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B. Acronyms

The full names for the acronyms used in this document are:

Acronym	Definition
AC	Federal Aviation Administration Advisory Circular 150/5200-34, together with its Appendix 1, dated August 26, 2000.
CFR	The United States Code of Federal Regulations.
EPA	The United States Environmental Protection Agency.
FAA	The United States Federal Aviation Administration.
Ford Act	Wendell H. Ford Aviation Investment and Reform Act for the 21st Century.
MSWLF ..	Municipal Solid Waste Landfill.
RCRA	The Resource Conservation and Recovery Act.
U.S.	United States.
U.S.C.	United States Code.

I. Purpose of Today's Action

EPA is adding a note at the end of 40 CFR 258.10, the location restriction requirements in the criteria for municipal solid waste landfills (MSWLFs), to inform the public about landfill siting requirements enacted in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Pub. L. 106-181 (Ford Act), enacted on April 5, 2000. The Ford Act is an aviation statute administered by the Federal Aviation Administration (FAA). However, section 503 of the Ford Act includes a provision limiting the "construction or establishment" of new municipal solid waste landfills (MSWLFs) after April 5, 2000, within six miles of certain smaller public airports. Therefore, as a convenience for owners/operators of MSWLFs and for those wishing to construct or establish new MSWLFs, EPA is providing a reference to the Ford Act following the location requirements that apply to MSWLFs under RCRA.

On July 11, 2002, EPA published a direct final rule (67 FR 45915) and a parallel proposed rule (67 FR 45948) to incorporate the Ford Act restrictions into EPA's criteria for MSWLFs under RCRA. Had the rule gone into effect, it would have added a new paragraph (e)

to § 258.10 to incorporate the Ford Act landfill siting restrictions. However, EPA received several adverse comments on the direct final rule, therefore the Agency withdrew the rule on October 8, 2002 (67 FR 62647).

One commenter challenged EPA's authority to issue the rule under RCRA, as well as the adequacy of the record to support incorporation of the Ford Act requirements in the RCRA criteria. A second commenter also questioned the validity of data cited by EPA with respect to the hazards from bird strikes.

After reviewing the comments, EPA has decided not to finalize the rule as proposed. Instead of adding a new subsection (e) to 40 CFR 258.10, EPA is incorporating information about the Ford Act in a note following the criteria in 40 CFR 258.10. As a result, the specific limitations of the Ford Act are not being incorporated into the criteria for MSWLFs under RCRA and are not enforceable as part of EPA's MSWLF criteria. The note is for advisory purposes only.

Because section 503 of the Ford Act is directly applicable to any "person" constructing or establishing a MSWLF, it does not by its terms require implementation through regulation. The Ford Act does not amend Subtitle D of the Resource Conservation and Recovery Act (RCRA), which EPA administers. Therefore, in light of the comments received, EPA has reconsidered promulgating a regulation under RCRA that incorporates the Ford Act requirements. In addition, to the extent that section 503 the Ford Act is to be interpreted, the Federal Aviation Administration, not EPA, is the administering agency under the statute. The FAA has issued guidance interpreting section 503. See FAA AC No.150/5200-34. For further information, the public should contact the FAA.

II. Airport Safety Location Restrictions

A. The Ford Act

The Ford Act has been in effect since April 5, 2000. Section 503(b) amends 49 U.S.C. 44718(d), and states:

(1) No person shall construct or establish a municipal solid waste landfill (as defined in § 258.2 of title 40, Code of Federal Regulations, as in effect on the date of enactment of this subsection) that receives putrescible waste (as defined in § 257.3-8 of such title) with 6 miles of a public airport that has received grants under chapter 471 and is primarily served by general aviation aircraft and regularly scheduled flights of aircraft designed for 60 passengers or less unless the State

aviation agency of the State in which the airport is located requests that the Administrator of the Federal Aviation Administration exempt the landfill from the application of this subsection and the Administrator determines that such exemption would have no adverse impact on aviation safety.

(2) Limitation on Applicability—Paragraph 1 shall not apply in the State of Alaska and shall not apply to the construction, establishment, expansion, or modification of, or to any other activity undertaken with respect to, a municipal solid waste landfill if the construction or establishment of the landfill was commenced on or before the date of enactment of this subsection.

Section 503(c) of the Ford Act establishes civil penalties for violations of the limitations on siting landfills set forth above in section 503(b).

As previously stated, these landfill siting restrictions are directly applicable to any person constructing or establishing a new landfill as those terms are defined in the statute and interpreted by the FAA, the agency charged with administering the Ford Act. Therefore, it is not necessary for EPA to incorporate these provisions into the MSWLF criteria. Today's amendment to include a reference to section 503 of the Ford Act in a note to 40 CFR 258.10, which is the section of the criteria that sets forth the location restrictions for airport safety under RCRA, Subtitle D, is solely for the convenience of the public.

B. Criteria for Landfill Siting Under RCRA

Nothing in this notice amends the requirements of 40 CFR 258.10, which sets forth location restrictions for MSWLFs to address airport safety. Section 258.10(a) and (c) contain requirements for new MSWLFs, existing MSWLFs and lateral expansions of landfills that are located within 10,000 feet of any airport runway used by turbojet aircraft or within 5,000 feet of any airport runway used only by piston-type aircraft. Owners or operators of such landfills are required to (1) demonstrate that the MSWLFs are designed and operated so as not to "pose a bird hazard to aircraft; (2) place a copy of the demonstration in the MSWLF operating record, and (3) notify the State Director that it has been placed in the operating file. "State Director" is defined as the chief administrative office of the lead state agency responsible for implementing the state permit program for 40 CFR part 258 regulated facilities."

Section 258(b) applies to new MSWLFs and lateral expansions