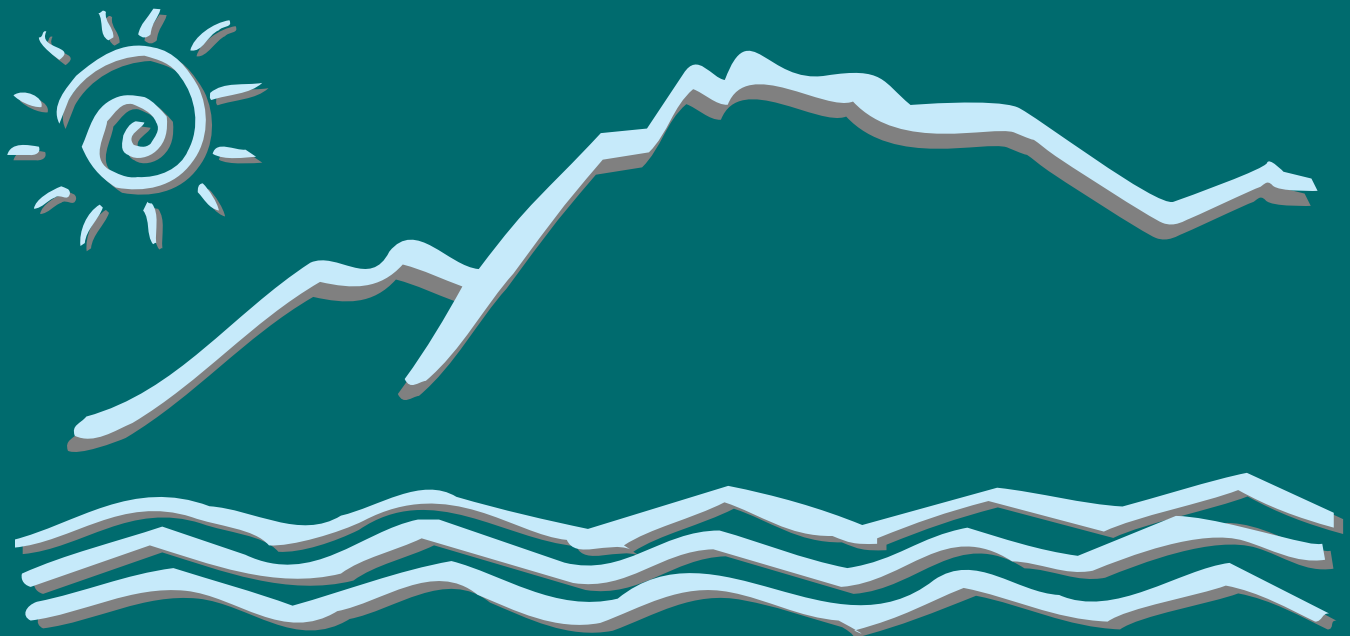




Site-Specific Flexibility Requests for Municipal Solid Waste Landfills in Indian Country Draft Guidance

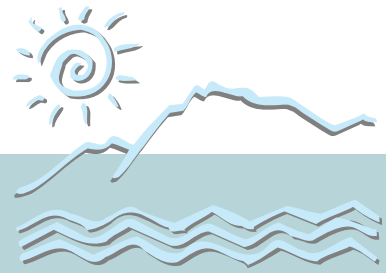


WASTE MANAGEMENT IN INDIAN COUNTRY



The following is a draft guidance document that sets out a process designed to help owners and operators in requesting flexibility in federal municipal solid waste landfill (MSWLF) rules in Indian Country and to help EPA Regional offices in reviewing and processing such requests. We encourage owners and operators of MSWLFs in Indian Country to use this guidance in its present form when seeking site-specific flexibility in conforming to the federal regulations applicable to MSWLFs. EPA may revise the process based on further review and any comments received on the draft guidance contained in this document.

The policies set out in this guidance are not final Agency actions, but are intended solely as guidance. They are not intended, nor can they be relied upon, to create any rights enforceable by any party in litigation with the United States. EPA officials may decide to follow the guidance provided, or to act at variance with the guidance, based on an analysis of site-specific circumstances. The Agency also reserves the right to change this guidance at any time.



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Introduction

This draft guidance document describes a process by which municipal solid waste landfill (MSWLF) owners and operators in Indian Country¹ may apply for the same flexibility that is available to landfill owners and operators in states with EPA-approved MSWLF permitting programs. The process encourages active dialogue among tribes², MSWLF owners and operators, EPA, and the public. This guidance is designed so that the Agency works in partnership with tribes. Because EPA recognizes tribal sovereignty, EPA will respect tribal findings concerning consistency of proposed approaches with tribal law and policy.

Background

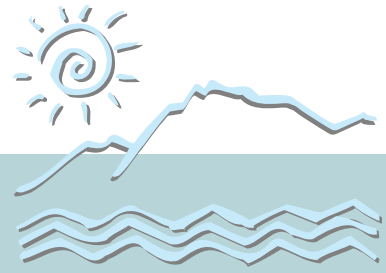
Federal regulations governing MSWLFs establish criteria for their location, design, operation, ground-water monitoring, corrective action, closure and post-closure care, and financial assurance. These criteria are in the Code of Federal Regulations at 40 CFR Part 258. For many of these criteria, 40 CFR Part 258 establishes a flexible performance standard in addition to the self-implementing technical standard. (See sidebar on page 3 for example.)

The Agency's role in the regulation of MSWLFs is to establish these national minimum standards that the states are to incorporate into their MSWLF permitting programs. EPA evaluates state MSWLF permitting programs to determine whether they are adequate to ensure that MSWLF owners and operators comply with the federal standards. Once EPA approves a state MSWLF permitting program, that state can allow MSWLF owners and operators to use flexible performance standards. The flexibility provided in the MSWLF criteria allows for the consideration of site-specific conditions in designing and operating a MSWLF at the lowest cost possible while ensuring protection of human health and the environment. In unapproved states, owners and operators must follow the self-implementing technical standards.

EPA has the authority under Sections 2002, 4004, and 4010 of the Resource Conservation and Recovery Act (RCRA) to promulgate site-specific rules as outlined in this draft guidance document. The authority to issue such rules has been upheld by a U.S. District Court in *Yankton Sioux Tribe v. EPA*, 950 F. Supp. 1471 (D.S.D. 1996). In addition, a U.S. Court of Appeals suggested it would recognize EPA's authority to issue such site-specific rules under RCRA Subtitle D. *Backcountry Against Dumps v. EPA*, 100 F.3d 147 (D.C. Cir. 1996). In this decision, the court noted that EPA and the tribe need not wait for Congress to amend RCRA to obtain flexibility in complying with the revised MSWLF criteria. Instead, the court suggested that EPA could issue a site-specific rule satisfying both the intent of RCRA and an owner or operator's need for flexibility. The steps outlined in this guidance document for promulgating site-specific rules are meant to satisfy the notice and opportunity for comment requirements of the Administrative Procedure Act (5 USC 551).

¹ This guidance uses the term "Indian Country" as defined in 40 CFR §258.2 to mean "(1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running throughout the reservation; (2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of the State; and (3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."

² Throughout this guidance "tribe" and "tribal" refer to the federally recognized tribal government or an agency or authorized official of the tribal government.



EPA's Goal

From the beginning of EPA's development of the permitting program approval process, the Agency planned to offer permitting program approval to tribes as well as to states. In a recent court decision³, the court ruled that EPA cannot approve tribal permitting programs. The decision means that our existing regulations do not provide a mechanism under which owners and operators in Indian Country can take advantage of site-specific approaches that would enable them to reduce the cost of operating a MSWLF that is protective of human health and the environment. The Agency has therefore developed a site-specific rulemaking process to meet its goal of providing warranted flexibility quickly and efficiently to owners and operators in Indian Country. Under this process, an owner or operator can request to use certain alternative approaches at a specific MSWLF site to meet the 40 CFR Part 258 performance standards. (See page 4 for examples of alternative approaches that consider site-specific conditions.)

Tribal government owners and operators should submit such requests directly to EPA Regional offices (see Appendix A, page 13 for a map and contact information). Other owners and operators, including individual tribal members, should submit requests to the tribal government in whose area of Indian Country the MSWLF is or will be located. The tribal government should review the request and forward it to EPA with a recommendation. If EPA approves a request, it will issue a site-specific rule allowing the use of alternative approaches.

Example of Technical and Performance Standards in 40 CFR Part 258: Daily Cover

Technical standard:
6 inches of earthen material.

Performance standard:
Any alternative cover material and thickness that control disease vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment.

Organization of This Document:

- **Section 1** is guidance for tribal government MSWLF owners and operators.
- **Section 2** is guidance for MSWLF owners and operators other than tribal governments. This includes individual tribal members.
- **Section 3** is guidance for tribal environmental protection personnel and other tribal government officials who receive requests from MSWLF owners or operators.

³ *Backcountry Against Dumps v. EPA*, 100 F3d 147 (D.C. Cir. 1996).

Examples of Alternative Approaches Allowed by 40 CFR Part 258

For a more complete list of areas of flexibility, see Appendix A, page 14 or consult the MSWLF criteria in 40 CFR Part 258.

Location:

- Wetlands siting of new MSWLFs.
- Deadline for closure of existing MSWLFs that do not comply with the fault area, seismic impact zone (SIZ), unstable area, floodplain, and/or airport safety provisions.

Operations:

- Alternative daily cover materials or alternative cover thickness.
- Temporary waiver of daily cover requirements.
- Alternative locations for facility records.

For MSWLF Design:

- Alternative landfill designs meeting performance standard (in lieu of composite liner).

Ground-Water Monitoring:

- Alternative boundary (or point of compliance) for ground-water monitoring (and corrective action and design) requirements.
- A multi-unit ground-water monitoring system, instead of separate monitoring systems for each MSWLF unit at a facility.
- List of detection monitoring parameters.

- Alternative frequency for detection monitoring.
- List of assessment monitoring parameters.
- Alternative frequencies for various sampling steps during assessment monitoring.

Corrective Action:

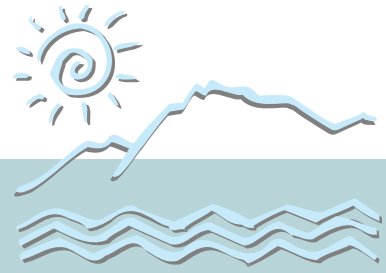
- Alternative ground-water protection standards for any constituent for which a maximum contaminant level (MCL) has not been established.
- Waiver of cleanup of a particular 40 CFR Part 258 Appendix II constituent.
- Alternative time period defining end of corrective action.

Closure and Post-Closure Care:

- Alternative final cover design.
- Extension beyond specified deadline for beginning closure activities.
- Extension beyond specified deadline for completing closure.
- Removal of notation from the deed.
- Reduction of the 30-year post-closure care period.

For Financial Assurance:

- Alternative financial assurance mechanisms.



Section 1

Process for Tribal Government MSWLF Owners and Operators

Note: If you are not an authorized official of a federally recognized tribal government, please see Section 2. Sections 1 and 2 contain some similar steps, but they are not identical.

STEP 1:

Evaluate Alternative Approaches and Submit Request Package

If you are opening, operating, or expanding a MSWLF in Indian Country, you may wish to use alternative approaches to meet the requirements of the MSWLF criteria in 40 CFR Part 258. Before making any decision, you should familiarize yourself with the federal requirements and the areas in which you can seek flexibility. You can apply for flexibility in site selection, liner design, daily cover application, ground-water monitoring, corrective action, closure and post-closure care, and financial assurance. For examples of the alternative approaches allowed in 40 CFR Part 258, see page 4.

Once you have decided on an alternative approach, you should assemble a request package. It should include a cover letter and a Site-Specific Flexibility Request Form (see Appendix B, pages 17 to 19 for samples) and appropriate rationale, engineering drawings, modeling results, or other documentation demonstrating compliance of your proposed approach with the requirements of the criteria in 40 CFR Part 258. You may wish to identify in this letter any additional and relevant impacts to human health and the environment. You should have an authorized official of the tribal government certify that the request complies with tribal law and policy (see Appendix B, page 20 for a sample certification letter), and then you should submit the request to the appropriate EPA Regional office (see Appendix A, page 13 for a map and contact information). Regional office personnel will work closely with you throughout the request process. You will receive a letter from us acknowledging receipt of your request. In most cases, we will publish a notice in the local newspaper (and in the *Federal Register*, if appropriate) indicating that we have received your request.

STEP 2:

EPA Review

We will perform a technical review of your request to determine whether your proposed approach meets the requirements of the criteria in 40 CFR Part 258. During this technical review, we might ask you for additional information to help us assess your proposal. To expedite our review, you should respond to such requests promptly.

STEP 3:

Tentative Decision by EPA

We will attempt to rule on your request within 90 days of receiving it. You will receive a letter of tentative approval or a notice of technical deficiency. In cases of technical deficiency, the letter will tell you where your proposed approach failed to meet the requirements of the criteria in 40 CFR Part 258. If you receive a notice of technical deficiency and you decide to modify your approach, you will be expected to provide a revised request package to us. If these modifications result in tentative approval, processing of your request will continue.

If we tentatively approve your request or provide a notice of technical deficiency, in most cases, we will publish a notice in the local newspaper (and in the *Federal Register*, if appropriate) announcing the tentative decision and inviting public comment.

STEP 4:

Public Participation

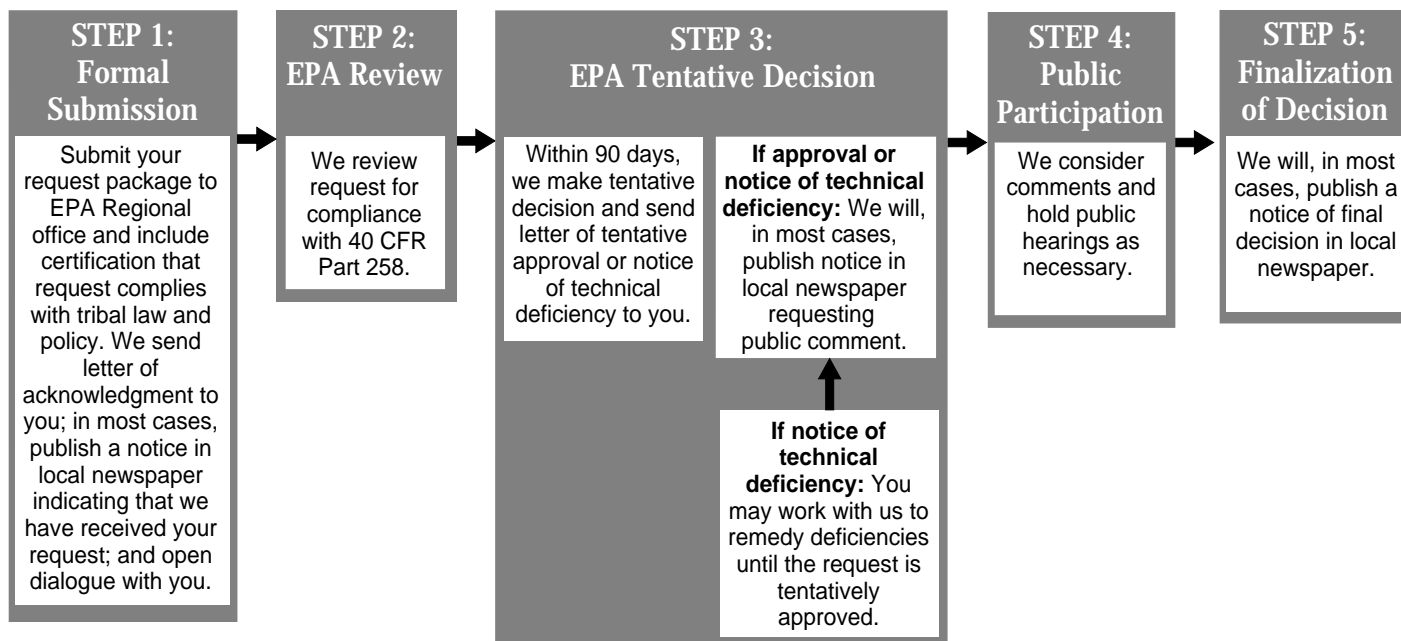
The rule request process includes a public participation period. The public notices described in Steps 1 and 3 enable the public, including nearby residents such as tribal members, and other interested parties, to become involved in the request evaluation. We will consider public comments on your request and, if appropriate, hold public hearings.

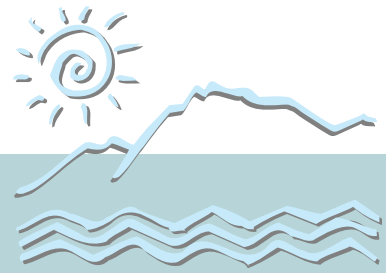
Several available EPA publications explain the public involvement process. (See Appendix E, page 28 for a listing.) You may want to consult these publications to familiarize yourself with that process. You may also want a tribal representative to attend public hearings and present your views and information. You are encouraged to read the public comments in the docket and remain in close contact with us.

STEP 5:

Finalization of Decision

After the public participation period, we will send you a final decision. We will, in most cases, also publish a notice of the final decision in the local newspaper (and in the *Federal Register*, if appropriate) and send you a copy of the notice. Our correspondence will document any additional suggestions or conditions that we may have attached to the decision to address issues specifically related to the areas of flexibility you requested. We will discuss these issues, if any, with you before finalizing our decision.





Section 2

Process for MSWLF Owners and Operators Other Than Tribal Governments

STEP 1:

Evaluate Alternative Approaches and Submit Request Package

If you are opening, operating, or expanding a MSWLF in Indian Country, you may wish to use alternative approaches to meet the requirements of the MSWLF criteria in 40 CFR Part 258. Before making any decision, you should familiarize yourself with the federal requirements and the areas in which you can seek flexibility. You can apply for flexibility in site selection, liner design, daily cover application, ground-water monitoring, corrective action, closure and post-closure care, and financial assurance. For examples of alternative approaches allowed in 40 CFR Part 258, see page 4.

Once you have decided on an alternative approach, you should assemble a request package. It should include a cover letter and a Site-Specific Flexibility Request Form (see Appendix C, pages 21 to 23 for samples) and appropriate rationale, engineering drawings, modeling results, or other documentation demonstrating compliance of your approach with the requirements of the criteria in 40 CFR Part 258. You should submit the request to the tribal government in whose area of Indian Country your MSWLF is or will be located. Many tribes have offices of natural resources or environmental protection. Consult with the tribal government to determine exactly where to send your request.

At the same time, you should also send a letter (see Appendix C, page 24 for sample) and a copy of the Site-Specific Flexibility Request Form to the appropriate EPA Regional office (see Appendix A, page 13 for a map and contact information), notifying us that you have sent a request to the tribe. You and the tribe will receive letters from us acknowledging receipt of your letter. We will also, in most cases, publish a notice in the local newspaper (and in the *Federal Register*, if appropriate) indicating that we and the tribe have received your request and that the tribe is reviewing it.

STEP 2:

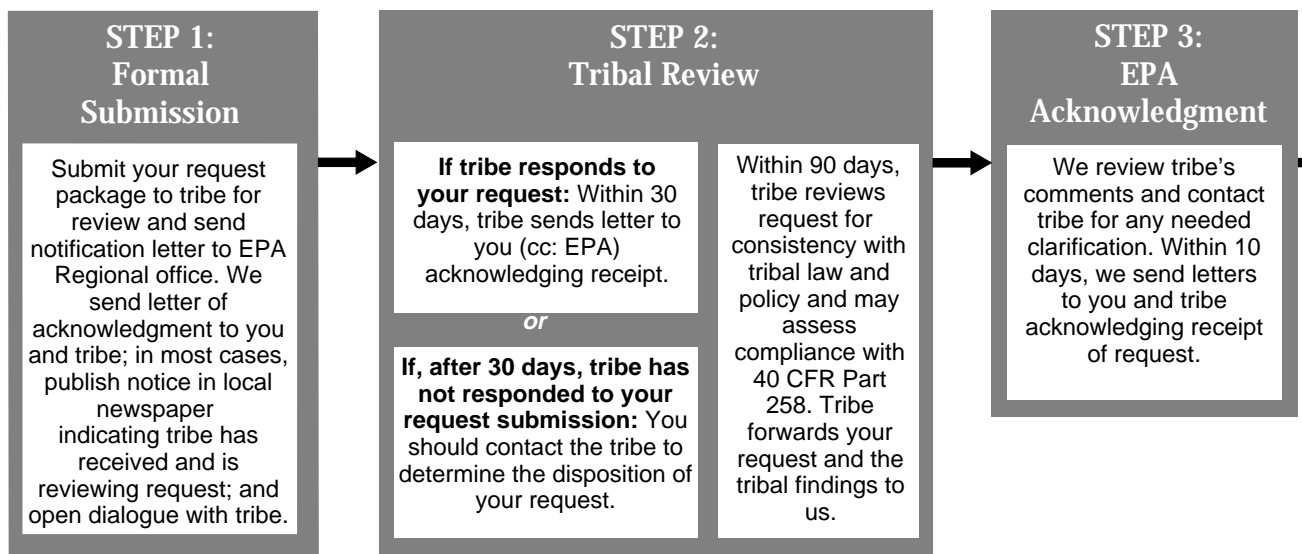
Tribal Review

Within 30 days of filing your request, you should receive a letter of acknowledgment from the tribe. This indicates that the tribe has received your request and has begun reviewing it. If, after 30 days, you have not received the tribal acknowledgment letter, you should contact the tribe to determine the disposition of your request. You should work closely with the tribe to address any issues that the tribe may identify as needing resolution in order to proceed with a review.

The tribe should evaluate whether your proposed approach complies with tribal law and policy. The tribe also may review your request for compliance with the requirements of the criteria in 40 CFR Part 258, although we also will do this in our review. Additionally, the tribe might provide comments about the impact of your proposed approach on human health and the environment.

Within 90 days of receiving your request, the tribe should complete its review. You should then receive a letter from the tribe indicating whether it supports your request. If the tribe does not support it, you should be specifically informed in

this letter of any areas where your proposed approach is inconsistent with tribal law or policy or fails, in the tribe's view, to meet the requirements of the criteria in 40 CFR Part 258. The tribe will also forward your application and a copy of the letter of tribal findings to the appropriate EPA Regional office.



STEP 3:

EPA Acknowledgment

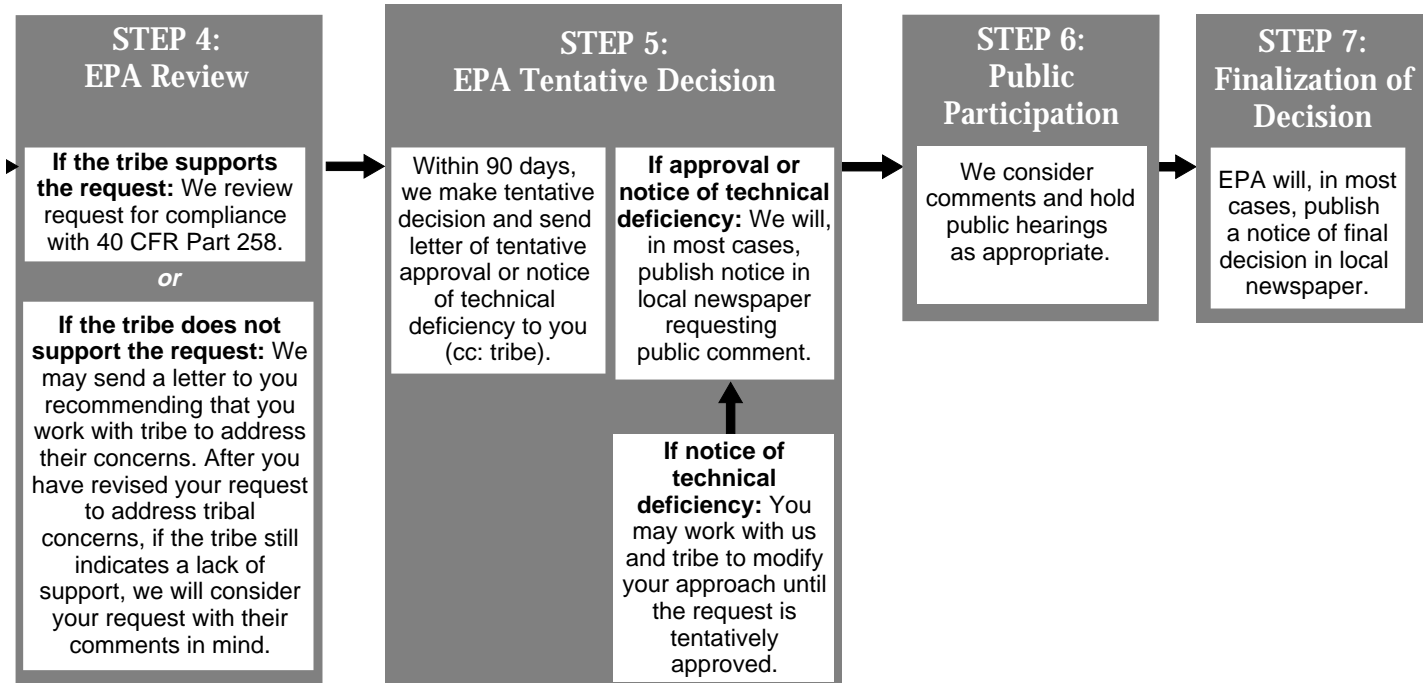
About 10 days after the tribe notifies you of its findings, you should receive a letter from us acknowledging that we have received your request and a copy of the letter of tribal findings. During our review of the tribe's comments we may contact the tribe for clarifications.

STEP 4:

EPA Review

If our review of the information provided by the tribe indicates tribal support for your proposed approach, we will evaluate your request for compliance with the requirements of the criteria in 40 CFR Part 258. During this technical evaluation, we might ask you for additional information to help us assess your proposal. To expedite our evaluation, you should respond to such requests promptly.

If our review of tribal input indicates a lack of support for your proposal, we may send you and the tribe letters recommending that you work together to determine means by which you might revise your approach to address tribal concerns. After such revision, you should resubmit your request to the tribe. The tribe should again review your request and resubmit it and any additional input to us for review. If, at that time, the tribe indicates its support, we will perform the technical evaluation described above. If the tribe still indicates a lack of support, we will consider your request with their comments in mind.



STEP 5:**Tentative Decision by EPA**

We will attempt to rule on your request within 90 days of receiving it from the tribe. You will receive a letter of tentative approval or a notice of technical deficiency. In cases of technical deficiency, the letter will tell you where your proposed approach failed to meet the requirements of the criteria in 40 CFR Part 258. If you receive a notice of technical deficiency and you decide to modify your approach, you will be expected to provide revised request packages to the tribe for comment and to us. If these modifications result in tentative approval, and your modified approach is supported by the tribe, processing of your request will continue.

If we tentatively approve your request or provide a notice of technical deficiency, we will, in most cases, publish a notice in the local newspaper (and in the *Federal Register*, if appropriate) announcing the tentative decision and inviting public comment.

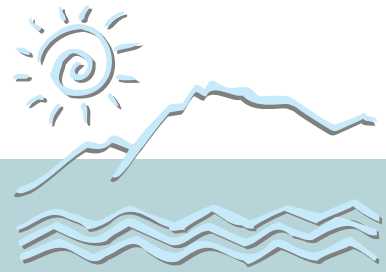
STEP 6:**Public Participation**

The rule request process includes a public participation period. The public notices described in Steps 1 and 5 enable the public, including nearby residents such as tribal members, and other interested parties, to become involved in the request evaluation. We will consider public comments on your request and, if appropriate, hold public hearings.

Several available EPA publications explain the public involvement process. (See Appendix E, page 28 for a listing.) You may want to consult these publications to familiarize yourself with that process. You may also want a representative of your organization available to attend public hearings and to present your views and information. You and the tribe are both encouraged to read the public comments in the docket and remain in close contact with each other and with us.

STEP 7:**Finalization of Decision**

After the public participation period, we will send you a final decision. We will also, in most cases, publish a notice of the final decision in the local newspaper (and in the *Federal Register*, if appropriate) and send you a copy of the notice. Our correspondence will document any additional suggestions or conditions that we may have attached to the decision to address issues specifically related to the areas of flexibility you requested. We will discuss these issues, if any, with you and the tribe before finalizing our decision.



Section 3

Review Process for a Tribe That Receives a Request From an Owner or Operator

This section describes the steps that a tribe should take when it receives a MSWLF owner or operator's request for approval of an alternative approach. The steps outlined below are the same as those discussed in Section 2; however, this section focuses on the tribe's role rather than that of the owner or operator.

STEP 1:

Evaluate Alternative Approaches and Submit Request Package

The owner or operator should submit to you an application package consisting of a cover letter, the Site-Specific Flexibility Request Form, and appropriate rationale, engineering drawings, modeling results, or other documentation demonstrating that the proposed approach will satisfy the requirements of the criteria in 40 CFR Part 258. At the same time, the owner or operator should submit a letter notifying the appropriate EPA Regional office of the request filed with you. As a result of this notification, you and the owner or operator will receive letters from us indicating that we are aware of the request. The letter should state that we have published a notice in the local newspaper (and in the *Federal Register*, if appropriate) indicating that you and the Regional office have received the request and that you are reviewing it.

STEP 2:

Tribal Review

Within 30 days of receiving the request, you should send a letter of acknowledgment (see Appendix D, page 25 for sample) to the owner or operator. This indicates that you have received the request and have begun reviewing it. In your review, you should evaluate whether the proposed approach complies with tribal law and policy. You also may review the request for compliance with the requirements of the criteria in 40 CFR Part 258, although we also will do this in our review. Additionally, you may provide comments about the impact of the proposed approach on human health and the environment.

Within 90 days of receiving the request, you should complete your review and send a letter (see Appendix D, pages 26 to 27 for samples) to the owner or operator indicating whether you support the request. If you do not support it, please specify in this letter any areas where the proposed approach is inconsistent with tribal law or policy, has impacts on human health or the environment, or, in your view, fails to meet the requirements of the criteria in 40 CFR Part 258. You should also forward the request and a copy of the letter of tribal findings to the EPA Region (see Appendix A, page 13 for map and contact information).

STEP 3:**EPA Acknowledgment**

About 10 days after you forward the request and your findings to us, you will receive a letter from us acknowledging that we have received the materials. Before beginning our own technical review for compliance with the requirements of the criteria in 40 CFR Part 258, we will read and consider your views concerning consistency with tribal law and policy, impacts on human health and the environment, and any other comments. We may contact you during this time for clarifications.

STEP 4:**EPA Review**

If our review of the information you provided indicates your support for the owner or operator's proposed approach, we will evaluate the request for compliance with the requirements of the criteria in 40 CFR Part 258.

If our review of your input indicates a lack of support for the owner or operator's proposal, we may send you and the owner or operator letters recommending that you work together to determine means by which the owner or operator might revise his or her approach to address tribal concerns. After such revision, the owner or operator should resubmit the request to you. You should again perform a review of the request as described in Step 2, and submit the request and any additional input to us for review. If, at that time, you indicate your support, we will

perform the technical evaluation described above. If you still do not support the request, we will carefully consider your objections before continuing this process.

STEP 5:**Tentative Decision by EPA**

We will attempt to rule on the request within 90 days of receiving it and your letter of findings. You will receive a copy of the letter of tentative approval or notice of technical deficiency that we send to the owner or operator. In cases of technical deficiency, the letter will tell you and the owner or operator where the proposed approach failed to meet the requirements of the criteria in 40 CFR Part 258.

If the owner or operator receives a notice of technical deficiency and decides to modify his or her approach, he or she will be expected to provide revised request packages to you for comment and to us. You should maintain contact with us and the owner or operator to stay informed of any modifications to the request. Your involvement ensures that modifications intended to gain our approval do not make a previously acceptable approach unacceptable to you.

If we tentatively approve the request or provide a notice of technical deficiency, we will, in most cases, publish a notice in the local newspaper (and in the *Federal Register*, if appropriate) announcing the decision and inviting public comment.

STEP 6:**Public Participation**

The rule request process includes a public participation period. The public notices described in Steps 1 and 5 enable the public, including nearby residents such as tribal members, and other interested parties, to become involved in the request evaluation. We will consider public comments on the owner or operator's request and, if appropriate, hold public hearings.

Several available EPA publications explain the public involvement process. (See Appendix E, page 28 for a listing.) You may want to consult these publications to familiarize yourself with that process. You may also want a tribal representative to attend public hearings and to present your views and information. You and the owner or operator are both encouraged to read the public comments in the docket and remain in close contact with each other and with us.

STEP 7:**Finalization of Decision**

After the public participation period, we will send you a copy of our final decision. We will also, in most cases, publish a notice of the final decision in the local newspaper (and in the *Federal Register*, if appropriate) and send you a copy of the notice. Our correspondence will document any additional suggestions or conditions that we may have attached to the decision to address issues specifically related to the areas of flexibility the owner or operator requested. We will discuss these issues, if any, with you and the owner or operator before finalizing our decision.

Suggested Means of Demonstrating That Proposed Alternative Approaches Satisfy 40 CFR Part 258 Criteria

For a complete list of available areas of flexibility, see 40 CFR Part 258.

LOCATION

Build in Wetlands [§258.12(a)]

- Demonstrate no practicable alternative to siting in a wetland, no violation of Clean Water Act toxic effluent standard, and no threat to endangered species.
- Demonstrate avoided impacts to wetlands, minimization of any unavoidable impacts, and offset of any remaining impacts through restoring existing degraded wetlands or creating new wetlands.

Build Within 200 Feet of a Fault [§258.13(a)]

- Demonstrate that structural damage to the landfill can be prevented with a setback of less than 200 feet and that human health and the environment will be protected.

Build in a Seismic Impact Zone (SIZ) [§258.14(a)]

- Demonstrate that all containment structures are designed to resist the maximum horizontal acceleration expected in the rock at the site.

Extend Deadline for Closure of Existing MSWLFs that Do Not Comply with the Unstable Area, Floodplain, or Airport Safety Provisions [§258.16(b)]

- For extension of closure deadline from October 9, 1996 to October 9, 1998, demonstrate no available alternative disposal capacity exists and that landfill presents no immediate threat to human health and the environment.

OPERATIONS

Alternative Daily Cover Materials [§258.21(b)]

- Demonstrate that alternative material controls insects, rodents, fires, odors, blowing litter, and scavenging.

Temporary Waiver of Daily Cover Requirements [§258.21(c)]

- Show daily cover impractical due to extreme weather conditions.

Alternative Locations for Facility Records [§258.29(a)]

- Show that facility records will be maintained in an appropriate location other than near the landfill.

DESIGN

Alternative Liner System Design [§§258.40(a)(1), (c), (d)]

- Demonstrate that an alternative liner design ensures that constituent concentrations listed in §258.40, Table 1 will not be exceeded in the uppermost aquifer at the relevant point of compliance.
- Address the hydrogeologic characteristics of the landfill site, climate, volume, and physical and chemical characteristics of the leachate, and model potential contaminant migration.

GROUND-WATER MONITORING

Suspension of Ground-Water Monitoring Requirements [§258.50(b)]

- Demonstrate that there is no potential for migration of hazardous constituents to uppermost aquifer during the landfill's active life and post-closure care period.

Alternative Boundary (Point of Compliance) for Ground-Water Monitoring [§§258.40(d) and 258.51(a)(2)]

- Demonstrate that a monitoring point up to 150 meters away from the landfill unit boundary rather than at the boundary will ensure detection of ground-water contamination in the uppermost aquifer.

Use of Multi-Unit Ground-Water Monitoring System [§258.51(b)]

- Demonstrate multi-unit system is as protective of human health and the environment as monitoring individual units, taking into account the number, spacing, and orientation of the MSWLF units, hydrogeology, site history, engineering design of units, and types of waste accepted.

Modified List of Detection Monitoring Parameters [§258.54(a)(1), (2)]

- For deletion of an Appendix I detection monitoring parameter, demonstrate that the constituent is not reasonably expected to be in or derived from the waste in the landfill.
- For an alternative list of inorganic indicator parameters, demonstrate that the parameters will reliably indicate inorganic releases to ground water. Accurate analysis for some such parameters may only be possible with field-filtered samples.

Alternative Frequency for Detection Monitoring [§258.54(b)]

- Demonstrate that an alternative frequency, no less than annual, is appropriate for the site, taking into account the (1) lithology of the aquifer and unsaturated zone; (2) hydraulic conductivity of the aquifer and unsaturated zone; (3) ground-water flow rate; (4) minimum distance between the upgradient edge of the MSWLF unit and the downgradient monitoring well; and (5) the resource value of the aquifer.

Modified List of Assessment Monitoring Parameters [§258.55(b)]

- Demonstrate that any of the Appendix II assessment monitoring parameters are not reasonably expected to be in or derived from the waste in the landfill, by providing information on characterization of the waste and leachate.

Alternative Frequencies for Sampling Steps [§§258.55(c), (d)(2)]

- Demonstrate that an alternative frequency, no less than annual, is appropriate for the site, by providing information on: (1) lithology of the aquifer and unsaturated zone; (2) hydraulic conductivity of the aquifer and unsaturated zone; (3) ground-water flow rate; (4) minimum distance between the upgradient edge of the MSWLF unit and the downgradient monitoring well; (5) the resource value of the aquifer; and (6) fate and transport of constituents.

CORRECTIVE ACTION

Establish Ground-Water Protection Standards for Constituents for Which Maximum Containment Levels Have Not Been Established [§§258.55(i), (j)]

- Demonstrate that standards rely on appropriate health-based levels.
- Provide information that the health-based levels are: (1) derived following EPA guidelines; (2) based on scientifically valid studies; (3) for carcinogens, concentrations representative of cancer risk levels with a 1×10^{-4} to 1×10^{-6} range; and (4) for toxic chemicals that cause effects other than cancer or mutation, concentrations representative of daily exposure without deleterious effects during a lifetime.

Determination that Cleanup of a Particular Appendix II Constituent is Unnecessary [§258.57(e)]

- Demonstrate that the ground water is contaminated by multiple sources and cleanup of the MSWLF release would provide no significant reduction in risk.
- Demonstrate that the contaminated ground water is not a current or potential source of drinking water and is not hydraulically connected with waters to which the hazardous constituents are migrating or are likely to migrate in a concentration that would exceed ground-water protection standards.
- Demonstrate remediation is not technically feasible or results in unacceptable cross media impacts.

Alternative Time Period for Completion of Corrective Action [§258.58(e)(2)]

- Demonstrate that compliance with the ground-water protection standards for a period shorter than three years is indicative of a completed remedy, by providing information on: (1) the extent and concentration of the release(s); (2) behavior of the hazardous constituents in the ground water; (3) accuracy of monitoring or modeling techniques; and (4) characteristics of the ground water.

CLOSURE/POST-CLOSURE CARE

Use of Alternative Final Cover [§258.60(b)]

- For an infiltration layer, demonstrate alternative material and/or alternative thickness provides reduction of infiltration equivalent to that of 18 inches of earthen material with: (1) a permeability less than or equal to any bottom liner system or natural subsoils, or (2) a permeability no greater than 1×10^{-5} cm/sec.
- For an erosion layer, demonstrate alternative material and/or alternative thickness provides protection from wind and water erosion equivalent to that of 6 inches of earthen material.

Extension for Beginning Closure Activities [§258.60(f)]

- For extension of the 1-year deadline, demonstrate that a MSWLF unit has the capacity to receive additional waste, is likely to do so, and that steps will be taken to prevent threats to human health and the environment while the unit remains unclosed.

Extension for Completing Closure Activities [§258.60(g)]

- For extension beyond the 180-day deadline, show that closure activities will, of necessity, take longer than 180 days and that steps will be taken to prevent threats to human health and the environment from the unclosed unit during closure activities.

Remove Notation from Deed [§258.60(j)]

- Demonstrate that all wastes have been removed from facility.

Shorten the 30-Year Post-Closure Care Period [§258.61(b)]

- Demonstrate that a shorter post-closure care period is sufficient to protect human health and the environment.

Disturbance of Final Cover [§258.61(c)(3)]

- Demonstrate that disturbance of final cover or any other part of containment system will not increase the potential threat to human health or the environment.

FINANCIAL ASSURANCE

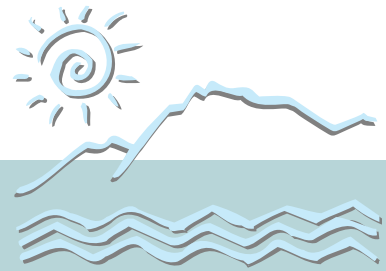
Alternative Financial Assurance Mechanisms [§258.74(i)]

- Demonstrate that mechanisms assure sufficient funds to cover the estimated costs of closure, post-closure care, and corrective action for known releases; assure funds will be available in a timely fashion when needed; and are legally valid, binding, and enforceable under federal law.

Waiver of Financial Assurance Requirements Until April 9, 1998 [§258.70(c) at 61 *FR* 60337]

- Demonstrate that April 9, 1997 effective date for financial assurance requirements does not provide sufficient time to comply and that waiver until April 9, 1998 will not adversely affect human health and the environment.

Appendix B



Sample Application Materials for Tribal Government MSWLF Owners and Operators

Sample Application Letter to EPA Region for Site-Specific Flexibility Request

[Date]

[Name of Regional Administrator]
Regional Administrator
Region [xx], U.S. Environmental Protection Agency
[Street Address]
[City, State ZIP Code]

Dear [Mr. or Ms.] [Name of Regional Administrator]:

In accordance with applicable guidance, the [name of tribe] Tribe, [owner and/or operator—specify which] of the [name of landfill] landfill, is hereby formally submitting a flexibility request for the areas indicated on the attached form. We have also enclosed all the materials necessary to demonstrate compliance of our proposed approach with the requirements of the criteria in 40 CFR Part 258.

Should you require further information, please contact [individual you want EPA Regional Office to contact] at [telephone number]. Thank you for your assistance.

Sincerely,

[Your name]*
[title], [name of tribe] Tribe

Enclosures
cc: EPA Regional Solid Waste Indian Coordinator

*This letter should be signed by the tribal chairperson or other individual who has the authority to act on behalf of the tribal government.

Sample Site-Specific Flexibility Request Form

NAME OF LANDFILL: _____

MSWLF OWNER OR OPERATOR SUBMITTING REQUEST: _____

MSWLF OWNER OR OPERATOR ADDRESS: _____

PHONE: _____

LOCATION OF LANDFILL (PHYSICAL ADDRESS OR TOWNSHIP/RANGE LOCATION): _____

PLEASE CHECK ONE: Modification of existing landfill
 New landfill

Please check all alternative approaches that are being proposed.

For MSWLF Location:

- Allow siting of new MSWLFs in wetlands.
- Allow siting of new MSWLFs within 200 feet of a fault.
- Allow siting of new MSWLFs in a seismic impact zone.
- Extend deadline for closure of existing MSWLFs that do not comply with the fault area, seismic impact zone, unstable area, floodplain, and/or airport safety provisions.

For MSWLF Operations:

- Allow use of alternative daily cover materials or alternative cover thickness.
- Grant temporary waiver of daily cover requirements.
- Approve alternative locations for facility records.

For MSWLF Design:

- Approve landfill designs meeting performance standard (in lieu of composite liner).

For Ground-Water Monitoring:

- Suspend ground-water monitoring requirements.
- Establish an alternative boundary (or point of compliance) for ground-water monitoring (and corrective action and design) requirements.
- Allow use of a multi-unit ground-water monitoring system, instead of separate monitoring systems for each MSWLF unit at a facility.

For Ground-Water Monitoring (continued)

- Modify list of detection monitoring parameters.
- Approve an alternative frequency for detection monitoring.
- Modify list of assessment monitoring parameters.
- Specify alternative frequencies for various sampling steps during assessment monitoring.

For Corrective Action:

- Establish Ground-Water Protection Standards for any constituent for which a maximum contaminant level (MCL) has not been established.
- Determine that cleanup of a particular Appendix II constituent is unnecessary.
- Specify alternative time period for completion of corrective action.

For Closure/Post-Closure Care of MSWLFs:

- Approve use of an alternative final cover.
- Grant extensions beyond specified deadline for beginning closure activities.
- Grant extension beyond specified deadline for completing closure.
- Allow removal of notation from the deed.
- Shorten the 30-year post-closure care period.
- Allow disturbance of final cover.

For Financial Assurance:

- Approve use of alternative financial assurance mechanisms.
- Waiver of financial assurance requirements for 1 year.

Sample Letter Certifying Compliance With Tribal Law and Policy

[Date]

[Name of Regional Administrator]
Regional Administrator
Region [xx], U.S. Environmental Protection Agency
[Street Address]
[City, State ZIP Code]

Dear [Mr. or Ms.] [Name of Regional Administrator]:

On behalf of the [name of tribe] Tribe, [owner and/or operator—specify which] of the [name of landfill] landfill, I certify that the attached flexibility request complies with the laws and policies of the [name of tribe] Tribe.

Should you have any questions or concerns, please contact me at [telephone number].

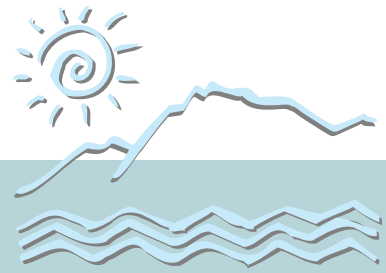
Sincerely,

[Your name]*
[title], [name of tribe] Office of [name of office]

cc: EPA Regional Solid Waste Indian Coordinator

*This letter should be signed by the tribe's chief legal officer or other person who has the authority to make this certification on behalf of the tribal government.

Appendix C



Sample Application Materials for MSWLF Owners and Operators Other Than Tribal Governments

Sample Application Letter to Tribe for Site-Specific Flexibility Request

[Date]

[Contact name]

[Title]

[Tribal Government]

[Street Address or P.O. Box Number]

[City, State ZIP Code]

Dear [Mr. or Ms.] [Contact name]:

In accordance with applicable guidance, [name of owning or operating organization], [owner and/or operator—specify which] of the [name of landfill] landfill, is hereby formally submitting a flexibility request for the areas indicated on the attached form. We have also enclosed all the materials necessary to demonstrate compliance of our proposed approach with the requirements of the criteria in 40 CFR Part 258. Please review this request to ensure that it is consistent with tribal law and policy.

Should you require further information, please contact [individual you want tribe to contact] at [telephone number]. Thank you for your assistance.

Sincerely,

[Your name]

[title], [name of owning or operating organization]

Enclosures

Sample Site-Specific Flexibility Request Form

NAME OF LANDFILL: _____

MSWLF OWNER OR OPERATOR SUBMITTING REQUEST: _____

MSWLF OWNER OR OPERATOR ADDRESS: _____

PHONE: _____

LOCATION OF LANDFILL (PHYSICAL ADDRESS OR TOWNSHIP/RANGE LOCATION): _____

PLEASE CHECK ONE: Modification of existing landfill
 New landfill

Please check all alternative approaches that are being proposed.

For MSWLF Location:

- Allow siting of new MSWLFs in wetlands.
- Allow siting of new MSWLFs within 200 feet of a fault.
- Allow siting of new MSWLFs in a seismic impact zone.
- Extend deadline for closure of existing MSWLFs that do not comply with the fault area, seismic impact zone, unstable area, floodplain, and/or airport safety provisions.

For MSWLF Operations:

- Allow use of alternative daily cover materials or alternative cover thickness.
- Grant temporary waiver of daily cover requirements.
- Approve alternative locations for facility records.

For MSWLF Design:

- Approve landfill designs meeting performance standard (in lieu of composite liner).

For Ground-Water Monitoring:

- Suspend ground-water monitoring requirements.
- Establish an alternative boundary (or point of compliance) for ground-water monitoring (and corrective action and design) requirements.
- Allow use of a multi-unit ground-water monitoring system, instead of separate monitoring systems for each MSWLF unit at a facility.

For Ground-Water Monitoring (continued)

- Modify list of detection monitoring parameters.
- Approve an alternative frequency for detection monitoring.
- Modify list of assessment monitoring parameters.
- Specify alternative frequencies for various sampling steps during assessment monitoring.

For Corrective Action:

- Establish Ground-Water Protection Standards for any constituent for which a maximum contaminant level (MCL) has not been established.
- Determine that cleanup of a particular Appendix II constituent is unnecessary.
- Specify alternative time period for completion of corrective action.

For Closure/Post-Closure Care of MSWLFs:

- Approve use of an alternative final cover.
- Grant extensions beyond specified deadline for beginning closure activities.
- Grant extension beyond specified deadline for completing closure.
- Allow removal of notation from the deed.
- Shorten the 30-year post-closure care period.
- Allow disturbance of final cover.

For Financial Assurance:

- Approve use of alternative financial assurance mechanisms.
- Waiver of financial assurance requirements for 1 year.

Sample Letter Notifying Regional Administrator of Request Filed With Tribe

[Date]

[Name of Regional Administrator]
Regional Administrator
Region [xx], U.S. Environmental Protection Agency
[Street Address]
[City, State ZIP Code]

Dear [Mr. or Ms.] [Name of Regional Administrator]:

In accordance with applicable guidance, [name of owning or operating organization], [owner and/or operator—specify which] of the [name of landfill] landfill, has formally submitted to the [name of tribe] Tribe a flexibility request for the areas indicated on the attached form. Please prepare to review this request, which should arrive from the tribe within 90 days.

Should you require further information, please contact [individual you want EPA Regional Office to contact] at [telephone number]. Thank you for your assistance.

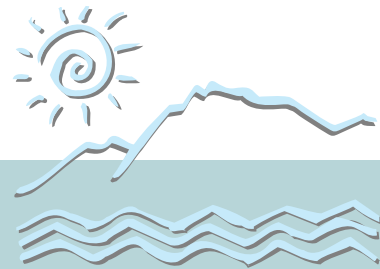
Sincerely,

[Your name]
[title], [name of owning or operating organization]

Enclosure

cc: EPA Regional Solid Waste Indian Coordinator

Appendix D



Sample Response Materials for Tribes

Sample Letter From Tribe Acknowledging Receipt of Request

[Date]

[Name of owner or operator]

[Title]

[Owning or operating organization]

[Street Address or P.O. Box Number]

[City, State ZIP Code]

Dear [Mr. or Ms.] [Name of owner or operator]:

This letter is to inform you that the [name of Tribe] Office of [name of natural resources or other appropriate office] has received the flexibility request you submitted on [date] for the [name of landfill] landfill. In accordance with applicable guidance, my staff is reviewing the request for compliance with tribal law and policy and for impacts to human health and the environment. We will make every effort to provide a determination within 90 days. We may contact you during this period to discuss the request.

Should you have any questions or concerns, please contact [individual you want owner or operator to contact] at [telephone number].

Sincerely,

[Your name]

[title], [name of tribe] Office of [office]

cc: EPA Regional Administrator

EPA Regional Solid Waste Indian Coordinator

Sample Tribal Determination Letter (Determination: Approve)

[Date]

[Name of owner or operator]

[Title]

[Owning or operating organization]

[Street Address or P.O. Box Number]

[City, State ZIP Code]

Dear [Mr. or Ms.] [Name of owner or operator]:

In accordance with applicable guidance, I have enclosed materials documenting our evaluation of the flexibility request you submitted on behalf of [name of owning or operating organization] for the [name of land-fill] landfill. A copy of this evaluation, along with your application package, is being sent to EPA.

We have found that your proposed approach complies with tribal law and policy and sufficiently safeguards human health and the environment. [OPTIONAL IF TRIBE REVIEWED FOR 40 CFR PART 258 COMPLIANCE: We have also reviewed your proposed approach for compliance with the requirements of the criteria in 40 CFR Part 258 and find it to be satisfactory.] We recommend that EPA proceed with a technical review of your request.

Should you have any questions or concerns, please contact [individual you want owner or operator to contact] at [telephone number].

Sincerely,

[Your name]*

[title], [name of tribe] Office of [office]

Enclosures

cc: EPA Regional Administrator

EPA Regional Solid Waste Indian Coordinator

* This letter should be signed by the tribe's chief legal officer or other person who has the authority to certify the tribal government's evaluation of the owner or operator's proposal.

Sample Tribal Determination Letter (Determination: Suspend)

[Date]

[Name of owner or operator]

[Title]

[Owning or operating organization]

[Street Address or P.O. Box Number]

[City, State ZIP Code]

Dear [Mr. or Ms.] [Name of owner or operator]:

In accordance with applicable guidance, I have enclosed materials documenting our evaluation of the flexibility request you submitted on behalf of [name of owning or operating organization] for the [name of land-fill] landfill. A copy of this evaluation, along with your request package, is being sent to EPA.

We recommend that EPA suspend processing of your request. Our findings are as follows:

Does not comply with tribal law or policy (please specify name and section of law or policy and attach a copy):

In our view, does not comply with the requirements of the criteria in 40 CFR Part 258 (please specify):

Human health/environment concerns (please specify):

Should you have any questions or concerns or require further clarification of our findings, please contact [individual you want owner or operator to contact] at [telephone number].

Sincerely,

[Your name]*

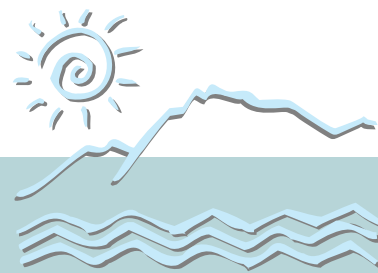
[title], [name of tribe] Office of [office]

cc: EPA Regional Administrator

EPA Regional Solid Waste Indian Coordinator

* This letter should be signed by the tribe's chief legal officer or other person who has the authority to certify the tribal government's evaluation of the owner or operator's proposal.

Appendix E



List of Public Involvement Process Resources

The following publications are available at no charge. To order, call EPA RCRA, Superfund, and EPCRA Hotline at 800 424-9346; TDD 800 553-7672 (hearing impaired); in the Washington, DC metropolitan area, 703 412-9810; TDD 703 412-3323.

U.S. EPA. 1997. 1995 Toxics release inventory: Public data release. EPA745-R-97-005. Washington, DC. (<http://www.epa.gov/opptintr/tri/pdr95/drhome.htm>)

U.S. EPA. 1996. RCRA public participation manual. EPA530-R-96-007. Washington, DC. (<http://www.epa.gov/epaoswer/hazwaste/permit/pubpart/manual.htm>)

U.S. EPA. 1995. Decision-makers' guide to solid waste management: Second edition. EPA530-R-95-023. Washington, DC. (<http://www.epa.gov/epaoswer/non-hw/muncpl/dmg2.htm>)

U.S. EPA. 1990. Sites for our solid waste: A guidebook for effective public involvement. EPA530-SW-90-019. Washington, DC. (not available online.)

The following publication is available at no charge from the Environmental Justice Information line. To order, call 800 962-6215.

U.S. EPA. 1992. Environmental equity: Reducing risk for all communities. EPA230-R-92-008A. Washington, DC. (<http://www.epa.gov/docs/oppeinet/oppe/futures/risk/history/equity/index.html>)