Washington, DC 20460. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. The public must make an appointment to view docket materials. Call 202–260– 9327 for an appointment. Copies cost \$0.15 per page for materials exceeding 100 pages.

FOR FURTHER INFORMATION CONTACT: For general questions on this proposed rule, contact the RCRA/Superfund Hotline at 1–800–424–9346, TDD 1–800–553–7672 (hearing impaired); in the Washington, DC metropolitan area the number is 703–412–9810, TDD 703–412–3323. For technical questions, contact Mr. Andrew Teplitzky (703–308–7275) or Mr. Allen Geswein (Phone 703–308–7261): Office of Solid Waste, U.S. Environmental Protection Agency, Mail Code 5306W, 401 M St. SW., Washington, DC 20460.

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I. Authority

The Agency is proposing today's regulations under the authority of section 4010(c) of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6949a(c). Section 4010(c) requires EPA to establish appropriate ground-water monitoring, location, and corrective action criteria for MSWLFs that may receive household hazardous wastes or hazardous waste from small quantity generators. Section 4010(c) States that: "At a minimum such revisions for facilities potentially receiving such wastes should require ground-water monitoring as necessary to detect contamination, establish criteria for the acceptable location of new or existing facilities, and provide for corrective action as appropriate."

II. Background

A. 40 CFR Part 258 and Small Landfill Exemption

On August 30, 1988, the Agency published proposed landfill criteria under Subtitle D of RCRA (53 FR 33314), including minimum federal criteria for location restrictions, facility design and operation, ground-water monitoring, corrective action, financial assurance, and closure and post-closure care requirements. The Agency received over 350 public comments in response to the proposed criteria.

The Agency received a significant number of public comments on the impact the proposal would have on small communities that own and operate small landfills. Commentors were concerned that: (1) Small communities face shortages of technical professionals trained in landfill design and operating practices; (2) small communities have insufficient financial resources to be able to comply with the most costly requirements of the criteria (i.e., the design and ground-water monitoring requirements); and (3) a resurgence in illegal dumping would occur if the proposed criteria resulted in closures of small landfills.

Responding to these concerns in the landfill criteria final rule, published on October 9, 1991 (56 FR 50978), EPA included an exemption for owners and operators of certain small MSWLF units from the design and ground-water monitoring requirements of the criteria. To qualify for the exemption, the small landfill could only accept less than twenty tons of municipal solid waste per day (based on an annual average), have no evidence of existing groundwater contamination, and either: (1) Serve a community that experiences an annual interruption of at least three consecutive months of surface transportation that prevents access to a regional waste management facility, or (2) be located in an area that annually receives less than or equal to 25 inches of precipitation and serve a community

that has no practicable waste management alternative. In adopting this limited exemption, the Agency believed it had complied with the statutory requirement to protect human health and the environment, taking into account the practicable capabilities of small landfill owners and operators.

In January, 1992, the Sierra Club and the Natural Resources Defense Council (NRDC) filed a petition with the U.S. Court of Appeals, District of Columbia Circuit, for review of the Subtitle D criteria. The Sierra Club and NRDC alleged, among other things, that EPA exceeded its statutory authority when it provided for an exemption for certain landfills from the ground-water monitoring requirements. On May 7, 1993, the Court of Appeals issued its opinion in Sierra Club v. United States Environmental Protection Agency 992 F.2d 337 (D.C. Cir. 1993). The Court determined that under RCRA section 4010(c), the only factor EPA could consider in determining whether facilities must monitor ground-water was whether such monitoring was "necessary to detect contamination," not whether such monitoring is 'practicable." Thus, the Court vacated the small landfill exemption as it pertains to ground-water monitoring, and remanded that portion of the final rule to the Agency for further consideration. The Court did not require EPA to remove the exemption for design requirements, since the Sierra Club and NRDC did not challenge the final rule's exemption from the design requirement.

Consequently, as part of the Agency's October 1, 1993 final rule delaying the effective date of the MSWLF criteria (58 FR 51536; October 1, 1993), EPA rescinded the exemption from groundwater monitoring for qualifying small MSWLFs. At the same time, however, EPA delayed the effective date of the MSWLF criteria for qualifying small MSWLFs for two years (until October 9, 1995), to allow owners and operators of such small MSWLFs adequate time to decide whether to continue to operate in light of the Court's ruling, and to prepare financially for the added costs if they decided to continue to operate. This additional two-year period also was intended to provide time for EPA to determine if there are practical and affordable alternative monitoring systems or approaches that are adequate to detect contamination.

The U.S. Court of Appeals decision does not preclude EPA from issuing separate ground-water monitoring standards for these landfills, taking into account size, location, and climate, as long as these separate standards ensure that any ground-water contamination