

requirements for CESQGs or the full hazardous waste regulations. Also note that some such items may be, in the future, covered under streamlined "universal waste" regulations that would minimize the applicable regulatory requirements. (See final "universal waste rule," 60 FR 25492, May 11, 1995.)

Literature that was evaluated by the Agency and summarized in Chapter 2 of the Agency's report "Construction and Demolition Waste Landfills" identify a number of wastes that are referred to using such terms as "hazardous," "excluded," "unacceptable," "problem," "potentially toxic," or "illegal." It is not necessarily true that all of these wastes meet the definition of "hazardous" under Subtitle C of RCRA, but they provide an indication of the types of wastes that may be present in the construction and demolition waste stream that are considered by others to be a potential problem.

A construction and demolition waste generator should contact their State Solid Waste Program for their guidance or rules concerning the types of construction and demolition wastes that the State considers to be hazardous.

C. Existing State Programs

1. State Requirements Pertaining to Management of CESQG Hazardous Wastes

Since the existing controls governing the disposal of CESQG waste are under the Subtitle C program (i.e., § 261.5), State requirements must be at least as stringent as the Federal requirements. States may however establish more stringent controls for CESQGs within their jurisdiction. Some States require that CESQGs obtain a hazardous waste ID number while other States require CESQGs to use a manifest for off-site transportation. Some States require that all or some portion (e.g., those with liquid industrial and ignitable wastes) of CESQG waste be managed at only permitted Subtitle C facilities. States that require that CESQG waste be managed at only Subtitle C facilities would prohibit CESQG disposal in a municipal, non-hazardous industrial, or construction and demolition waste landfill.

2. State Requirements for Construction and Demolition Facilities

EPA conducted a study to determine the current regulatory standards for construction and demolition facilities that are applicable on a State level. State regulatory standards for construction and demolition facilities vary State-by-State and are generally not as detailed

nor environmentally stringent as State standards for municipal solid waste landfills. Furthermore, States apply standards more frequently to off-site construction and demolition waste facilities vs. on-site construction and demolition waste facilities. In general, the EPA study focussed on the number of State programs that had requirements for the statutory minimum components specified in RCRA section 4010(c). The numbers, discussed below, correspond to the number of States that impose the requirement or standard on off-site construction and demolition waste facilities. Generally, a smaller number of States impose requirements on on-site facilities.

The most common location restrictions that States apply to C&D facilities relate to airports and bird hazards, wetlands and floodplains. A majority of the States (35) have restrictions applicable to construction and demolition facilities being located within the 100-yr. floodplain. Twenty-five (25) States have location restrictions pertaining to construction and demolition disposal facilities in wetlands. Similarly, 21 States have location restrictions for some or all construction and demolition facilities pertaining to airports and bird hazards. Fewer States have adopted location restrictions pertaining to seismic impact zones, fault areas, or unstable areas.

With regard to ground-water monitoring and corrective action, 29 States require some or all construction and demolition facilities to monitor ground-water and 22 States have corrective action requirements. For those States that impose ground-water monitoring requirements, most States have requirements that are substantially less stringent than the Municipal Solid Waste Landfill Criteria (part 258). With regard to those States that impose corrective action requirements, States usually require that either the permit applicant submit a corrective action plan with the permit or require the facility owner/operator to submit a plan after a release to ground water is detected.

V. Discussion of Today's Regulatory Proposal

A. Non-Municipal Solid Waste Disposal Facilities That Receive CESQG Hazardous Waste

This rule applies to non-municipal solid waste disposal facilities that receive CESQG hazardous waste, and the rule would provide that only such facilities which meet the requirements in §§ 257.5 through 257.30 "may receive" CESQG waste, as required by

RCRA section 4010(c). Any non-municipal solid waste disposal facility that does not meet the proposed requirements may not receive CESQG hazardous wastes. The non-municipal units that are subject to this rule are surface impoundments, landfills, land application units and waste piles that receive CESQG waste for storage, treatment, or disposal. This is based on the existing applicability of part 257 to all solid waste disposal facilities (40 CFR 257.1(c)). Disposal is defined at § 257.2 to mean "the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any water, including ground waters." This is also the statutory definition of "disposal" in RCRA section 1004(3). The definition covers any placement of waste on the land whether it is intended to be temporary or permanent.

B. Decision to Impose or Go Beyond the Statutory Minimum Components

RCRA section 4010(c) requires that these revised Criteria must at a minimum include location restrictions, ground-water monitoring as necessary to detect contamination, and corrective action, as appropriate. The part 258 Municipal Solid Waste Landfill Criteria went beyond the statutory minimum requirements (see 56 FR 50977) and included the following additional requirements: Operational requirements, design standards, closure and post-closure care requirements and financial assurance standards. The Municipal Solid Waste Landfill Criteria went beyond the statutory minimum components for a variety of reasons. Some of these reasons included:

- 163 case studies that revealed ground-water contamination at 146 MSWLFs, along with 73 MSWLFs that had documented cases of surface water contamination,
- 29 documented cases of uncontrolled methane releases at MSWLF causing fires and explosions at 20 of the 29 facilities,
- A high percentage of National Priority List (NPL) sites were MSWLFs (184 sites out of 850 as of May 1986), and
- A belief, based on risk modelling, that some MSWLFs presented unacceptable risks to human health.

Taken together, these problems demonstrated a pattern of recurring problems and potential hazards associated with MSWLFs best addressed by requiring a comprehensive set of facility standards.