

defined to mean the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities in accordance with § 258.60 (i.e., closure and post-closure care activities). The change in the definition of the term active life was necessary to reflect the fact that today's proposal does not contain closure or post-closure care requirements.

The Agency selected the 30 year continuance of ground-water monitoring after the final receipt of waste because 30 years is consistent with the period of time that ground-water monitoring is done after the final receipt of waste at MSWLFs. Following the approach that was selected for MSWLFs, the Agency has allowed the Director of an approved State to decrease or increase the 30 year period of time that ground-water monitoring must be done after the final receipt of waste. Any reduction in the period of time may be granted only after a demonstration by the owner/operator that a shorter period of time is sufficient to protect human health and the environment and the Director of an approved State approves such a demonstration.

The Agency requests comments on the 2-year effective date and the 30-year period of time after the active life that ground-water monitoring must be conducted. Commentors should submit data that supports a shorter or longer effective date and data concerning the necessity of the 30-year ground-water monitoring period.

The flexibility that an approved State/Tribal Director has in suspending the ground-water monitoring requirements for MSWLFs has been provided for non-municipal solid waste disposal facilities that receive CESQG hazardous waste in today's proposal (Reference #9, 56 FR 51061-51062). The provision is proposed for the same reason that it was finalized in the MSWLF Criteria. The Agency believes that certain hydrogeologic settings may preclude the migration of hazardous constituents from the non-municipal solid waste disposal facility to the ground-water. This provision is in the applicability section of today's ground-water monitoring requirements.

The Agency is also proposing to provide to approved States the flexibility to determine alternative ground-water monitoring requirements for small, dry non-municipal solid waste disposal facilities that receive CESQG waste. The Agency had previously issued an exemption to small, dry municipal solid waste landfills from some of the requirements in the MSWLF Criteria (Reference #9, 56 FR 50989-50991). Although the D.C.

Circuit vacated this exemption in the *Sierra Club v. EPA* opinion, 992 f.2d at 345, the Court left it to the Agency's discretion to allow for alternative types of ground-water monitoring based upon factors such as size, location, and climate. Concurrent with this proposal, the Agency is proposing that approved States be allowed to determine alternative ground-water monitoring requirements for small, dry MSWLFs. The Agency sees no reason to limit this flexibility to MSWLFs and, therefore, is proposing that approved States may allow alternative monitoring requirements for small, dry non-municipal solid waste disposal facilities that are receiving CESQG waste if the facilities meet the definition of small and dry proposed in § 257.21(i). Additional information concerning the alternative ground-water monitoring requirements for MSWLFs will be published soon in a FR notice.

In order to be considered small, the non-municipal solid waste disposal facility must dispose of less than 20 tons of non-municipal waste daily. The 20 tons per day is proposed in order to be consistent with the small landfill exemption under the municipal solid waste landfill Criteria. However, the Agency recognizes that the size distribution, potential risks, practical capability and other factors differ for these facilities. The Agency is accepting comments on whether this number should be different for non-municipal solid waste facilities.

#### **b. Overall Performance of the Ground-Water Monitoring System**

##### *Today's Proposed Language Regarding Ground-Water Monitoring Systems (§ 257.22)*

Today's proposal contains the same performance language in the MSWLF Criteria and, as such, will provide owners and operators a performance-based approach to establishment of a monitoring system that will ensure detection of contamination.

Today's proposal continues to allow State Directors the discretion to establish an alternative monitoring boundary and multi-unit monitoring. The establishment of an alternative boundary provides flexibility to owners/operators and in some cases can serve to reduce corrective action costs by allowing the owner/operator the advantage of a limited dilution and attenuation zone. The establishment of multi-unit monitoring allows for local conditions to be taken into account where individual monitoring systems cannot be established.

#### **c. Ground-Water Sampling and Analysis Requirements**

##### *Today's Proposed Language Regarding Sampling and Analysis (§ 257.23)*

Today's proposal contains the same sampling and analysis procedures that are in the MSWLF Criteria. The sampling and analysis requirements ensure accurate ground-water monitoring results and allow for an accurate representation of both the background ground-water quality and the quality of ground water at the monitoring wells placed downgradient from the facility. Owners/operators need to ensure that consistent sampling and analysis procedures are in place in order to determine if a statistically significant increase in the level of a constituent has occurred indicating the possibility of ground-water contamination.

In the promulgated Criteria for municipal solid waste landfills, the Agency required that ground-water samples not be field-filtered prior to laboratory analysis. (See § 258.53(b)). The preamble discussion for this requirement can be found at 56 FR 51074, October 9, 1991. The Agency has been actively working on the issue of sample filtration due to concerns expressed by some members of the scientific community. The Agency expects to issue, in the near future, a proposal addressing additional flexibility on this issue. This proposal would include any potential revision to the prohibition on field filtering as specified in proposed § 257.23. Thus, any rule language change to the part 258 Criteria on this issue will be addressed in the final rule language for non-municipal solid waste facilities that receive CESQG wastes.

#### **d. Detection Monitoring Program**

##### *Today's Proposed Language Regarding Detection Monitoring Requirements (§ 257.24)*

Today's proposal establishes the same series of steps for ground-water monitoring as developed in the MSWLF Criteria. The Agency believes that monitoring for a limited set of parameters and determining if there is a statistically significant increase for any of these parameters is an essential first step in evaluating the possibility of a release from a non-municipal solid waste disposal facility that receives CESQG wastes. Today's proposed detection monitoring program contains the same areas of flexibility that exist within the MSWLF Criteria. This flexibility can be used by the Director of an approved State to delete any parameter from appendix I (appendix I