

regulations based on anticipated risks. In the absence of a State program, owners/operators would have to determine how to comply based on risk. However, the Agency is concerned that such a performance standard approach may result in greater uncertainty for owners/operators.

While the Agency has not proposed the general performance standard approach in today's proposal, the Agency believes that the performance standard approach provides some interesting options/advantages for owners/operators and State agencies. Therefore, the Agency is requesting comments on the use of general performance standards in lieu of the approach used in today's proposal.

E. Highlights of Today's Statutory Minimum Requirements for Non-Municipal Solid Waste Disposal Facilities That May Receive CESQG Hazardous Waste

For today's proposed regulatory language, the Agency has used the part 258 Criteria as a baseline. The highlights of the part 258 requirements are presented in this section of today's preamble. The flexibility that was developed for the part 258 Criteria has been incorporated into today's proposal for the location restrictions and the ground-water monitoring and corrective action requirements. The Agency solicits comments from the regulated community on whether these standards would provide sufficient flexibility for construction and demolition waste facilities. Commentors are requested to review the proposal with an eye towards identifying those areas in the proposal that they believe do not contain sufficient flexibility and would unduly hinder or place unnecessary burdens on construction and demolition waste facilities or other facilities potentially affected by the rule. The Agency requests that if commentors identify a provision that is lacking in flexibility, that the commentors clearly identify alternative rule language that provides the necessary flexibility.

1. Applicability and Effective Date

Today's proposal establishes new sections in part 257 (i.e., §§ 257.5 through 257.30) that apply to any non-municipal solid waste disposal facility that receives CESQG hazardous wastes. Today's proposal does not apply to municipal solid waste landfills subject to part 258 or hazardous waste facilities subject to regulations under Subtitle C of RCRA.

Owners/operators of non-municipal solid waste disposal facilities whose facilities do not meet the proposed

requirements may not receive CESQG hazardous waste. Owners/operators of such facilities would continue to be subject to the requirements in §§ 257.1–257.4.

Owners/operators of non-municipal solid waste disposal facilities that receive CESQG hazardous waste after the effective date (i.e., 18 months after the date of publication of the final rule in the **Federal Register**) must comply with the requirements in §§ 257.5 through 257.30.

Certain facilities may implement screening procedures to effectively eliminate the receipt of CESQG hazardous wastes. If an owner/operator has a question concerning applicability of the rule, he/she is encouraged to contact his/her State Agency to determine that the screening procedure ensures that the facility does not receive CESQG hazardous waste.

2. Existing Part 257 Requirements

All types of non-hazardous waste facilities, except municipal solid waste landfills, must comply with the current requirements in 40 CFR part 257. In developing today's proposal for non-municipal solid waste disposal facilities that receive CESQG wastes, the Agency decided to retain some of the existing part 257 requirements. Owners/operators of non-municipal solid waste disposal facilities that receive CESQG hazardous waste continue to be subject to the following existing requirements in §§ 257.1–257.4: §§ 257.3–2 (Endangered Species), 257.3–3 (Surface Water), 257.3–5 (Application to food-chain crops), 257.3–6 (Disease), 257.3–7 (Air), and 257.3–8 (a), (b), and (d) (Safety). The Agency saw no reason to eliminate these requirements because non-municipal solid waste facilities have been subject to these requirements since 1979. A non-municipal solid waste disposal facility that becomes subject to the CESQG requirements in §§ 257.5 through 257.30 would no longer be subject to the following existing requirements in §§ 257.1–257.4: §§ 257.3–1 (Floodplains), 257.3–4 (Ground water), and 257.3–8(c) (bird hazards to aircraft) because §§ 257.5 through 257.30 would contain separate standards for each of these areas.

As stated earlier, RCRA section 4010 requires that the Agency establish revised Criteria for non-municipal solid waste disposal facilities that receive CESQG wastes that include, at a minimum, ground-water monitoring, corrective action, and location restrictions. These requirements have been included in new §§ 257.5 through 257.30. Each of these requirements is

discussed below and in more detail in Reference #1.

3. Specific Location Restrictions

The requirements in §§ 257.7 through 257.12 will establish location restrictions for any non-municipal solid waste disposal facility that receives CESQG hazardous wastes. The location restrictions are for airport safety, floodplains, wetlands, fault areas, seismic impact zones, and unstable areas. The location restrictions being proposed today for non-municipal solid waste disposal facilities that receive CESQG hazardous wastes are identical to the location restrictions that were promulgated under Part 258 for municipal solid waste landfills. A detailed discussion of the municipal solid waste landfill location restrictions can be found at 56 FR 51042–51049 and in reference #1.

a. Airport Safety

Today's Proposed Language Regarding Airport Safety (§ 257.7)

Today's proposal uses the identical airport safety language that was established for MSWLFs. Today's proposal will require that new, existing, and lateral expansions of non-municipal solid waste disposal facilities that receive CESQG hazardous waste demonstrate that the facility does not pose a bird hazard to aircraft. For existing facilities that become subject to today's rule, only the demonstration requirement is different from the current airport safety standard in § 257.3–8(c). The demonstration requirement is being proposed because today's airport safety requirement is written to be self-implementing and the demonstration documents compliance and may protect the owner/operator from a citizen suit. For new and lateral expansions of non-municipal solid waste disposal facilities, the notification to the FAA and the affected airport is a new provision. This provision is being proposed in order for the Agency to be consistent with existing FAA Order #5200.5A (see Reference #9—page 51043). This FAA Order establishes that any disposal site that attracts or sustains hazardous bird movements from feeding, watering or roosting areas may be incompatible with airport operations.

b. Floodplains

Today's Proposed Language Regarding Floodplains (§ 257.8)

Today's proposal uses the identical language from the MSWLF Criteria. The demonstration requirement for new, existing, and lateral expansions of non-municipal solid waste disposal facilities