

“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 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.

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use “voluntary consensus standards” (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today’s action does not require the public to perform activities conducive to the use of VCS. 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 October 11, 2002.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 12, 2002. 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 23, 2002.

**Gary Gulezian,**

*Acting Regional Administrator, Region 5.*

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations 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.*

#### Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c) (148) to read as follows:

#### § 52.770 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(148) On August 8, 2001, the State submitted rules to incorporate by reference Federal capture efficiency test methods. The submittal amends 326 IAC 8-1-4.

(i) Incorporation by reference.

Title 326: Air Pollution Control Board; Article 8: Volatile Organic Compound Rules; Rule 1: General Provisions; Section 4: Testing procedures. Filed with the Secretary of State on June 15, 2001 and effective on July 15, 2001. Published in 24 *Indiana Register* 3619 on August 1, 2001.

\* \* \* \* \*

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[MN69-7294a; FRL-7264-9]

#### Approval and Promulgation of State Implementation Plans; Minnesota

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

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving a site-specific revision to the Minnesota particulate matter (PM) State Implementation Plan (SIP) for Metropolitan Council Environmental Service’s (MCES) Metropolitan Wastewater Treatment Plant located on Childs Road in St. Paul, Ramsey County, Minnesota. By its submittal dated June 1, 2001, the Minnesota Pollution Control Agency (MPCA) requested that EPA approve MCES’s federally enforceable state operating permit (FESOP) into the Minnesota PM SIP and remove the MCES Administrative Order from the state PM SIP. 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 rulemaking action.

**DATES:** This “direct final” rule is effective November 12, 2002, unless

EPA receives written adverse comment by October 11, 2002. If written adverse comment is received, EPA 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:** Written comments may be mailed to: Carlton T. 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.)

A copy of the SIP revision is available for inspection at the Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 260-7548.

**FOR FURTHER INFORMATION CONTACT:** Christos Panos, Environmental Engineer, 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?

#### II. Background on Minnesota Submittal

1. What Is the Background for This Action?
2. What Information Did Minnesota Submit, and What Were its Requests?
3. What Is a "Title I Condition?"

#### 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 PM SIP certain portions of the FESOP for MCES's Metropolitan Wastewater Treatment Plant located on Childs Road in St. Paul, Ramsey County, Minnesota. Specifically, EPA is only approving into the SIP those portions of the permit cited as "Title I Condition: State Implementation Plan for PM<sub>10</sub>." In this same action, EPA is removing the MCES Administrative Order from the state PM SIP.

#### 2. Why Is EPA Taking This Action?

EPA is taking this action because the state's request does not change any of the emission limitations currently in the SIP or their accompanying supportive documents, such as the PM air dispersion modeling. The revision to the SIP does not approve any new construction or allow an increase in emissions, thereby providing for attainment and maintenance of the PM National Ambient Air Quality Standards (NAAQS) and satisfying the applicable PM requirements of the Act. The only change to the PM SIP is the enforceable document for MCES, from the Administrative Order to the FESOP.

### II. Background on Minnesota Submittal

#### 1. What Is the Background for This Action?

MCES's Metropolitan Wastewater Treatment Plant is located on Childs Road in St. Paul, Ramsey County, Minnesota. A portion of the St. Paul area was designated nonattainment for PM upon enactment of the Clean Air Act Amendments of 1990, thus requiring the State to submit SIP revisions by November 15, 1991, satisfying the PM attainment demonstration requirements of the Act. The State submitted SIP revisions intended to meet these requirements in 1991, 1992, and 1993. An Administrative Order for MCES was included in these submittals. The EPA took final action on February 15, 1994 at 59 FR 7218, to approve Minnesota's submittals as satisfying the applicable requirements for the St. Paul PM nonattainment area.

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

The SIP revision submitted by MPCA on February 6, 2000, consists of a FESOP issued to MCES. The state has requested that EPA approve the following:

- (1) The inclusion into the Minnesota PM SIP only the portions of the MCES Wastewater Treatment Plant FESOP cited as "Title I Condition: State Implementation Plan for PM<sub>10</sub>."; and,
- (2) The removal from the Minnesota PM SIP of the Administrative Order for MCES previously approved into the SIP.

#### 3. What Is a "Title I Condition?"

SIP control measures were contained in permits issued to culpable sources in Minnesota until 1990 when EPA determined that limits in state-issued permits are not federally enforceable because the permits expire. The state then issued permanent Administrative Orders to culpable sources in

nonattainment areas from 1991 to February of 1996.

Minnesota's operating permitting program, approved into the state SIP on May 2, 1995 (60 FR 21447), includes the term "Title I condition" which was written, in part, to satisfy EPA requirements that SIP control measures remain permanent and requires all state permits, not only Title V permits, to contain all applicable requirements. A "Title I condition" is defined as "any condition based on source-specific determination of ambient impacts imposed for the purposes of achieving or maintaining attainment with the national ambient air quality standard and which was part of the state implementation plan approved by EPA or submitted to the EPA pending approval under section 110 of the act \* \* \*." The rule also states that "Title I conditions and the permittee's obligation to comply with them, shall not expire, regardless of the expiration of the other conditions of the permit." Further, "any title I condition shall remain in effect without regard to permit expiration or reissuance, and shall be restated in the reissued permit."

Minnesota has since resumed using permits as the enforceable document for imposing emission limitations and compliance requirements in SIPs. The SIP requirements in the permit submitted by MPCA are cited as "Title I Condition: State Implementation Plan for PM<sub>10</sub>," therefore assuring that the SIP requirements will remain permanent and enforceable. In addition, EPA reviewed the state's procedure for using permits to implement site-specific SIP requirements and found it to be acceptable under both Titles I and V of the Act (July 3, 1997 letter from EPA to MPCA). The MPCA has committed to using this procedure if the Title I SIP conditions in the permit issued to MCES and included in the SIP submittal need to be revised in the future.

### III. Final Rulemaking Action

EPA is approving the site-specific SIP revision for MCES's Metropolitan Wastewater Treatment Plant located on Childs Road in St. Paul, Ramsey County, Minnesota. Specifically, EPA is approving into the SIP only those portions of MCES's FESOP cited as "Title I Condition: State Implementation Plan for PM<sub>10</sub>." In this same action, EPA is also removing from the state PM SIP the MCES Wastewater Treatment Plant Administrative Order which had previously been approved into the SIP on February 15, 1994.

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 November 12, 2002 without further notice unless we receive relevant adverse written comments by October 11, 2002. 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 November 12, 2002.

#### IV. Administrative Requirements

Under Executive Order 12866, "Regulatory Planning and Review" (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 nor does it 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 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, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This action also does not have federalism

implications because it will 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, "Federalism" (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 a significant regulatory action under Executive Order 12866.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a SIP submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA 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, and has determined that the rule's requirements do not constitute a taking. 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).

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 12, 2002. 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, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: August 13, 2002.

**Bharat Mathur,**

*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. 7401-7671q.

2. Section 52.1220 is amended by adding paragraph (c)(61) to read as follows:

#### § 52.1220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(61) On June 1, 2001, the State of Minnesota submitted a site-specific revision to the Minnesota particulate matter (PM) State Implementation Plan (SIP) for Metropolitan Council Environmental Service's (MCES) Metropolitan Wastewater Treatment

Plant located on Childs Road in St. Paul, Ramsey County, Minnesota. Specifically, EPA is only approving into the SIP those portions of the MCES federally enforceable state operating permit cited as "Title I Condition: State Implementation Plan for PM10." In this same action, EPA is removing from the state PM SIP the MCES Administrative Order previously approved in paragraph (c)(29) of this section.

(i) Incorporation by reference.

(A) Air Emission Permit No.

12300053-001, issued by the Minnesota Pollution Control Agency to MCES's Metropolitan Wastewater Treatment Plant at 2400 Childs Road on March 13, 2001, Title I conditions only.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 60

[SIP NO. SD-001-0015; FRL-7374-3]

#### Approval and Promulgation of Air Quality Implementation Plans; State of South Dakota; New Source Performance Standards

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

**ACTION:** Final rule.

**SUMMARY:** On June 30, 2000, the State of South Dakota submitted a request for delegation of the New Source Performance Standards (NSPS) and requested that the NSPS be removed from the State Implementation Plan (SIP). On April 2, 2002, EPA delegated to the State of South Dakota the authority to implement and enforce the NSPS program. Since the State has been delegated the authority to implement and enforce the NSPS program, the intended effect of this action is to remove the NSPS sections from the SIP and also update the NSPS "Delegation Status of New Source Performance Standards" table. These actions are being taken under sections 110 and 111 of the Clean Air Act. Other parts of the June 30, 2000 submittal will be acted on in a separate notice.

**DATES:** This final rule is effective October 11, 2002.

**ADDRESSES:** 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. Copies of the State documents relevant to this action are available for public inspection at the South Dakota

Department of Environmental and Natural Resources, Air Quality Program, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501.

**FOR FURTHER INFORMATION CONTACT:** Laurel Dygowski, EPA, Region 8, (303) 312-6144.

**SUPPLEMENTARY INFORMATION:** On July 10, 2002, EPA published a notice of proposed rulemaking (NPR) for the State of South Dakota. In letters dated January 25, 2002 and April 2, 2002, EPA delegated to the State of South Dakota the authority to implement and enforce the NSPS program. Since the State had been delegated the authority to implement and enforce the NSPS program, the NPR proposed approval of removing the NSPS sections from the SIP and updating the NSPS "Delegation Status of New Source Performance Standards" table. The January 25, 2002 and April 2, 2002 letters of delegation were printed in their entirety in the July 10, 2002 (67 FR 45684) document.

#### I. Final Action

Since the EPA received no comments on the July 10, 2002 notice of proposed rulemaking, EPA is approving the update of the table in 40 CFR 60.4(c), entitled "Delegation Status of New Source Performance Standards [(NSPS for Region VIII)]", to indicate the 40 CFR part 60 NSPS that are now delegated to the State of South Dakota.

In addition, EPA is approving the removal of the NSPS from the SIP. In its January 30, 2000 submittal, the State requested that the NSPS be removed from the SIP. Since the State has been delegated the authority for the implementation and enforcement of the NSPS in 40 CFR part 60, we are proposing to remove the following sections from the South Dakota SIP: 74:36:07:01, 74:36:07:02, 74:36:07:03, 74:36:07:04, 74:36:07:05, 74:36:07:06, 74:36:07:07, 74:36:07:07.01, 74:36:07:09, 74:36:07:10, 74:36:07:12, 74:36:07:13, 74:36:07:14, 74:36:07:15, 74:36:07:16, 74:36:07:17, 74:36:07:18, 74:36:07:19, 74:36:07:20, 74:36:07:21, 74:36:07:22, 74:36:07:23, 74:36:07:24, 74:36:07:25, 74:36:07:26, 74:36:07:27, 74:36:07:28, 74:36:07:31, 74:36:07:32, 74:36:07:33, and 74:36:07:43. The following sections of Chapter 74:36:07 remain in the SIP: 74:36:07:08, 74:36:07:11<sup>1</sup> and 74:36:07:29-30.

#### II. 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. 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 (Public Law 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 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

<sup>1</sup>This rule, however, has been repealed.