

beyond those imposed by state law. Accordingly, the Administrator certifies that this final 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 (Public Law 104-4). This final rule also does 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), nor will it 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), because it 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 final rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP 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 SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the

takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. 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.*).

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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective July 12, 2001.

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 August 13, 2001. 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 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Ozone, Volatile organic compounds.

Dated: May 9, 2001.

William J. Muszynski,

Acting Regional Administrator, Region 2.
[FR Doc. 01-13779 Filed 6-11-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN68-01a; FRL-6991-7]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency is approving a site-specific revision to the Minnesota Sulfur Dioxide (SO₂) State Implementation Plan (SIP) for Koch Petroleum Group, LP (Koch). The Minnesota Pollution Control Agency (MPCA) submitted the SIP revision request on December 20, 2000. The request is approvable because it satisfies the requirements of the Clean Air Act (Act). The rationale for the approval and other information are provided in this document.

DATES: This direct final rule will be effective August 13, 2001, unless EPA receives adverse comment by July 12, 2001. If EPA receives adverse comments, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch (AR-18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the documents relevant to this action are available for inspection during normal business hours at the above address. (Please telephone Christos Panos at (312) 353-8328, before visiting the Region 5 office.)

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Programs Branch (AR-18J), Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8328.

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

- I. General Information
 1. What action is EPA taking today?
 2. Why is EPA taking this action?
 3. What is the background for this action?
- II. Review of state implementation plan revision
 1. Why did the state submit this SIP revision?
 2. What Information did Minnesota

- submit, and what were its requests?
3. How Does the SIP Revision Show Attainment of the SO₂ Standards?

III. Final Rulemaking Action

IV. Administrative Requirements

I. General Information

1. What Action Is EPA Taking Today?

In this action, EPA is approving into the Minnesota SO₂ SIP a site-specific revision for Koch, located in the Pine Bend Area of Rosemount, Dakota County, Minnesota. Specifically, EPA is approving into the (SO₂) SIP Amendment No. 4 to the Administrative Order (Order) for Koch.

2. Why Is EPA Taking This Action?

EPA is taking this action because the state's submittal for Koch is fully approvable. The SIP revision provides for attainment and maintenance of the SO₂ National Ambient Air Quality Standards (NAAQS) and satisfies the applicable SO₂ requirements of the Act. A more detailed explanation of how the state's submittal meets these requirements is in EPA's March 2, 2000 Technical Support Document (TSD).

3. What Is the Background for This Action?

EPA designated Air Quality Control Region (AQCR) 131, which contains Dakota County, as a primary SO₂ nonattainment area on March 3, 1978 (43 FR 8962) based on monitored violations of the primary SO₂ NAAQS from 1975 through 1977. In response to the Part D requirements of the Act, MPCA submitted a final SO₂ plan for AQCR 131 on August 4, 1980. EPA approved the Minnesota Part D SO₂ SIP for AQCR 131 on April 8, 1981 (46 FR 20996). Based on monitored violations recorded in 1982, EPA declared the Dakota County SO₂ SIP inadequate and issued a call for revisions to the Minnesota SO₂ SIP on December 5, 1984 (49 FR 47488). The SIP call required that MPCA submit a SIP revision demonstrating attainment of the SO₂ NAAQS in the Pine Bend Area by September 1985.

The promulgation of a good engineering practice stack height rule, along with difficulties negotiating a control strategy with Koch, and the selection of an appropriate computer model, delayed the submittal. On September 10, 1987, MPCA submitted revisions to the operating permits for five sources and requested redesignation to attainment for all of AQCR 131 except the Pine Bend and St. Paul Park areas.

As a result of numerous EPA comments, MPCA withdrew the Pine Bend SO₂ SIP while passage of the 1990

Amendments to the Act delayed action on the rest of the SO₂ revisions for AQCR 131. On July 29, 1992, MPCA submitted to EPA a revision to the SO₂ SIP for the Dakota County/Pine Bend SO₂ nonattainment area demonstrating attainment of the SO₂ NAAQS. As part of the attainment demonstration for the SIP, Koch was modeled for ambient air impacts and MPCA issued an Order based on that modeling. To allow some flexibility in adding new sources at the facility without compromising the attainment status, the Order allows Koch to make changes at the refinery of 2.28 lb/hour SO₂ while burning refinery fuel gas without revising the Order. An amendment to the original Order for Koch, dated February 11, 1993, revised the completion dates for construction and operation of a new stack and control equipment.

EPA identified specific issues regarding the July 29, 1992 submittal in a June 4, 1993 letter to MPCA. On January 28, 1994 (59 FR 4016), EPA proposed to disapprove Minnesota's SO₂ SIP revision for the Dakota County/Pine Bend area of AQCR 131. However, EPA stated that if its comments were adequately addressed by the State by the end of the 30-day comment period, and if no other substantive, adverse public comments were received, EPA would proceed with a final rulemaking approving the SIP revision. The State satisfactorily addressed the issues and submitted revised Orders for Koch to EPA on February 25, 1994. EPA did not receive any public comments on the January 28, 1994 proposed action. Therefore, EPA took final action on September 9, 1994 (59 FR 46553), to approve Minnesota's SO₂ SIP revision submittals for the Dakota County/Pine Bend area of AQCR 131.

On September 7, 1994, MPCA submitted a request to redesignate the Pine Bend area of AQCR 131 to attainment. EPA approved the state's request in a direct final rule document published on May 31, 1995 (60 FR 28339) redesignating the Pine Bend area to attainment of the SO₂ NAAQS.

II. Review of State Implementation Plan Revision

1. Why Did the State Submit This SIP Revision?

Koch initiated a project at its #2 Crude Unit to reduce emissions of nitrogen oxides (NO_x) and SO₂ as part of a Consent Decree lodged in the United States District Court for the District of Minnesota on December 22, 2000 (*United States v. Koch Petroleum Group, L.P.*, Civil Action No. 00-2756-PAM-SRN), relating to negotiations

conducted between Koch, EPA and MPCA to develop a settlement covering a broad range of actions to reduce emissions of air pollutants from petroleum refineries owned and operated by Koch.

Koch will install a new heater (11H-6) with low-NO_x burners which will operate on refinery fuel gas. The SO₂ emissions from this new heater will be offset by a simultaneous SO₂ emissions decrease resulting from the removal of three existing heaters (11H-3, 11H-4 and 11H-5). Two of the three heaters to be removed (11H-3 and 11H-5) are currently allowed to burn fuel oil. Replacing these existing heaters with a new heater will significantly reduce Koch's capacity to generate both NO_x and SO₂ emissions. As part of this project, Koch also proposes to increase the capacity of heater 16H-1, which it converted to burn only fuel gas in 1995. Prior to that, it could burn fuel oil as well as fuel gas.

2. What Information Did Minnesota Submit, and What Were Its Requests?

The December 20, 2000 SIP revision submitted by MPCA consists of emission increases and the compensating emission reductions. Amendment 4 to the Order for Koch requires permanent emission reductions from the removal of heaters 11H-3, 11H-4 and 11H-5. The modeling retains some ambient impact from 11H-3 and 11H-5 (but not decoking), for PSD/NSR credit purposes. The revised Order limits 11H-6 to burning refinery fuel gas only with allowable SO₂ emissions of 6.0 lb/hr on an annual basis and 9.3 lb/hr on a 3-hour average. Decoking at 11H-6 is limited to 90 hours per year, which equates to three 30-hour events per year. Emissions of SO₂ from 11H-6 and the associated steam-air decoking total 26.5 tons/year. The State requested that EPA approve the following changes to Koch's Order:

"New Project" Language. Koch plans to remove three existing heaters, increase the capacity of an existing heater, and construct a new heater. Total SO₂ emissions at the facility will substantially decrease after implementation of these changes.

Name Change. The name of the owner and operator of the refinery in Rosemount, Minnesota has changed to Koch Petroleum Group, L.P. from Koch Refining Company.

Incorporation of Changes from Amendment No. 3. Amendment No. 3 used underlining to identify where new language was added and striking out to identify where language was removed. Amendment No. 4 removes the underlining and strike out markings and

eliminates the language marked for removal in Amendment No. 3.

Updating of Some Information. In cases where it was needed for clarity, the language was modified to reflect regulatory changes that have occurred since Amendment No. 3 went into effect.

Correction of Typographical Errors and Changes for Clarification and Consistency. MPCA corrected typographical errors and changed language which appeared unclear or inconsistent with other portions of the document.

3. How Does the SIP Revision Show Attainment of the SO₂ Standards?

The MPCA submitted air quality modeling in support of Koch's SO₂ SIP revision. MPCA's modeling demonstrates that the SO₂ emissions from the #2 Crude Unit modification project do not threaten attainment of the SO₂ NAAQS when factored into the 1992 attainment demonstration modeling. A more detailed discussion is in EPA's March 2, 2001 TSD.

Net baseline emissions are the allowable emission rates used in the approved 1992 SIP attainment demonstration for the Pine Bend Area. The SO₂ emissions for the four heaters and the steam—air decoking associated with each heater totaled 1,560 tons/year in the 1992 SIP. Total SO₂ emissions associated with the #2 Crude Unit modification project are 170 tons/year. The difference in SO₂ emissions from the 1992 SIP for the affected sources and the current project is a decrease of nearly 1,400 tons/year.

III. Final Rulemaking Action

EPA is approving the site-specific SIP revision for Koch Petroleum Group, LP, located in the Pine Bend area of Rosemount, Dakota County, Minnesota. Specifically, EPA is incorporating Amendment No. 4 to Koch's Administrative Order into the Minnesota SO₂ SIP. The State submitted this SIP revision on December 20, 2000 as a result of negotiations to a consent decree between EPA, MPCA and Koch, in which Koch proposed to modify the #2 Crude Unit at the Pine Bend refinery. This modification project consists primarily of the removal of three existing heaters and the installation of a new heater, thereby substantially decreasing SO₂ emissions at the facility. As described above, this project provides for attainment and maintenance of the SO₂ NAAQS in the Pine Bend area and is therefore fully approvable.

The EPA is publishing this action without prior proposal because we view

this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse comments are filed. This rule will be effective August 13, 2001 without further notice unless we receive relevant adverse comments by July 12, 2001. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective August 13, 2001.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative 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. 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 preexisting 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 (Public Law 104-4). This rule also does 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), nor will it 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), because it 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 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP 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 SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. 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.*).

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. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is

not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

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 August 13, 2001. 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 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

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

Dated: May 8, 2001.

Norman Niedergang,

Acting Regional Administrator, Region 5.

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

2. Section 52.1220 is amended by adding paragraph (c)(57) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(57) On December 20, 2000, the State of Minnesota submitted a site-specific State Implementation Plan (SIP) revision for the control of emissions of sulfur dioxide (SO₂) for Koch Petroleum Group, L.P., located in the Pine Bend Area of Rosemount, Dakota County, Minnesota. Specifically, EPA is approving into the SO₂ SIP Amendment No. 4 to the Administrative Order previously approved in paragraph (c)(35) of this section.

(i) Incorporation by reference.

(A) An administrative order identified as Amendment Four to Findings and Order by Stipulation, for Koch Petroleum Group, L.P., dated and

effective December 19, 2000, submitted December 20, 2000.

[FR Doc. 01-14614 Filed 6-11-01; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP No. MT-001-0034a, MT-001-0035a; FRL-6991-1]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Emergency Episode Avoidance Plan and Cascade County Open Burning Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving State Implementation Plan (SIP) revisions submitted by the State of Montana on February 9, 2001. This submittal revises the State's Emergency Episode Avoidance Plan and Cascade County's Local Regulation Chapter 7, Open Burning. In addition, Billings and Great Falls Carbon Monoxide Limited Maintenance Plans were submitted on February 9, 2001. EPA will act on the Billings and Great Falls Plans at a later date. This action is being taken under section 110 of the Clean Air Act, 42 U.S.C. section 7410.

DATES: This rule is effective on August 13, 2001 without further notice, unless EPA receives adverse comment by July 12, 2001. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202 and copies of the Incorporation by Reference material are available at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Copies of the State documents relevant to this action are available for public inspection at the Montana Department of Environmental Quality, Air and Waste Management

Bureau, 1520 E. 6th Avenue, Helena, Montana 59620.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, EPA, Region 8, (303) 312-6437.

SUPPLEMENTARY INFORMATION: For the purpose of this document, we are giving meaning to certain words as follows: (a) The words "EPA," "we," "us" or "our" mean or refer to the United States Environmental Protection Agency. (b) The words State or Montana mean the State of Montana unless the context indicates otherwise. (c) The initials MDEQ mean the Montana Department of Environmental Quality.

I. Summary of SIP Revision

On February 9, 2001, the State of Montana submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of updates to the Montana Emergency Episode Avoidance Plan (EEAP) and Cascade County's Local Regulation Chapter 7, Open Burning. Other revisions to the SIP were also submitted on February 9, 2001 but will be acted on at a later date.

Montana's Emergency Episode Avoidance Plan

The February 9, 2001 submittal revises Montana's Emergency Episode Avoidance Plan (EEAP). The submittal revises the priority classification of two of the Air Quality Control Regions (AQCR) based on more current ambient data; replaces the references to the National Weather Service with references to the MDEQ meteorological staff; and makes grammatical corrections.

We last approved revisions to Montana's EEAP on December 6, 1999 (64 FR 68034). We are approving the 2001 revisions to Montana's EEAP and updating 40 CFR 52.1371 to indicate the current emergency episode priority classifications for the AQCRs.

Cascade County Air Pollution Control Program Regulation Chapter 7, Open Burning

In addition, the February 9, 2001 submittal revises the Cascade County Air Pollution Control Program. The submittal consists solely of Regulation Chapter 7, Open Burning. The Cascade County open burning regulations only apply to minor open burning sources. Major open burning sources are subject to the State's open burning regulations. We believe it is appropriate to incorporate local air pollution control programs in the SIP if the program is needed for attainment and maintenance of any National Ambient Air Quality Standard (NAAQS). The State's Group II PM-10 SIP relies on many rules,