulations. The STIR process for State approval focuses on the municipal solid waste program of Alaska that are subject to Subtitle D of the Resource Conservation and Recovery Act (RCRA) without expressing any opinion on the other programs that are addressed in Alaska's waste management rule (18 AAC 60) that went into effect on January 28, 1996. With respect to sewage and biosolids wastes, the only criteria in Alaska's rule that are being approved today are those that correspond to EPA's 40 CFR Part 258 municipal landfill criteria.

Indian Country

In preparing and reviewing the Alaska application, ADEC and Region 10 have taken into consideration the needs and status of recognized Indian Tribes and Alaska Native Villages. Today's tentative partial approval of the State of Alaska's solid waste program does not extend to ''Indian Country'' located in Alaska, as defined in 18 U.S.C. 1151. Because the extent of Indian Country is currently unknown and in litigation, the exact boundaries of Indian Country have not been established. At present, the lands acknowledged to be Indian Country are the Annette Island Reserve, and trust lands identified as Indian Country by the United States in Klawock, Kake, and Angoon. By tentatively approving Alaska's solid waste program, EPA does not intend to affect the rights of Federally recognized Indian Tribes in Alaska, nor does it intend to limit the existing rights of the State of Alaska.

Small Landfills

Alaska defines Class II municipal landfills as those that receive twenty tons per day or less on an annual average and meet specifications that include the federal § 258.1(f)(1) arid or remote small-landfill qualifying criteria. Alaska defines its Class III landfills as those that receive five tons per day or less and meet the specifications in Alaska's 18 AAC 60.300(c)(3), which does not include all of the § 258.1(f)(1) qualifying criteria for small landfills. In addition, Alaska's 18 AAC 60 contains flexibility for Class III landfills that includes less stringent requirements than the Part 258 allows for small MSWLFs.

Over the recent past, two methods of addressing small landfills in Alaska have been developed. The first was a compromise between Region 10 and ADEC in 1993 and 1994, that agreed upon regulatory language in 18 AAC 60 that now says: ''After October 9, 2010, all MSWLFs must meet the standards applicable to either a Class I or Class II MSWLF or close in accordance with this chapter.'' The delay to 2010 for Class III landfills, versus the effective date in 40 CFR Part 258, was based on the practicable capabilities of the small communities affected and on conditions that are unique in Alaska versus the rest of the nation.

The second method was established when Congress passed a new statute after Alaska had finalized its solid waste rule and had submitted its application for program approval to EPA Region 10. Several elements of the new act address small landfills in Alaska. This statute, Public Law 104–119, entitled the ''Land Disposal Program Flexibility Act of 1996'' (LDP Flexibility Act), became effective on March 26, 1996, as an amendment to the Solid Waste Disposal Act.

Note: This act is different than the ''Regulatory Flexibility Act of 1996'' that addresses economic impacts of a wide range of federal programs, and which is referred to near the end of this notice.

Subsection (5) of Section 3(a) of the LDP Flexibility Act reads, verbatim, as follows: ''ALASKA NATIVE VILLAGES—Upon certification by the Governor of the State of Alaska that application of the requirements described in paragraph (1) to a solid waste landfill unit of a Native village (as defined in section 3 of the Alaska Native Claims Settlement Act (16 U.S.C. 1602)) or unit that is located in or near a small, remote Alaska village would be infeasible, or would not be cost-effective, or is otherwise inappropriate because of the remote location of the unit, the State may exempt the unit from some or all of those requirements. This paragraph shall apply only to solid waste landfill units that dispose of less than 20 tons of municipal solid waste daily on an annual average.''

Note: The reference to ''paragraph (1)'' in the above text is to paragraph (1) of section 4010(c) of SWDA.

Therefore, Class II and Class III landfills that receive an exemption by the Governor from some or all of the Part 258 criteria will not be subject to the citizens suit provision of Section 7002 of RCRA as to the Governor's exemptions.

Under this new Act, certain small landfills can be exempted from the need to upgrade to the federal Part 258 standards until an indefinite time in the future. ADEC cites in the narrative summary of its application for program approval, and has further clarified in subsequent conferences with Region 10, that the State's intention is to remove the 2010 deadline from its existing regulation if Alaska's Governor exempts Class III landfills from requirements that distinguish Class II facilities from Class III facilities. EPA expects that at the time when all Class III landfills have either upgraded to Class II standards, or have been exempted by Alaska's Governor from the elements of 40 CFR Part 258 that are more stringent for Class III landfills than the Alaska's 18 AAC 60, the 2010 deadline in Alaska's rule would become redundant and could be removed unilaterally by ADEC without affecting today's approval. The State of Alaska and EPA intend to continue to work cooperatively toward successive improvements at Class III landfills and to bringing them into compliance with the Part 258 criteria to the extent such compliance is economically and practicably achievable.

The exemption authority in subsection (5) of the LDP Flexibility Act is granted to the Governor of Alaska only. ADEC has initiated development of an approach for addressing small landfills with respect to exemptions under this new Act. This approach includes identification of important needs and goals, mapping landfills, consulting with Village Safe Water personnel and Public Service staff, providing technical assistance and educational materials, and establishing procedures to grant exemptions on a category basis. Furthermore the State is considering a broad short-term exemption to provide a bridge until a final plan is developed for ensuring environmental protection that is consistent with community resources and capabilities. EPA supports the

State's approach to use the exemption authority strategically to achieve continued improvement at landfills that require more time. Standard factors such as climate, hydrogeological conditions, and risk are important considerations in determining where and for how long exemptions are appropriate.

In addition, subsection (6) of the LDP Flexibility Act mandates that the EPA shall, within two years, promulgate revisions to Part 258 to provide additional flexibility to approved States with respect to qualifying landfills that receive an average of 20 tons per day or less. The areas of increased flexibility are limited to alternative frequencies of daily cover application, frequencies of methane gas monitoring, infiltration layers for final cover, and means for demonstrating financial assurance. This subsection includes a provision that such alternative requirements must take into account climatic and hydrogeologic conditions and be protective of human health and the environment. The Act intends that the additional flexibility mandated by this subsection (6) will become available in all approved States/Tribes.

On a nationwide basis, another section of the Flexibility Act reinstates the exemption on ground-water monitoring for all facilities that receive an average of 20 tons per day or less and meet the qualifying criteria in the LDP Flexibility Act for small dry or remote municipal solid waste landfills. The act does not modify the existing Part 258 exemption on liner requirements for qualifying small or remote MSWLFs. The liner exemption, promulgated in October 1991, is still in effect.

Unique Landfills and Special Criteria

Two special categories of landfills are included in ADEC's regulations: Ash monofills that accept MSW and permafrost MSW landfills. EPA finds that Alaska's regulatory flexibility with respect to methane monitoring and daily cover at MSWLF ash monofills is in keeping with either present Part 258 flexibility or the future flexibility that the LDP Flexibility Act requires EPA to develop. Alaska's MSW ash monofills are handled under 18 AAC 60 Article 3 that sets ADEC's standards for landfill disposal of municipal solid wastes. EPA believes that Alaska's program meets EPA standards for monofills that receive only MSW-ash provided that the ash is ''non-toxic'' based on RCRA requirements.

The Alaska solid waste regulations also include flexibility provisions for permafrost landfills that include flexibility that is different and less stringent than the federal Part 258 requirements. Almost all permafrost landfills in Alaska are small and receive less than an average of 20 tons per day of municipal solid waste. EPA believes use of flexibility that is specific to permafrost landfills exclusively is in keeping with practicable capability considerations of RCRA. EPA invites comments on the permafrost provisions in Alaska's municipal solid waste rule with respect to adequacy and tentative partial approval of Alaska's program.

With respect to the disposal of hazardous wastes from conditionally exempt small quantity generators (CESQG), EPA promulgated its final rule on disposal criteria for this category of solid waste after Alaska had submitted its application in February to EPA Region 10 for approval of its solid waste program. The final CESQG rule was published in the Federal Register on July 1, 1996. The rule modifies 40 CFR 261 of the hazardous waste regulations to establish an additional category of landfills under 40 CFR Sections 257.5 through 257.30 that allows certain nonmunicipal, nonhazardous waste landfills to receive CESQG wastes. In addition Section 261.5 is amended, per the same Federal Register of July 1996, such that CESQG wastes may be disposed of in a facility that is: ''permitted, licensed, or registered by a State to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to part 258'' of Title 40. (Text within the quotation marks is verbatim copy of the Federal Register text.) In anticipation of EPA's final CESQG rule, Alaska's 18 AAC 60 already requires that all CESQG wastes must go to Class I or Class II municipal landfills exclusively. Alaska's 18 AAC 60 requires, with respect to CESQG wastes, that: a conditionally exempt hazardous waste from a small quantity hazardous waste generator may be disposed of only at a facility that meets the requirements for a Class I or Class II MSWLF set out in 18 AAC 60.300 through 60.397 of Alaska's municipal landfill rule. Since both classes meet or exceed the Part 258 municipal landfill criteria, Alaska is already meeting EPA's new CESQG disposal standards. Therefore, EPA is including Alaska's 18 AAC 60 criteria for disposal of CESQG solid wastes in today's tentative approval of Alaska's program.

A corollary of the requirements of this amendment to 40 CFR 261, is that landfills which the State Governor has exempted from some or all of the Part 258 criteria would not be eligible to accept CESQG wastes—based on Region 10's interpretation that the meaning of the text in the July 1996 Federal Register is that the landfill must be subject to the entire Part 258.

In the wetlands section of Alaska's landfill rule, Alaska has a stability requirement that applies only for ''undisturbed'' native wetland soils and deposits used to support the MSW landfill. Part 258 applies this stability requirement to all types, not only undisturbed, wetlands support. ADEC has assured EPA Region 10 that it will remove the word ''undisturbed'' from its section 18 AAC 60.315(3) during its next revision of the rule, even though this may not be finalized before a final-partial approval is promulgated by EPA. During the interim, ADEC expects to achieve equivalent stringency via its permitting activities and authority.

Administrative Elements and Criteria

Part 258 requires notification of the State Director under numerous specified circumstances, including under § 258.1(f)(3) with respect to small landfills. This subsection requires that if the owner/operator of a small, arid or remote, landfill has knowledge of ground-water contamination resulting from the unit, the owner/operator must notify the State Director. Alaska's regulation does not include the exact wording of this sub-section, but ADEC believes that it is meeting the requirement in practice. ADEC and EPA believe that via ADEC's existing permitting and compliance-monitoring practices, and via the activities of other support agencies, ADEC will become aware of any ground-water contamination from a Class II landfill as rapidly as ADEC would by relying on the owner/operator to fulfill the notification requirement. In addition, Alaska's regulation requires that Class II landfills must perform groundwater monitoring unless a landfill demonstrates to the State Director that there is no practical potential for migration to an aquifer of resource value.

Note: Alaska's rule, like Part 258, requires compliance with Part 258's Subpart E ground-water monitoring and corrective action if contamination from the landfill becomes known.

With respect to public participation, Alaska cites in the narrative summary of its application that it has been and is ADEC's policy to provide additional public participation opportunities after a permit is issued, including for permit renewals and major modifications or variances, particularly if public interest was expressed at the time of the original permit or if there is any controversy surrounding the permit. The summary states that Alaska's current version of its

18 AAC 15.100(d) regulation does not require public notice or a public hearing on applications for renewal of a permit or amendment. As a means of formalizing ADEC's existing and on-going practices in this area, the Commissioner of ADEC issued a policy paper on October 9, 1996, entitled ''Policy Regarding Public Notice Requirements for Solid Waste Renewals and Modifications''. A copy has been placed in Alaska's application, and this policy is included in today's tentative approval.

Alaska, in its application to Region 10 for approval, has adequately described its staffing and implementation capabilities. ADEC was reorganized during 1995 to further improve the administration of its solid waste program. A memorandum of agreement (MOA) establishes the relationship and duties of the two key divisions of ADEC that will implement and enforce the solid waste program. The MOA for solid waste services is between the Division of Environmental Health and the Division of Public Service; both are divisions of ADEC. It outlines the types of services that will be provided to DEH. A copy of the MOA that was signed by the Directors in late February is included in Alaska's application.

With respect to effective dates, a gap of one-quarter year exists between the dates contained in the regulations of Alaska versus EPA with respect to closure of those existing landfills that do not meet the location restrictions regarding airports, floodplains, and unstable areas. The Alaska MSWLF criteria require that the landfill must close within one year after January 28, 1996, if it does not meet these location restrictions. This results in Alaska's rule having effective dates that are one-quarter year later than Part 258. Likewise, the Alaska criteria allow the State Director to extend the deadline for up to two years if the landfill owner/operator makes the required demonstration, which represents an extension to January 28, 1999. The EPA criteria specify that such landfills must close by October 9, 1996, and that extensions of the deadline shall require closure on or before October 9, 1998. A factor related to these deadlines is that in late 1995 EPA extended the effective date for which small arid or remote qualifying landfills must meet Part 258 to October 9, 1997. EPA believes that to partial out the two quarter-year gaps, from today's partial approval, is not practicable in comparison to the relatively short time delay that each of these gaps represent. EPA will request that the State eliminate this gap either by adopting a guidance that achieves closure in all cases by October 9, 1998, or by changing the Alaska rule itself. An optional avenue for an owner/operator of a qualifying small landfill who has concerns about operating during this gap, is to request via the Governor of Alaska, under the provisions of the LDP Flexibility Act, for a quarter-year ''bridge'' exemption for the three-month time period. EPA invites comments on this issue as to whether the three-month effective-date gaps will result in a significant difference on protection of human health and the environment.

C. Decision

The portions of Alaska's municipal solid landfill program, including its provisions for permafrost landfills and municipal-ash monofills, that are being tentatively approved today are the following Subparts of 40 CFR part 258. These portions are also being tentatively approved under 40 CFR 261.5, as amended per the Federal Register of July, 1, 1996, for disposal of hazardous wastes from Conditionally Exempt Small Quantity Generators that is disposed of in landfills that are subject to 40 CFR Part 258. The portions of 40 CFR Part 258 that are included in today's tentative approval are:

Subpart A—General, including, but not limited to, Section 60.300(c) with respect to the October 9, 2010 date.

Subpart B—Location Restrictions;

Subpart C—Operating Criteria;

Subpart D—Design Criteria;

Subpart E—Ground-Water Monitoring and Corrective Action; and

Subpart F—Closure and Post-Closure Care.

The flexibility elements in Part 258 are an important factor that becomes available to a State/Tribe upon approval by EPA of its solid waste program. Not all existing State and Tribal permit programs ensure compliance with all provisions of the revised Federal Criteria. Were EPA to restrict a State or a Tribe from submitting its application until it could ensure compliance with the entirety of 40 CFR Part 258, many States/Tribes would need to postpone obtaining approval of their permit programs for a significant period of time. This delay in determining the adequacy of the State/Tribal permit program, while the State/Tribe revises its statutes or regulations, could impose a substantial burden on owners and operators of landfills because the State/Tribe would be unable to exercise the flexibility available to States/Tribes with approved permit programs.

As State/Tribal regulations and statutes are amended to comply with the Federal MSWLF landfill regulations, unapproved portions of a partially approved MSWLF permit program may be approved by the EPA. The State/Tribe may submit an amended application to EPA for review, and an adequacy determination will be made using the same criteria used for the initial application. This adequacy determination will be published in the Federal Register which will summarize the Agency's decision and the portion(s) of the State/Tribal MSWLF permit program affected. It will also provide for a minimum 30 day public comment period. This future adequacy determination will become effective 60 days following publication if no significant adverse comments are received. If EPA receives adverse comments on its adequacy determination, another Federal Register notice will be published either affirming or reversing the initial decision while responding to the public comments.

To ensure compliance with all of the current Federal Criteria and to obtain full approval of its municipal solid waste landfill permit program, the Alaska Department of Environmental Conservation must:

1. Add financial assurance requirements which meet one or more of the criteria in Subpart G of Part 258 that will cover all of the types of municipal landfills that are permitted by the State.

Comments are solicited on this tentative determination until the date shown in the **DATES** section of this notice. Copies of Alaska's application are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

EPA Region 10 will hold a public hearing if, and only if, requested (see **DATES** section of this notice) on this tentative decision, on the date and in the location shown in the **DATES** section of this notice. Comments can be submitted at the hearing, if held, as transcribed from oral comments presented, or in writing at the time of the hearing.

EPA will consider all written public comments on its tentative determination received during the public comment period, as well as those presented at the public hearing. Issues raised by those comments may be the basis for EPA's reconsideration of this tentative determination of adequacy for Alaska's program. EPA will make a final decision on whether or not to approve Alaska's program and will provide notice in the Federal Register. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of Section 7002 of RCRA to

enforce the Federal MSWLF criteria in 40 CFR Part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

EPA has determined that this authorization will not have a significant adverse economic impact on a substantial number of small entities. By approving State/Tribal municipal solid waste permitting programs, owners and operators of municipal solid waste landfills who are also small entities will be eligible to use the site-specific flexibility provided by Part 258 to the extent the State/Tribal permit program allows such flexibility. However, since such small entities which own and/or operate municipal solid waste landfills are already subject to the requirements in 40 CFR Parts 258 or are exempted from certain of these requirements, such as the groundwater monitoring and design provisions, this approval does not impose any additional burdens on these small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant adverse economic impact on a substantial number of small entities. It does not impose any new burdens on small entities; rather this approval creates flexibility for small entities in complying with the 40 CFR Part 258 requirements. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended 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) of the APA as amended.

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (the Act), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the Act EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The Agency does not believe that approval of the State's program would result in estimated costs of $100 million or more to State, local, and tribal governments in the aggregate, or to the private sector, in any one year. This is due to the additional flexibility that the State can exercise (which will reduce, not increase, compliance costs). Thus, today's notice is not subject to the written statement requirements in sections 202 and 205 of the Act.

As to section 203 of the Act, the approval of the State program will not significantly or uniquely affect small governments other than the applicant, the State of Alaska. As to the applicant, the State has received notice of the requirements of an approved program, has had meaningful and timely input into the development of the program requirements, and is fully informed as to compliance with the approved program. Thus, any applicable requirements of section 203 of the Act have been satisfied.

Authority: This notice is issued under the authority of sections 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended; 42 U.S.C. 6912, 6945 and 6949(a)(c).

Dated: November 14, 1996.

Chuck Clarke,

Regional Administrator.

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