State and corporate controls go beyond the statutory minimum controls and therefore the Agency believes that there is no need, on the Federal level, to impose additional standards beyond the statutory minimum.

3. Request for Additional Data and Comments Concerning Statutory Minimum or More Comprehensive Facility Requirements

The leachate and ground-water monitoring data and the damage cases analyzed represent a small number of facilities relative to the construction and demolition facility universe. The Agency solicits any additional data concerning C&D facilities to further assess the potential risks they may pose, as well as additional data on commercial industrial solid waste facilities or other types of facilities that may be subject to today's proposal.

The Agency also requests comment on whether the requirements being proposed today should go beyond the statutory minimum components. Requirements beyond the statutory minimum components could include all or any of the following components: Operational criteria, design standards, closure and post-closure care requirements, and financial assurance standards. The Agency is requesting that commentors provide data that documents the need to go beyond the statutory minimum components. The Agency is also requesting that commentors be specific as to whether any additional controls should be identical to the part 258 Criteria for municipal landfills or should require a different standard and what that standard should be.

C. Decision to Establish Facility Standards Under Part 257 and Revisions to Part 261

The Agency proposes today to establish facility standards for nonmunicipal solid waste disposal facilities that receive CESQG hazardous wastes. Section 4010(c) states that the Agency should revise the existing part 257 Criteria for facilities that "may receive" CESQG waste. Clearly, today's proposal responds to the statutory language. The Agency is proposing to establish facility standards, in a separate section of part 257, for non-municipal solid waste disposal facilities that receive CESQG hazardous waste. By providing that only those facilities meeting the new standards "may receive" CESQG waste, the Agency believes it will satisfy the statutory mandate of RCRA section 4010.

The Agency is also proposing revisions to the language in $\S 261.5$

(Special requirements for hazardous waste generated by conditionally exempt small quantity generators). These revisions will clarify the types of acceptable treatment, storage, or disposal facilities that can be used to manage CESQG hazardous waste while making it clear that CESQGs are responsible for ensuring that their CESQG hazardous wastes destined for storage, treatment, or disposal are sent to acceptable facilities. This will help ensure that CESQG waste is not sent to facilities that do not meet the new part 257 regulations (i.e., to facilities that "may not receive" CESQG waste. Acceptable facilities are either interim status or permitted Subtitle C facilities; municipal solid waste facilities permitted, licensed, or registered by a State and subject to part 258 or an approved State program; non-municipal solid waste disposal facilities that are permitted, licensed, or registered by a State and subject to the new part 257 regulations or an approved State program; or solid waste management facilities that are permitted, licensed, or registered by a State (i.e., municipal solid waste combustor). EPA encourages CESQGs to consult with their State solid waste agency to determine which facilities are acceptable. Today's proposed changes to § 261.5 make no changes to the provisions allowing CESQGs to send their hazardous waste for beneficial use, reuse, legitimate recycling or reclamation.

D. Request for Comment on the Use of an Alternative Regulatory Approach in Today's Rule

The Agency previously discussed its proposed approach to impose only the statutory minimum requirements on non-municipal solid waste facilities that receive CESQG hazardous waste. The Agency has identified two options for writing the statutory minimum components. One option is to use the part 258 Criteria as the baseline for these requirements. The second option would be to specify general performance standards to be met by facility owners/ operators as they implement the standards as well as to guide States in designing new regulatory programs (or revising existing regulatory programs).

There are several reasons why the Agency is considering using the part 258 Criteria. (1) Part 258 Criteria provide sufficient detail so that an individual owner/operator can self-implement them without State interaction in those instances where States do not seek approval of their permitting program as required in RCRA section 4005(c). (2) EPA believes that the national minimum requirements are

necessary to collect reliable and consistent ground-water monitoring data and to respond to contamination from the unit. (3) They contain a substantial amount of flexibility that allows approved States to tailor standards to individual and classes of facilities. Also, EPA and State success in accomplishing 42 State program approvals demonstrates that a variety of State approaches are consistent with the part 258 Criteria. As an example, States have established different design standards based on State-specific or sitespecific factors that comply with the part 258 criteria. The Agency expects States to likewise use this same flexibility in tailoring their groundwater monitoring programs. (4) Some States have expressed strong support for using 258 standards as the baseline for solid waste disposal facilities that receive CESQG hazardous waste. (5) While some States have standards for non-municipal facilities that are not identical to the 258 standards, the Agency believes there is a strong likelihood that many state programs would be approvable.

Reasons cited in support of using the general performance standard approach include: (1) Although the part 258 standards contain substantial flexibility for States to tailor the programs to their conditions, the part 258 standards put certain limits on State flexibility to design a program tailored to local conditions; (2) The part 258 standards also include certain national minimum requirements (which States can not modify) that EPA promulgated because of the risks posed by MSWLFs. However, since EPA has found that facilities that receive CESQG waste may pose substantially less risk than MSWLFs, these national minimum standards may be overly stringent at certain facilities; (3) In the absence of a significant Federal program, over half of the States have adopted location standards, ground-water monitoring requirements, and corrective action requirements that are significantly less extensive than the part 258 standards. If a State believes that its existing program satisfies the general RCRA performance standard-protects human health and the environment, taking into account the practicable capability of these facilities—it could seek approval of their existing programs and avoid substantial regulatory or legislative changes; and (4) a general performance standard would provide the maximum flexibility for States and owners to adopt new methodologies and technologies (e.g., detecting groundwater contamination from the