

aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not economically significant and does not cause an environmental risk to health or risk to safety that may disproportionately affect children.

#### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their

regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because it is a safety zone.

Under figure 2–1, paragraph (34)(g), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. From February 12, 2005 to March 31, 2005, add temporary § 165.T17–011 to read as follows:

#### § 165.T17–011 Alaska Aerospace Development Corporation, Sitkinak Island, Kodiak Island, AK: Safety Zones.

(a) *Description.* This safety zone includes an area in the Gulf of Alaska,

west of Sitkinak Island, Alaska. Specifically, the zone includes the waters of the Gulf of Alaska that are within the area bounded by a line drawn from a point located at 56°40.50' N, 153°42.50' W, then southeast to a point located at 56°34.00' N, 153°29.50' W, then southwest to a point located at 56°12.50' N, 154°2.50' W, and then northwest to a point located at 56°19.00' N, 154°16.50' W, and then northeast to the point located at 56°40.50' N, 153°42.50' W. All coordinates reference Datum: NAD 1983.

(b) *Enforcement periods.* The safety zone in this section will be enforced from 4 p.m. to 11 p.m. during each day of a seven-day launch window period from February 12, 2005 to March 31, 2005.

(c) *Regulations.* (1) The Captain of the Port and the Duty Officer at Marine Safety Office, Anchorage, Alaska can be contacted at telephone number (907) 271–6700.

(2) The Captain of the Port may authorize and designate any Coast Guard commissioned, warrant, or petty officer to act on his behalf in enforcing the safety zone.

(3) The general regulations governing safety zones contained in § 165.23 apply. No person or vessel may enter or remain in this safety zone, with the exception of attending vessels, without first obtaining permission from the Captain of the Port or his on-scene representative. The Captain of the Port, Western Alaska, or his on-scene representative may be contacted at the Kodiak Launch Complex via VHF marine channel 16.

Dated: January 21, 2005.

**R.J. Morris,**

*Captain U.S. Coast Guard, Captain of the Port, Western Alaska.*

[FR Doc. 05–2868 Filed 2–14–05; 8:45 am]

**BILLING CODE 4910–15–P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[R05–OAR–2004–MI–0002; FRL–7873–4]

#### Approval and Promulgation of Air Quality Implementation Plans; Michigan; Withdrawal of Direct Final Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** Due to the receipt of adverse comments, the EPA is withdrawing the December 23, 2004 (69 FR 76848), direct

final rule approving limits that would limit emissions of Oxides of Nitrogen (NO<sub>x</sub>) from large stationary sources (*i.e.* power plants, industrial boilers and cement kilns). The State of Michigan submitted this revision as a modification to the State Implementation Plan on April 3, 2003. After minor deficiencies in the April 3, 2003 submittal were identified, a subsequent submittal was made on May 27, 2004 to address these deficiencies. In the December 23, 2004 direct final approval, EPA found the changes made to the State's rules in the May 27, 2004 submittal approvable. In that direct final rule, EPA stated that if adverse comments were submitted by January 24, 2005, the rule would be withdrawn and not take effect. Comments were received during the public comment period. EPA believes these comments are adverse and, therefore, EPA is withdrawing the direct final rule. EPA will address the comments in a subsequent final action based upon the proposed action also published on December 23, 2004 (69 FR 76886). EPA will not institute a second comment period on this action.

**DATES:** The direct final rule published at 69 FR 76848 on December 23, 2004 is withdrawn as of February 15, 2005.

**FOR FURTHER INFORMATION CONTACT:** Douglas Aburano, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone: (312) 353-6960. E-Mail Address: [aburano.douglas@epa.gov](mailto:aburano.douglas@epa.gov).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: February 4, 2005.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

#### PART 52—[AMENDED]

■ Accordingly, the amendment to 40 CFR 52.1170 published in the **Federal Register** on December 23, 2004 (69 FR 76848) on pages 76848-76854 are withdrawn as of February 15, 2005.

[FR Doc. 05-2895 Filed 2-14-05; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 239 and 258

[FRL-7873-1]

#### Adequacy of Minnesota Municipal Solid Waste Landfill Program

**AGENCY:** Environmental Protection Agency (EPA),

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 5 is approving a modification to Minnesota's approved municipal solid waste landfill (MSWLF) permit program. The modification allows the State to issue research, development and demonstration (RD&D) permits to owners and operators of MSWLF units in accordance with its state law.

**DATES:** This final determination is effective February 15, 2005.

**FOR FURTHER INFORMATION CONTACT:** Donna Twickler, mailcode DW-8J, Waste Management Branch, U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886-6184, [twickler.donna@epa.gov](mailto:twickler.donna@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### A. Background

On March 22, 2004, EPA issued a final rule amending the municipal solid waste landfill criteria in 40 CFR part 258 to allow for research, development and demonstration (RD&D) permits. (69 FR 13242). This rule allows for variances from specified criteria for a limited period of time, to be implemented through state-issued RD&D permits. RD&D permits are only available in states with approved MSWLF permit programs which have been modified to incorporate RD&D permit authority. While States are not required to seek approval for this new provision, those States that are interested in providing RD&D permits to owners and operators of MSWLFs must seek approval from EPA before issuing such permits. Approval procedures for new provisions of 40 CFR Part 258 are outlined in 40 CFR 239.12.

Minnesota's MSWLF permit program was approved on August 16, 1993 (58 FR 43350). On June 2, 2004, Minnesota applied for approval of its RD&D permit provisions. On September 10, 2004, EPA published both an immediate final rule (69 FR 54756) approving Minnesota's RD&D permit requirements, and a parallel proposed rule (69 FR 54756) proposing to approve Minnesota's RD&D permit requirements. Both notices provided a public comment period that

ended on October 12, 2004. The immediate final rule would have become effective on November 9, 2004, if no adverse comments were received. However, EPA received one adverse comment on the immediate final rule. Therefore, on November 3, 2004, EPA withdrew the immediate final rule (69 FR 65381, Nov. 12, 2004). Today's rule takes final action on the proposed approval of Minnesota's program modification for RD&D permit authority. After a thorough review, EPA Region 5 has determined that Minnesota's RD&D permit provisions as defined under Minnesota Rule 7035.0450 are adequate to ensure compliance with the Federal criteria as defined at 40 CFR 258.4.

##### B. Response to Comment

The commenter urged EPA not to approve Minnesota's or any state's application to modify its approved MSWLF permit program to add RD&D permit authority, because of a pending legal challenge to the EPA's rule amending 40 CFR part 258 to allow for RD&D variances (*GrassRoots Recycling Network v. EPA*, No. 04-1196 (D.C. Cir.)). EPA does not agree that the pending legal challenge prevents implementation of the RD&D rule. The existence of a petition for review does not, by itself, suspend implementation of the RD&D rule. The commenter also opposes modification of the state program in order to preserve state resources. It is the State's, not EPA's, decision to implement the RD&D rule during the pendency of the legal challenge, and Minnesota has decided to seek approval of its permit program modification even with the knowledge of the pending case.

In sum, the comment did not address either the substance or adequacy of Minnesota's RD&D permit requirements, or the basis of EPA's proposed decision to approve those requirements. EPA has concluded that the comment is not a basis for disapproving Minnesota's permit program modification.

##### C. Statutory and Executive Order Reviews

This action approves state solid waste requirements pursuant to RCRA Section 4005 and imposes no federal requirements. Therefore, this rule complies with applicable executive orders and statutory provisions as follows: 1. Executive Order 12866: Regulatory Planning Review—The Office of Management and Budget has exempted this action from its review under Executive Order (EO) 12866; 2. Paperwork Reduction Act—This action does not impose an information collection burden under the Paperwork