VI. Consideration of Issues Related to Environmental Justice

The Agency believes that this proposed rule, if finalized, would not have a disproportionately high and adverse environmental or economic impact on any minority or low-income group, or on any other type of affected community. Rather, the Agency believes that this rulemaking will bring the cost of ground-water monitoring to an affordable level for some eligible communities that otherwise would have to bear the cost of full ground-water monitoring under 40 CFR part 258. As a result, the Agency believes that this rule will enable some minority and/or low-income communities to be served by a local landfill, and will reduce the potential for open burning and illegal dumping. Because this rule would reduce the financial impacts of groundwater monitoring, such communities may be able to allocate some funding to other priority issues affecting their local environments.

VII. Impact Analysis

A. Executive Order 12866

Under Executive Order 12866, EPA must determine whether a regulatory action is significant. A significant regulatory action is defined by Executive Order 12866 as one 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 rights and obligations or 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, 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 will be documented in the public record.

The Agency estimated the annual effect on the economy by comparing the costs of alternatives to ground-water monitoring with the costs of full ground-water monitoring. The Agency

estimates the national annual costs of baseline ground-water monitoring requirements at qualifying small facilities to range from \$7.2 million to \$26.6 million per year. National annual costs of the lowest-cost alternative range from \$1.3 million to \$4.4 million per year, resulting in a \$5.9 million to \$22.2 million savings over baseline groundwater monitoring requirements. Actual regulatory savings from this proposal are likely to be less because site-specific factors and/or State regulatory decisions may preclude the use of the lowest cost alternative. Because appropriately selected alternatives to ground-water monitoring will be able to detect contamination, the Agency anticipates that there will be no decrease in environmental benefits as a result of the proposed rule. The full cost analysis may be found in the docket (F-95-AGAP-FFFFF) to this rulemaking.

For estimating costs of alternatives to ground-water monitoring, the Agency selected several alternatives for cost modeling purposes. These alternatives include: (A) collection and analysis of ground-water samples from existing drinking water/agricultural wells and springs; (B) collection of ground-water samples from monitoring wells and analysis for a reduced list of constituents; (C) annual sampling and analysis of geologic (solid/liquid) materials from the unsaturated zone; (D) collection and analysis of soil gas samples from the unsaturated zone; (E) performing an electrical resistivity survey, and; (F) installing moisturedetection gypsum blocks.

The lowest cost alternative differed depending on the size and the remaining life of the landfill. In most cases, the lowest-cost alternatives involved unsaturated zone monitoring techniques. It is also important to note that for this analysis the Agency assumed that no contamination occurred or was detected. If contamination is detected, further analysis is required and the cost savings over baseline ground-water monitoring requirements would be reduced, or even eliminated.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires an agency to prepare, and make available for public comment, a regulatory flexibility analysis that describes the impact of a proposed or final rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have

significant economic impact on a substantial number of small entities.

The proposed amendment to 40 CFR part 258 would reduce the regulatory burdens of the part 258 criteria, thereby imposing no additional economic impact to small entities. Therefore, in accordance with 5 U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have a significant adverse economic impact on a substantial number of small entities (as defined by the Regulatory Flexibility Act)

C. Paperwork Reduction Act

The Agency has determined that there are two reporting requirements associated with today's proposed rule. Under this proposal, MSWLF owners/ operators subject to these provisions are required to report to the Directors of approved States and Tribes: (a) the nature and extent of any contamination detected, and (b) proposed corrective measures to prevent further contamination or to remediate contamination. These reporting requirements will not cause any additional burden over existing similar requirements of 40 CFR part 258; they are merely different because they are generated by alternative monitoring programs. These requirements have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

D. Executive Order 12875

Under Executive Order 12875, Federal agencies are charged with enhancing intergovernmental partnerships by allowing State and local governments the flexibility to design solutions to problems the citizenry is facing.

Executive Order 12875 calls on Federal agencies to either pay the direct costs of complying with Federal mandates or to consult with representatives of State, local, or tribal governments prior to formal promulgation of the requirement. The executive order also relates to increasing flexibility for State, Tribal, and local governments through waivers.

For this rulemaking, the Agency met with representatives of State and local governments, and other members of the regulated community, to provide them with an opportunity to present the Agency with information regarding the costs of monitoring ground water at qualifying small MSWLFs, and on any cost-effective alternatives to full part 258 ground-water monitoring requirements. The extent of the Agency's consultation with affected parties is discussed earlier in this preamble. Through this consultation