3. Proposal for Extension to General Compliance Date

As a separate matter in today's proposal, the Agency is requesting comment on two alternatives regarding an extension of the general compliance date for meeting the criteria in 40 CFR part 258. As noted earlier, the Agency has established a separate docket for this aspect of today's proposal (docket number F–95–AGDP-FFFFF) and has provided only a 30-day comment period. The shorter comment period is necessary to allow the Agency to put an extension in place by the time the current compliance date expires on October 9, 1995.

For qualifying small MSWLFs, the general compliance date for meeting the requirements of the solid waste disposal facility criteria specified in 40 CFR part 258, currently is October 9, 1995. Unless the qualifying small MSWLF ceases receipt of waste by this date, the qualifying small MSWLF must comply with all of the part 258 regulations including location, operation, groundwater monitoring and corrective action, closure and post-closure care, and financial assurance.

This October 9, 1995 compliance date does not apply in several circumstances, however. First, the effective date for ground-water monitoring for qualifying small MSWLFs located greater than two miles from a drinking water intake is October 9, 1996. Second, qualifying small MSWLFs are exempt from the design requirements of part 258 unless ground-water contamination that can be attributed to that MSWLF is discovered. Finally, in a separate rulemaking, the Agency extended the effective date for the financial assurance requirements (Subpart G) for all MSWLF units, regardless of size, until April 9, 1997 (see 60 FR 17649, April 7, 1995).

Since the Agency announced that it was investigating the possibility of providing approved States/Tribes with the flexibility to allow qualifying small MSWLFs to use alternatives to groundwater monitoring, the Agency believes (based on public comments) that a number of these MSWLFs have delayed plans for investing resources towards compliance with the requirements in 40 CFR part 258 until the Agency publishes a final rule governing the use of groundwater monitoring alternatives. The Agency believes that qualifying small MSWLFs, in determining whether to remain in operation past the general compliance date of October 9, 1995, should be able to consider any sitespecific flexibilities allowed under a final rule on alternatives to groundwater monitoring.

The Agency anticipates publication of a final rule regarding ground-water monitoring alternatives by October, 1996. Therefore, as part of today's proposed rule, the Agency is proposing to extend the general compliance date for qualifying small MSWLFs from October 9, 1995 to October 9, 1997. This should provide qualifying small MSWLFs with sufficient time to come into compliance. Should public comment support today's proposal to extend the general compliance date for qualifying small MSWLF units, the Agency would publish a final rule for the general compliance date extension prior to October 9, 1995. The Agency recognizes that time is short for this action and has taken steps that will allow the decision to be made prior to October 9, 1995. For this reason, the Agency has set a 30-day public comment period for the proposed rule changes that relate to extending the compliance date and has established a separate public docket (F-95-AGDP-FFFFF) for comments on the extension.

If finalized, qualifying small MSWLF units would not become subject to compliance with any of the part 258 requirements until October 9, 1997. At that time, these MSWLF units must be in compliance with all of the part 258 requirements, including the groundwater monitoring (or alternative groundwater monitoring) requirements and financial assurance requirements. Should a qualifying small MSWLF unit cease receipt of waste prior to October 9, 1997, the owner/operator of that unit need only comply with the final cover requirements as specified in §258.60(a). The final cover would have to be installed by October 9, 1998.

As a result of today's proposal to extend the general compliance date for qualifying small MSWLFs from October 9, 1995 to October 9, 1997, the Agency is proposing to make corresponding changes in the regulatory language in 40 CFR part 258. First, § 258.1(d)(3) and (e)(4) would be revised to reflect the new compliance date of October 9, 1997. Second, the definition of "New MSWLF unit" under §258.2 would be modified to account for the new general compliance date of October 9, 1997. Finally, the applicability section under §258.50(e) would be revised by removing paragraphs (1) and (2), which allowed for two different effective dates for the ground-water monitoring requirements based on the distance of the MSWLF unit to a drinking water intake. Today's proposal would create one effective date (i.e., October 9, 1997) for ground-water monitoring for all qualifying small MSWLFs, regardless of its distance to a drinking water intake.

The Agency believes that the new proposed effective date will provide sufficient time for all qualifying small MSWLFs to comply.

During development of today's proposal to extend the general compliance date for qualifying small landfills to October 9, 1997, the Agency received comments that situations existed where another extension of the effective date for *all* of the requirements of 40 CFR part 258 may not be appropriate.

First, the Agency learned that certain qualifying small landfill owners/ operators have already made arrangements to close their facilities and have established alternative means of waste management, particularly through the development of regionalized facilities. The Agency understands that the establishment of regional commitments amongst numerous small communities that heretofore have independently managed their own waste, can be a time-consuming and, at times, delicate process. The Agency was informed that an extension of the general compliance date could undermine these commitments by creating an incentive for these owners/ operators to reopen their closed facilities.

The Agency also learned that a number of the qualifying small landfills closed in advance of the October 9, 1995 compliance date due to the expense of compliance. The Agency understands that another delay of the general compliance date might serve to penalize those facilities that are trying to work within the rules by either deciding to close or make other arrangements and reward those communities that have done little or nothing. Finally, the Agency was informed that another delay of the general compliance date could allow the reopening of poorly designed and operated facilities that have already closed in anticipation of the October 9, 1995 compliance date.

The Agency does not have information on the extent to which the aforementioned problems may arise should a two-year delay of the general compliance date be promulgated. Therefore, the Agency requests comment (addressed to docket number F–95–AGDP-FFFFF) on these and any other concerns that may result from a two-year delay of the general compliance date.

In addition to soliciting comment on the implications of a two-year general compliance date delay, the Agency invites comments (also addressed to docket number F–95–AGDP-FFFFF) on an alternative to the proposed two-year delay. The alternative approach would