effective, they constitute the basis for citizen enforcement. Federal enforcement by EPA can be done only in States that EPA has determined have inadequate programs. EPA has no enforcement authorities under Section 4005 in approved States. EPA does, however, retain enforcement authority under section 7003 to protect against imminent and substantial endangerment to health and the environment in all States. A more complete discussion of the Subtitle D enforcement issue can be found in the MSWLF Criteria.

VII. Executive Order No. 12866– Regulatory Impacts Analysis

Under Executive Order No. 12866, EPA must determine whether a new regulation is significant. A significant regulatory action is defined as an action likely to result in a rule 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 the rights and obligations of 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.

Pursuant to the terms of the Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

A. Cost Impacts

The Agency estimates that of the total 1900 construction and demolition waste facilities, 718 would be potentially affected. The national annual low-end cost is estimated to be \$10.0M. This low-end cost assumes that all CESQG hazardous waste is separated at the point of generation for the construction industry. It assumes there will be no CESQG waste generated by the demolition industry. The CESQG portion is disposed of at hazardous waste facilities while the remaining non-hazardous waste portion is disposed of in non-upgraded

construction and demolition waste facilities. The costs include the separation costs at the point of generation, costs of transporting/ disposing the hazardous portion at a Subtitle C facility, and the costs of screening incoming wastes at all of the construction and demolition waste facilities. There are hundreds of thousands of construction and demolition sites active in the U.S. each year. EPA assumes that demolition rubble will not be CESQG waste and affected by this rule. Therefore, separation costs are likely to occur only at construction sites and the 3,742 industrial facilities with on-site nonhazardous waste landfills. The Agency requests comment on the labor and capital necessary to conduct separation at these facilities. The Agency also requests comment on how frequently CESQG hazardous waste is currently being separated at construction sites at these industrial facilities. In addition, the Agency requests comment on the transportation costs to bring small amounts of hazardous wastes from construction sites to a treatment and disposal facility.

The national annual high-end cost is estimated to be \$47.0M. This high-end cost assumes that generators will not separate out CESQG waste from 30% of construction and demolition wastes and that this fraction will be sent to upgraded construction and demolition waste facilities that elect to comply with today's proposed requirements. Under this scenario, the Agency assumed that most medium to large size construction and demolition waste facilities (162) will upgrade. The costs include separation costs at the point of generation for waste not going to an upgraded landfill, costs of screening incoming wastes at 80% of the affected construction and demolition waste facilities which do not upgrade and costs for 20% of the affected construction and demolition wastes facilities to upgrade. Upgrade costs include ground-water monitoring and corrective action.

This rule allows States and individual owners/operators to choose among compliance options. States and owners/ operators may determine that facility screening is a successful method to prevent the receipt of CESQG hazardous wastes. Other States and owners/ operators may determine that upgrading is necessary or there is a market for upgraded landfill capacity for generators and, as such, some facilities may upgrade. If more States and owners/ operators elect to use screening then the estimated cost of this proposal would be closer to the lower-bound estimate. The full analysis that was used to determine the range of costs for this rulemaking is presented in the Cost and Economic Impact Analysis of the CESQG Rule.

B. Benefits

The Agency believes that the requirements being proposed for nonmunicipal solid waste disposal facilities will result in more Subtitle D facilities providing protection against groundwater contamination from the disposal of small amounts of hazardous waste. Today's action will force some nonmunicipal solid waste disposal facilities to either upgrade and install groundwater monitoring and perform corrective action if contamination is detected, or stop accepting hazardous waste. Today's action will also cause some generators of CESQG wastes to separate out these small quantities of hazardous waste and send them to more heavily regulated facilities (i.e., Subtitle C facilities or MSWLFs). These are the direct benefits of today's proposal, however, additional benefits will be realized due to this proposal.

Today's proposal will ensure that any ground-water contamination that is occurring at facilities that continue to accept small quantities of hazardous waste will be quickly detected and corrective action can be initiated sooner.

To the extent that existing nonmunicipal facilities that receive CESQG hazardous waste upgrade their facilities to include ground-water monitoring and to the extent that new facilities will be sited in acceptable areas with groundwater monitoring, public confidence in these types of facilities will be increased. Having public confidence increased would result in these types of facilities being easier to site in the future.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to consider "small entities" throughout the regulatory process. Section 603 of the RFA requires an initial screening analysis to be performed to determine whether small entities will be adversely affected by the regulation. If affected small entities are identified, regulatory alternatives must be considered to mitigate the potential impacts. The Agency believes that it is unlikely that any industry will face significant impacts under the low-end scenario.

To help mitigate these impacts, EPA is proposing the minimum regulatory requirements allowed under the statute (which are still protective of human health and the environment). As a result, EPA believes that the lower-