

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 258**

[F-97-FLXP-FFFFF-5865-4]

RIN 2050-AE24

**Revisions to Criteria for Municipal Solid Waste Landfills****AGENCY:** Environmental Protection Agency.**ACTION:** Proposed rule.

**SUMMARY:** The Land Disposal Program Flexibility Act of 1996 (LDPFA) directed the Administrator of the U.S. Environmental Protection Agency (EPA) to provide additional flexibility to the Director of Approved States for the owners and operators of landfills that receive 20 tons or less of municipal solid waste per day. The additional flexibility pertains to alternative frequencies of daily cover, frequencies of methane monitoring, infiltration layers for final cover, and means for demonstrating financial assurance. The additional flexibility will allow the owners and operators of small municipal solid waste landfills (MSWLFs) the opportunity to reduce the cost of MSWLF operation while still protecting human health and the environment. This proposal recognizes, as did Congress in enacting LDPFA, that these decisions are best made at the State and local level and, therefore, offers this flexibility to approved States.

In the final rules Section of today's **Federal Register**, EPA is promulgating this amendment as a final rule without prior proposal because EPA views this as a noncontroversial action that in effect, codifies a legislative directive. Thus, we anticipate no adverse comments. A detailed rationale for the amendment is set forth in the preamble to the direct final rule. If no adverse comments are received in response to this proposal, no further activity is contemplated regarding this proposed rule. If EPA receives adverse comments, EPA will withdraw the final rule and all public comments received will be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action.

**DATES:** Comments on this proposed rule must be received on or before August 28, 1997. An adverse comment will be considered to be any comment substantively criticizing the proposal on

a basis not already provided to EPA in comment.

**ADDRESSES:** Commenters must send an original and two copies of their comments referencing docket number F-97-FLXP-FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address below. Comments may also be submitted electronically through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F-97-FLXP-FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., 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/page. The index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA Hotline at 800 424-9346 or TDD 800 553-7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703 412-9810 or TDD 703 412-3323.

For more detailed information on specific aspects of this rulemaking, contact Mr. Allen J. Geswein, U. S. Environmental Protection Agency, Office of Solid Waste (5306W), 401 M Street, SW, Washington, DC 20460, 703 308-7261, [GESWEIN.ALLEN@EPAMAIL.EPA.GOV].

**SUPPLEMENTARY INFORMATION:** The index and the following supporting materials are available on the Internet:

Memorandum to: RCRA Docket  
 From: Allen J. Geswein, Environmental Engineer  
 Subject: Daily Cover Requirements for MSWLFs  
 Memorandum to: RCRA Docket  
 From: Allen J. Geswein, Environmental Engineer  
 Subject: Landfill Gas Monitoring Requirements for MSWLFs  
 Memorandum to: RCRA Docket  
 From: Allen J. Geswein, Environmental Engineer  
 Subject: Infiltration Layer Requirements for MSWLFs  
 Memorandum to: RCRA Docket  
 From: Allen J. Geswein, Environmental Engineer  
 Subject: Financial Assurance Requirements for MSWLFs  
 Follow these instructions to access the information electronically:  
 WWW: <http://www.epa.gov/epaoswer/nonhazardous/waste>  
 FTP: [ftp.epa.gov](ftp://ftp.epa.gov)  
 Login: anonymous  
 Password: your Internet address

Files are located in /pub/gopher/OSWRCRA.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register** or in a response to comments document placed in the official record for this rulemaking. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

**Regulated Entities**

Entities potentially regulated by this action are public or private owners or operators of municipal solid waste landfills (MSWLFs) that dispose of 20 tons or less of municipal solid waste per day, based on an annual average. Regulated categories and entities include:

Category	Examples of regulated entities
Industry .....	Owners or operators of small MSWLFs
Municipal Governments .....	Owners or operators of small MSWLFs

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities the EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility would be regulated by this action, you should carefully examine the applicability criteria in the proposal. If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

#### Preamble Outline

- I. Authority
- II. Background
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- IV. Consideration of Issues Related to Environmental Justice
- V. 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 these regulations under the authority of sections 1008(a)(3), 2002(a), 4004(a), and 4010(c) of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6907(a)(3), 6912(a), 6944(a), and 6949a(c).

#### II. Background

As set out in detail in the related direct final rule, EPA is proposing to issue rules that grant the Director of an Approved State the flexibility to establish alternative requirements for certain criteria for small MSWLFs. EPA is promulgating revisions to existing criteria which would allow a Director of an Approved State, after public review and comment, to establish for small MSWLFs, alternative frequencies of daily cover application, frequencies of methane gas monitoring, and infiltration layers for final cover. Alternative means for demonstrating financial assurance for small MSWLFs are also discussed in the related direct final rule. When establishing these alternative requirements, the Director of an Approved State must, after public review and comment, consider the unique characteristics of small communities, take into account climatic

and hydrogeologic conditions, and ensure that any alternative standard is protective of human health and the environment.

#### III. Additional Information

For additional information, see the corresponding direct final rule published in the final rules section of this **Federal Register**. All persons who may wish to comment should review the preamble discussion in the direct final rule **Federal Register** notice.

#### IV. Consideration 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 does not currently have data on the demographics of populations surrounding the small MSWLFs affected by today's rule. The Agency does not believe, however, that today's rule granting additional flexibility to owners and operators of small MSWLFs will 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. In addition, any minority group or low-income group affected by alternative requirements will have an opportunity to review and comment on the alternative requirement proposed by the Director of the Approved State prior to its implementation. The Agency believes that this rulemaking will enable some minority and/or low-income communities to continue to be served by a local landfill at the lowest possible cost to residents, including minority and low income residents.

#### V. Impact Analysis

##### 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 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.

The Agency believes that this proposed rule does not meet the definition of a major regulation because it does not have an annual effect on the economy of \$100 million or more; nor does the rule fall within the other definitional criteria for a significant regulation described above. The proposed rule is deregulatory and will result in requirements applicable to specific MSWLFs that are protective of human health and the environment at a lower cost than would be the case without the additional flexibility afforded by these amendments. For this reason, the Agency is not conducting a Regulatory Impact Analysis.

##### B. Regulatory Flexibility 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, 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). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant adverse impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small

entities. The following discussion explains EPA's determination.

Implementation of the various requirements imposes increased costs on small MSWLFs and the small communities, including Tribes, that they serve. MSWLFs that dispose of 20 TPD of waste generally serve populations of 10,000 persons or less (based on a waste generation rate of 4 pounds per person per day). Because these owners/operators may lack practicable solid waste management alternatives, such as the option of joining regional waste management systems, these communities may have been required to absorb higher than necessary costs of compliance in the absence of the additional flexibility afforded by today's proposed rule.

The effect of this proposed rule is to provide small entities with additional flexibility to meet the requirements of Part 258. The proposal would not impose any new burdens on small entities. Therefore, pursuant to 5 U.S.C. 605(b), I certify that this proposed rule would not have a significant adverse impact on a substantial number of small entities. This proposed rule, therefore, does not require a regulatory flexibility analysis.

#### *C. Paperwork Reduction Act*

The Agency has determined that there are no new reporting, notification, or recordkeeping provisions associated with today's proposed rule.

#### *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. Today's proposed rule grants additional flexibility in complying with the MSWLF criteria, does not impose unfunded federal mandates on State, Tribal, and local governments, and is being undertaken to ensure that EPA is providing maximum flexibility to States, Tribes, and local governments. Additionally, the Agency has maintained dialog with States, Tribes, and local governments regarding ways of ensuring appropriate flexibility while maintaining protection of human health and the environment for small MSWLFs. Therefore, the Agency believes that this consultation with States, Tribes, and local governments, in addition to the public comment period provided in the proposed rules Section of today's **Federal Register**, satisfies the requirement of this Executive Order.

#### *E. Unfunded Mandates*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of regulatory actions on State, local, and Tribal governments, and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of alternatives and adopt the least costly, most cost effective or least burdensome alternative that achieves the objective of the rule. The provisions

of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed 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. In fact, today's proposed rule provides States with additional flexibility that would lower the cost of compliance with the Criteria for Municipal Solid Waste Landfills. In accordance with section 203, EPA has shared this proposal with State governments and asked for comment.

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

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

Dated: July 23, 1997.

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

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