

determination of adequacy appears at 58 FR 52491 (October 8, 1993).

EPA approved the following portions of the State's MSWLF permit program:

1. Location restrictions for airports, flood plains, wetlands, fault areas, seismic impact zones, and unstable areas (40 CFR 258.10 through 258.15).
2. Operating criteria for the exclusion of hazardous waste, cover materials, disease vector control, explosive gases, air criteria, access requirements, run-on/run-off control systems, surface water requirements, liquids restrictions, and record keeping requirements (40 CFR 258.20 through 258.29).
3. Design criteria requirements (40 CFR 258.40).
4. Closure and post-closure requirements (40 CFR 258.60 through 258.61).

EPA did not approve the following portions of the State's MSWLF permit program:

1. Wyoming will revise its regulations to incorporate the Federal ground-water monitoring and corrective action requirements in 40 CFR 258.50, 258.51, and 258.53 through 258.58.
2. Wyoming will develop new regulations to incorporate the financial assurance requirements in 40 CFR 258.70 through 258.72 and 258.74. Wyoming will revise its regulations to incorporate the financial assurance requirements in 40 CFR 258.73.

On September 30, 1994, the State of Wyoming submitted a revised application for partial program adequacy determination. EPA reviewed Wyoming's application and tentatively determined that the following portions of the State's subtitle D program will ensure compliance with the Federal Revised Criteria.

1. Ground-water monitoring and corrective action requirements (40 CFR 258.50, 258.51, and 258.53 through 258.58).
2. Financial assurance requirements (40 CFR 258.70 through 258.74)

The October 9, 1991, Final Rules for the MSWLF Criteria included an exemption for owners and operators of certain small MSWLF units from the design (subpart D) and ground-water monitoring and corrective action (subpart E) requirements of the Criteria. See 40 CFR 258.1(f). To qualify for the exemption, the small landfill had to accept less than 20 tons per day, on an average annual basis, exhibit no evidence of ground-water contamination, and serve either:

- (i) 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

- (ii) A community that has no practicable waste management alternative and the landfill unit is located in an area that annually received less than or equal to 25 inches of precipitation.

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 suit alleged, among other things, that EPA acted illegally when it exempted these small landfills from the ground-water monitoring requirement. On May 7, 1993, the United States Court of Appeals for the District of Columbia Circuit issued an opinion pertaining to the Sierra Club and NRDC challenge to the small landfill exemption. *Sierra Club v. United States Environmental Protection Agency*, 992 F.2d 337 (DC Cir. 1993).

In effect, the Court noted that while EPA could consider the practicable capabilities of facilities in determining the extent or kind of ground-water monitoring that a landfill owner/operator must conduct, EPA could not justify the complete exemption from ground-water monitoring requirements. Thus, the Court vacated the small landfill exemption as it pertains to ground-water monitoring, directing the Agency to "... revise its rule to require ground-water monitoring at all landfills."

EPA's final rule of October 1, 1993, as required by the Court, removed the October 9, 1991, small landfill exemption whereby owners and operators of MSWLF units that meet the qualifications outlined in 40 CFR 258.1(f) are no longer exempt from ground-water monitoring requirements in 40 CFR 258.50 through 258.55. The final rule does, however, provide for an extension for *all* of the MSWLF criteria requirements for a period up to two years for all MSWLF units that meet the small landfill exemption in § 258.1(f) for ground-water monitoring and corrective action as follows: October 9, 1995, for new units; and October 9, 1995 through October 9, 1996, for existing units and lateral expansions.

The U.S. Court of Appeals in its decision did not preclude the possibility that the Agency could establish separate ground-water monitoring standards for the small dry/remote landfills that take such factors as size, location, and climate into account.

The Agency will continue to maintain an open dialogue with all interested parties to discuss whether alternative

ground-water monitoring requirements should be established and will continue to accept information on alternatives. At this time, the Agency is investigating this issue and cannot be certain that practicable alternatives for detecting ground-water contamination will exist for MSWLF units that would qualify for the exemption under § 258.1(f). The October 9, 1993 final rule does not link the effective date of ground-water monitoring for landfills that qualify for the small/arid and remote exemption to promulgation of alternative ground-water monitoring requirements.

Under Wyoming rules, the State's 71 active MSWLF's, by definition, consist of Type I and Type II landfills. Type II landfills, which make up the vast majority of landfills in Wyoming, fit the same definition as those defined as small/arid and remote landfills under § 258.1(f). The State's Type I landfills are those that are *not* Type II landfills. Type II landfills currently comply with State ground-water monitoring and corrective action rules.

Since the State's Type II landfills are not required to comply with ground-water monitoring and corrective action criteria as defined in § 258.1(f) until October 9, 1996, the State is not seeking approval for this portion of their program at this time. When EPA promulgates final revisions to the MSWLF § 258.1(f) criteria and provides enough latitude for states to tailor these requirements for small, arid landfills, then the State of Wyoming will need to update their rules. It is the State of Wyoming's position that when EPA promulgates final rule revisions to the MSWLF criteria in § 258.1(f), Wyoming will revise its application for full program approval to bring Type II landfills into compliance with part 258 criteria for ground-water monitoring and corrective action.

Although RCRA does not require EPA to hold a public hearing on a determination to approve a State/Tribe's MSWLF program, the Region has tentatively scheduled a public hearing on this determination. If a sufficient number of people express interest in participating in a hearing by writing the Region or calling the contact within 30 days of the date of publication of this notice, the Region will hold a hearing on March 13, 1995, at the Wyoming Department of Environmental Quality, Herschler Building, 1st Floor Conference room 1299, 122 West 25th Street, Cheyenne, Wyoming 82002 at 10 a.m.

In its application for adequacy determination, Wyoming has not asserted jurisdiction over Indian Country, as defined in 18 U.S.C. 1511.