of rights to natural resources, excluding lease bonus payments; waste treatment and depollution services; and other private services (language translation services; salvage services; security services; account collection services; satellite photography and remote sensing/satellite imagery services; space transport (includes satellite launches, transport of goods and people for scientific experiments, and space passenger transport); and transcription services).

* * * * *

[FR Doc. 04–20502 Filed 9–9–04; 8:45 am]

BILLING CODE 3510–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[VA139–5073a; FRL –7810–7]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Commonwealth of Virginia; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerator Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve the hospital/medical/infectious incinerator (HMIWI) section 111(d)/129 plan (the ''plan'') submitted to EPA on August 25, 2003 by the Virginia Department of Environmental Quality (DEQ). The plan includes supplemental information submitted on August 11, 2003, and April 6, and July 23, 2004. The plan establishes emission limits, monitoring, operating, and recordkeeping requirements for commercial and industrial solid waste incinerator units for which construction commenced on or before November 30, 1999. Submittal and approval of the plan fulfills a Clean Air Act (the Act) requirement for the Commonwealth of Virginia. As a result, the Federal plan (65 FR 49868, August 15, 2000) is no longer applicable, as of the effective date of this action.

DATES: This rule is effective on November 9, 2004 without further notice, unless EPA receives written comment by October 12, 2004. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by VA139–5073 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. E-mail: [*wilkie.walter@epa.gov*].

C. Mail: Walter Wilkie, Chief, Air Quality Analysis Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. VA139–5073. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: James B. Topsale, P.E., at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 111(d)/129 of the Act require states to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustion facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines (EG) for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the Act, but emissions of which are subject to a standard of performance for new stationary sources. However, section 129 of the Act, also requires EPA to promulgate EG for HMIWI units that emit a mixture of air pollutants. These pollutants include organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter (including opacity). On September 15, 1997 (62 FR 48348), EPA promulgated HMIWI unit new source performance standards and EG, 40 CFR part 60, subparts Ec and Ce, respectively. The designated facility to which the EG applies is each HMIWI unit, as stipulated in subpart Ce, that commenced construction on or before June 20, 1996.

Section 111(d) of the Act requires that ''designated'' pollutants, regulated under standards of performance for new stationary sources by Section 111(b) of the Act, must also be controlled at existing sources in the same source category to a level stipulated in an emission guidelines (EG) document. Section 129 of the Act specifically addresses solid waste combustion and emissions controls based on what is commonly referred to as ''maximum achievable control technology'' (MACT). Section 129 requires EPA to promulgate a MACT based emission guideline (EG) document for HMIWI units, and then requires states to develop plans that implement the EG requirements. The HMIWI EG under 40 CFR part 60, subpart Ce, establish emission and operating requirements under the authority of the Act, sections 111(d) and 129. These requirements must be incorporated into a State plan that is ''at least as protective'' as the EG, and is Federally-enforceable upon approval by EPA. The procedures for adoption and

submittal of State plans are codified in 40 CFR part 60, subpart B.

II. Review of the Virginia HMIWI Plan

EPA has reviewed the Virginia HMIWI plan in the context of the requirements of 40 CFR part 60, and subparts B and Ce, and the applicable compliance schedule provisions of the related Federal plan, 40 CFR part 62, subpart HHH. A summary of the review is provided below.

A. Identification of Enforceable State Mechanism(s) for Implementing the EG

On August 25, 2003, the DEQ submitted to EPA the required plan, including an enforceable mechanism, the State Air Pollution Control Board's Regulation for the Control and Abatement of Air Pollution, Emission Standards for Hospital/Medical/ Infectious Waste Incinerators (Rule 4–44). In addition, related applicable Regulations for General Administration were submitted on August 11, 2003 and April 6, 2004.

B. Demonstration of Legal Authority

DEQ's authority is explained in detail in its August 11, 2003 letter to EPA. The DEQ cites its authority under the Air Pollution Control Law of Virginia at Title 10.1, Chapter 13, Code of Virginia. This is also discussed in the plan narrative, Section I, Legal Authority—State, and the Attorney General's Office certification of authority in a July 1, 1998 letter. The DEQ has sufficient statutory and regulatory authority to implement and enforce the plan.

C. Inventory of HMIWI Units in Virginia Affected by the EG

The plan contains a DEQ inventory of known existing CISWI units that are subject to the plan.

D. Inventory of Emissions From HMIWI Units in Virginia

The submitted plan contains an estimate of emissions from each affected facility. Emissions estimates are provided for organics (dioxins/furans), carbon monoxide, acid gases (hydrogen chloride, sulphur dioxide, and nitrogen oxides), metals (cadmium, lead, mercury), and particulate matter.

E. Emission Limitations for HMIWI Units

The state HMIWI regulation, Rule 4–44, also known as 9 VAC 5 Chapter 40, Article 44, includes emission limitation requirements that are at least as protective as those in the EG, subpart Ce.

F. Compliance Schedules

Rule 4–44 contains a compliance schedule provision (9 VAC 5–40–6200 A) that requires final compliance on or before July 1, 2001, and a separate provision for extending the final compliance date until September 15, 2002. At one time, it was possible to extend the final compliance date for two basic reasons: (1) Additional time was needed to install air pollution control equipment, or (2) additional time was needed for facility closure or shutdown. The Federal plan, which contains an expeditious compliance schedule, as required by the Act, allowed for an extension of the July 1, 2001 final compliance date. If additional time were needed to install air pollution control equipment, the facility owner/operator was required to submit a control plan to EPA by September 15, 2000, or if additional time were needed for facility closure, then the facility owner/operator was required to submit a compliance date extensions request to EPA by a date no later than November 13, 2000. EPA, as the Federal plan implementing agency, has no record of receiving a control plan or compliance date extension request. Neither EPA or the DEQ has at this time the authority under the Act and related rules to grant or approve a compliance date extension request submitted after the noted dates. Accordingly, under the Virginia plan, final compliance is required on or before July 1, 2001 for all affected facilities.

G. Testing, Monitoring, Recordkeeping, and Reporting Requirements

Rule 4–44 includes the applicable source compliance testing, monitoring, recordkeeping, and reporting requirements of the EG.

H. A Record of the Public Hearing on the State Plan

A public hearing for the plan was held in Richmond, Virginia, on May 8, 2002. The DEQ provided evidence of complying with the public notice and other hearing requirements of subpart B.

I. Provision for Annual State Progress Reports to EPA

The DEQ will submit to EPA on an annual basis a report which details the progress in the enforcement of the plan. The first annual progress report will be submitted to EPA, commencing with the first full report period after approval of the Virginia plan.

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts * * * .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language

renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its section 111(d)/129 program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

III. Final Action

EPA is approving the Virginia HMIWI plan for controlling designated pollutants under sections 111(d) and 129 of the Act. Accordingly, EPA is amending 40 CFR part 62 to reflect this action. As a result, the Federal plan is no longer applicable, as of the effective date of this action.

This approval is based on the rationale discussed above and in further detail in the technical support document (TSD) associated with this action. The DEQ has committed, as part of the plan, to consult with EPA and obtain its concurrence before implementing certain actions as described in the plan narrative, section J, Discretionary Authority, and Regulation for General Administration (9 VAC 5–20–80), Relationship of state regulations to Federal regulations.

As stated above, EPA has no record of receiving a HMIWI unit compliance date extension request, as required by the Federal plan. As a result, neither EPA nor the DEQ has at this time the authority to approve an extension request submitted to either agency after the noted dates. Therefore, EPA is taking no action to approve those provisions of Rule 4–44 that relate to a compliance date extension request under section 9 VAC 5–40–6200 B. Final compliance or closure for all affected units is required on or before July 1, 2001.

There are other Rule 4–44 provisions that are not relevant or germane to this plan approval action. One provision, for example, includes an odor control requirement. A listing of the Commonwealth rule provisions that are not part of the plan, except for the one noted in the previous paragraph, are identified in the plan, Attachment A, and DEQ's April 6, 2004 letter, Attachment C.

As provided by 40 CFR 60.28(c), any revisions to the Virginia plan will not be considered part of the applicable plan until submitted by the DEQ in accordance with 40 CFR 60.28(a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action simply reflects already existing Federal requirement for state air pollution control agencies and existing HMIWI units that are subject to the provisions of 40 CFR part 60, subparts B and Ce, respectively, and the Federal plan's compliance schedule. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the 111(d) plan should relevant adverse or critical comments be filed. This rule will be effective November 9, 2004 without further notice unless the Agency receives relevant adverse comments by October 12, 2004. If EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule did not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing 111(d)/129 plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan submission that

otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 9, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, approving the Virginia HMIWI plan, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste treatment and disposal.

Dated: August 31, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart VV—Virginia

■ 2. Add a new center heading and §§ 62.11625, 62.11626, and 62.11627 to subpart VV to read as follows:

Emissions From Existing Hospital/ Medical/Infectious Waste Incinerators (HMIWI) Units—Section 111(d)/129 Plan

§ 62.11625 Identification of plan.

Section 111(d)/129 HMIWI plan submitted on August 25, 2003, including related supplemental information submitted on August 11, 2003, and April 6 and July 23, 2004.

§ 62.11626 Identification of sources.

The plan applies to all affected HMIWI units for which construction commenced on or before June 20, 1996.

§ 62.11627 Effective date of plan.

Effective date of the plan is November 9, 2004.

[FR Doc. 04–20429 Filed 9–9–04; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 239 and 258

[FRL–7810–9]

Adequacy of Minnesota Municipal Solid Waste Landfill Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: On March 22, 2004, the U.S. EPA issued final regulations allowing research, development, and demonstration (RD&D) permits to be issued to certain municipal solid waste landfills by approved States. On June 2, 2004, Minnesota submitted an application to the U.S. EPA seeking Federal approval of its RD&D requirements. Subject to public review and comment, this action approves Minnesota's RD&D permit requirements.

DATES: This final determination is effective November 9, 2004, unless adverse comments are received on or before October 12, 2004. If adverse comments are received a second **Federal Register** document responding to the adverse comments will be subsequently published.

ADDRESSES: Send written comments to Donna Twickler, Waste Management Branch (Mail Code: DW–8J), U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Comments may also be submitted electronically to *twickler.donna@epa.gov. See* **SUPPLEMENTARY INFORMATION** for file formats for electronic submittals. Documents pertaining to this action can be viewed and copied during regular business hours at the EPA Region 5 office located at the address noted above.

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.*

SUPPLEMENTARY INFORMATION:

A. Background

On March 22, 2004, the U.S. EPA issued final regulations allowing RD&D permits to be issued at certain municipal solid waste landfills (69 FR 13242, March 22, 2004). This new provision may only be implemented by an approved State. While States are not required to seek approval for this new provision, those States that are interested in providing RD&D permits to municipal solid waste landfills 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. On June 2, 2004, Minnesota submitted an amended application for approval of its RD&D permit provisions. Minnesota received full approval for all other 40 CFR part 258 provisions on August 16, 1993 (58 FR 43350, August 16, 1993).

B. Decision

After a thorough review, U.S. EPA Region 5 determined that Minnesota's RD&D provisions as defined under Minnesota Rule 7035.0450 are adequate to ensure compliance with the Federal criteria as defined at 40 CFR 258.4.

C. Electronic Access and Filing

You may submit comments by sending electronic mail to *twickler.donna@epa.gov.* Please submit comments as ASCII files and avoid the use of special characters and any form of encryption. Please identify this specific action in your comments.

D. 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