

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D. C. 20460**

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

The Honorable Wes Cooley
United States House of Representatives
Washington, DC 20515

Dear Congressman Cooley:

Thank you for your letter of April 15, 1996 to Administrator Browner regarding your interest in H.R. 2036, the "Land Disposal Program Flexibility Act of 1996." As you discussed in your letter, this Act requires the Environmental Protection Agency (EPA) to promulgate revisions to the Municipal Solid Waste Landfill (MSWLF) Criteria to provide additional flexibility to States with EPA-approved permit programs to allow MSWLFs receiving less than 20 tons per day to use alternative frequencies for daily cover application and methane gas monitoring and to allow alternative final covers and means for demonstrating financial assurance.

The Agency is aware that Congress required promulgation of these revisions within two years of the date of enactment; i.e., March 26, 1998. We have begun the rulemaking process for these revisions and are determined to promulgate a rule as soon as possible. We agree that promulgation of this rule before the current general compliance date of October 9, 1997 would lend some certainty with respect to the requirements expected of owners/operators of small MSWLFs. Nevertheless, please understand that while we expect this rule to be relatively straightforward and will be promulgated in a timely manner, we cannot accurately predict a schedule for final rule promulgation due to unforeseen circumstances such as complex technical and sensitive policy issues that may arise internally during rulemaking development or as a result of the public comment period.

In your letter, you expressed concern that without the flexibility provided in this rulemaking, small, rural communities would be faced with "unfair and inefficient expenditure of resources." I would like to respond to this concern. H.R. 2036 requires the Agency to provide flexibility in four areas: frequency of daily cover, frequency of gas monitoring, final cover design, and financial assurance. While we are sensitive to the budget constraints of small communities, we believe that compliance with these requirements, in their present form, can be carried out without imposing a major resource burden to small communities. Your constituent communities may be interested in these approaches, even in the absence of new regulations.

RO 14227

The requirement to place daily cover at the end of each operating day has been in place since 1979; therefore, this requirement should not be placing new burdens on operating landfills. Please bear in mind that the practice of applying daily cover provides a useful function in that it controls disease vectors, fires, odors, blowing litter, and scavenging. One practice that can reduce the compliance burden on small landfills is to adjust operating schedules so that the landfill is open only once or twice a week, thereby resulting in a commensurate reduction in the number of daily cover applications.

The minimum quarterly methane gas monitoring requirement is new as of October 9, 1991. Note that because the regulations require quarterly monitoring, an owner/operator of an affected small landfill could delay the first monitoring event for up to three months beyond the October 9, 1997 effective date and still be in compliance. Nevertheless, should an owner/operator become subject to this requirement in January, 1998, the owner/operator should not find compliance overly burdensome.

Methane gas monitoring can be performed simply using a hand held meter to measure the lower explosive limit (LEL). The LEL meter is used to measure methane concentrations in on-site buildings. At the facility property boundary, a simple pipe may be driven into the ground and the air exiting the pipe can then be measured with the LEL meter. The purchase price of a typical meter is roughly \$650.00, but it is possible to rent a meter for as little as \$55/day. While the final rule ultimately will contain the gas monitoring requirements, if any, for affected small landfills, the Agency believes it would be prudent for the owner/operator to perform at least a one-time reading, and periodically thereafter, to ensure that methane concentrations are not approaching levels that could result in explosion and injury.

With respect to the alternative final cover requirements, the current regulations already provide some flexibility for an approved State to allow alternative cover designs. This flexibility is found in 40 CFR 258.60(b)(1). Further, it is possible that many of the affected small landfills currently in operation will continue operation during the next two years thus obviating the need to comply with the final cover requirements prior to issuance of a final rule providing further flexibility.

Finally, with respect to the financial assurance requirements, the current regulations already provide some flexibility for an approved State. This flexibility is found in 40 CFR 258.74(I). This section allows an approved state to permit the use of an alternative financial assurance mechanism. In addition to this current flexibility, the Agency will soon promulgate a local government financial test that should provide relief for local governments by allowing them to test out of the need to set aside monies for closure and post-closure care of their landfills. We anticipate promulgation of the

final local government test by September, 1996.

Please understand that the Agency will, in response to H.R. 2036, make every effort to promulgate a rule by October 1997 to provide additional flexibility to, and reduce the resource expenditures of, owners and operators of small landfills Thank you for writing to express your concerns regarding small communities

Sincerely yours,

Michael Shapiro, Director
Office of Solid Waste