

approving into the PM SIP only those portions of the Lafarge Red Rock Road facility state operating permit cited as "Title I condition: SIP for PM10 NAAQS."

(i) Incorporation by reference.

(A) AIR EMISSION PERMIT NO. 12300353-002, issued by the Minnesota Pollution Control Agency (MPCA) to Lafarge Corporation—Red Rock Terminal on May 7, 2002, Title I conditions only.

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BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MN79-1a; FRL-7543-6]

#### 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 sulfur dioxide (SO<sub>2</sub>) State Implementation Plan (SIP) for the Xcel Energy (formerly known as Northern States Power Company) Inver Hills Generating Plant located in the city of Inver Grove Heights, Dakota County, Minnesota. By its submittal dated August 9, 2002, the Minnesota Pollution Control Agency (MPCA) requested that EPA approve Xcel's federally enforceable Title V operating permit into the Minnesota SO<sub>2</sub> SIP and remove the Xcel Administrative Order from the state SO<sub>2</sub> SIP. The state is also requesting in this submittal, that EPA rescind the Administrative Order for Ashbach Construction Company (Ashbach) from the Ramsey County particulate matter (PM) SIP. The requests are approvable because they satisfy 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 3, 2003, unless EPA receives written adverse comment by October 2, 2003. 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.)

Comments may also be submitted electronically or through hand delivery/courier, please follow the detailed instructions described in Part(I)(B)(1)(i) through (iii) of the Supplementary Information section. 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.  
[panos.christos@epa.gov](mailto:panos.christos@epa.gov).

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

- I. General Information.
- II. EPA Action and Review.
  1. What action is EPA taking today?
  2. Why is EPA taking this action?
- III. 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"?
- IV. Final Rulemaking Action.
- V. Statutory and Executive Order Reviews.

#### I. General Information

##### A. How Can I Get Copies Of This Document and Other Related Information?

1. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* EPA has established an official public rulemaking file for this action under "Region 5 Air Docket MN79". The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of

materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the contact listed in the For Further Information Contact section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the [regulations.gov](http://www.regulations.gov) web site located at <http://www.regulations.gov> where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

##### B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking Region 5 Air Docket "MN79" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or

CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. 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.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to [nash.carlton@epa.gov](mailto:nash.carlton@epa.gov). Please include the text "Public comment on proposed rulemaking Region 5 Air Docket MN79" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to [Regulations.gov](http://www.regulations.gov) at <http://www.regulations.gov>, then click on the button "TO SEARCH FOR REGULATIONS CLICK HERE", and select Environmental Protection Agency as the Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please include the text "Public comment on proposed rulemaking Regional Air Docket MN79" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

### *C. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

## **II. EPA Action and Review**

### *1. What Action Is EPA Taking Today*

In this action, EPA is approving into the Minnesota SO<sub>2</sub> SIP certain portions of the Title V permit for Xcel Energy's Inver Hills Generating Plant (Xcel) located in the city of Inver Grove Heights, Dakota County, Minnesota. Specifically, EPA is only approving into the SIP those portions of the permit cited as "Title I Condition: State Implementation Plan for SO<sub>2</sub>." In this same action, EPA is removing the Xcel Administrative Order from the state SO<sub>2</sub> SIP, and the Ashbach Administrative Order from the state PM SIP.

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

EPA is taking this action for Xcel because the state's request does not

change any of the emission limitations currently in the SO<sub>2</sub> SIP or their accompanying supportive documents, such as the SO<sub>2</sub> air dispersion modeling. The revision to the SO<sub>2</sub> SIP does not approve any new construction or allow an increase in emissions, thereby providing for attainment and maintenance of the SO<sub>2</sub> National Ambient Air Quality Standards (NAAQS) and satisfying the applicable SO<sub>2</sub> requirements of the Act. The only change to the SO<sub>2</sub> SIP is the enforceable document for Xcel, from the Administrative Order to the Title V permit.

EPA is taking action to rescind the Administrative Order for Ashbach from the Ramsey County PM SIP because, as described below, the Administrative Order for this facility is no longer necessary since the company has permanently ceased operations at the Saint Paul asphalt plant.

## **III. Background on Minnesota Submittal**

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

Xcel Energy Inver Hills Generating Plant

Xcel's Inver Hills Generating Plant is located in Inver Grove Heights, Dakota County, Minnesota, in the Pine Bend SO<sub>2</sub> maintenance area. Monitored violations of the primary SO<sub>2</sub> NAAQS from 1975 through 1977 led EPA to designate Air Quality Control Region (AQCR) 131 as a primary SO<sub>2</sub> nonattainment area on March 3, 1978 (43 FR 8962). AQCR 131 includes Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington Counties in the State of Minnesota. In response to Part D requirements of the Clean Air Act, MPCA submitted a final SO<sub>2</sub> plan on August 4, 1980. EPA approved the Minnesota Part D SO<sub>2</sub> SIP for AQCR 131 on April 8, 1981 (46 FR 20996).

Subsequent monitored violations of the SO<sub>2</sub> NAAQS prompted a 1982 notice of SIP inadequacy for the Dakota County area of AQCR 131. Also, as a result of the promulgation of the Good Engineering stack height rule in 1985, the MPCA identified modeled attainment problems in other areas of AQCR 131. The submittal of a revised plan was further delayed by the passage of the 1990 Amendments to the Act. The plan for the Pine Bend area of Dakota County of AQCR 131, which included an Administrative Order for Northern States Power-Inver Hills Station, was approved by EPA on September 9, 1994 (59 FR 46553). EPA approved Amendments Two and Three to the administrative order for Northern States

Power-Inver Hills Station on June 13, 1995 (60 FR 31088), and October 13, 1998 (63 FR 54585), respectively.

The state submitted a request to redesignate the Twin Cities and Pine Bend areas of AQCR 131 (excluding the Saint Paul Park area), to attainment of the SO<sub>2</sub> NAAQS on September 7, 1994. EPA approved the redesignation request on May 31, 1995 (60 FR 28339).

#### Ashbach Construction Company

Ashbach was located in Saint Paul, Ramsey County, Minnesota. A portion of the Saint Paul area was designated nonattainment of the PM NAAQS upon enactment of the 1990 Amendments to the Act. The State submitted SIP revisions satisfying the attainment demonstration requirements of the Act in 1991 and 1992. The enforceable element of the State's submittals were administrative orders for nine facilities in the Saint Paul area. An Administrative Order for Ashbach was included in these submittals. EPA took final action on February 15, 1994 at 59 FR 7218, to approve Minnesota's submittals as satisfying the applicable requirements for the Saint Paul PM nonattainment area. The facility ceased operations at the end of the 1996 asphalt producing season and was permanently shut down in 1997.

On June 20, 2002, MPCA requested that EPA redesignate the Saint Paul PM nonattainment area to attainment. EPA took final action on July 26, 2002 at 67 FR 48787, redesignating the Saint Paul PM nonattainment area to attainment of the PM NAAQS.

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

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

(1) The inclusion into the Minnesota SO<sub>2</sub> SIP only the portions of the Xcel Inver Hills Generating Plant Title V permit cited as "Title I Condition: State Implementation Plan for SO<sub>2</sub>.";

(2) The removal from the Minnesota SO<sub>2</sub> SIP of the Administrative Order for Xcel previously approved into the SIP; and,

(3) The removal from the Minnesota PM SIP of the Administrative Order for Ashbach 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 SO<sub>2</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 Xcel and included in the SIP submittal need to be revised in the future.

#### IV. Final Rulemaking Action

EPA is approving the SIP revision for Xcel's Inver Hills Generating Plant located in the city of Inver Grove Heights, Dakota County, Minnesota. Specifically, EPA is approving into the SIP only those portions of Xcel's Title V permit cited as "Title I Condition: State Implementation Plan for SO<sub>2</sub>." In this same action, EPA is removing from the state SO<sub>2</sub> SIP the Xcel Inver Hills Generating Plant Administrative Order which had first been approved into the SO<sub>2</sub> SIP on September 9, 1994 and amended on June 13, 1995 and October

13, 1998. In addition, EPA is removing from the state PM SIP the Ashbach Administrative Order which had previously been approved into the PM 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 3, 2003 without further notice unless we receive relevant adverse written comments by October 2, 2003. 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 3, 2003.

#### V. Statutory and Executive Orders Reviews

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. section 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. section 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 3, 2003. 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, Sulfur Dioxide.

Dated: May 23, 2003.

**Jerri-Anne Garl,**

*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:
  - a. Removing and reserving paragraphs (c)(29)(i)(A) and (c)(35)(i)(B).
  - b. Revising paragraph (c)(41)(i)(A).

- c. Removing and reserving paragraph (c)(41)(i)(C).
- d. Adding paragraph (c)(63).

The revision and addition read as follows:

**§ 52.1220 Identification of plan.**

\* \* \* \* \*  
 (c) \* \* \*  
 (41) \* \* \*  
 (i) \* \* \*

(A) Amendments, all effective December 21, 1994, to Administrative Orders approved in paragraph (c)(29) of this section for Commercial Asphalt, Inc.; Great Lakes Coal and Dock Company; Harvest States Cooperatives; LaFarge Corporation; Metropolitan Council; North Star Steel Company; Rochester Public Utilities; J. L. Shiely Company.

\* \* \* \* \*

(63) On August 9, 2002, the State of Minnesota submitted a revision to the Minnesota sulfur dioxide (SO<sub>2</sub>) State Implementation Plan (SIP) for Xcel Energy's Inver Hills Generating Plant (Xcel) located in the city of Inver Grove Heights, Dakota County, Minnesota. Specifically, EPA is only approving into the SO<sub>2</sub> SIP those portions of the Xcel Title V operating permit cited as "Title I Condition: State Implementation Plan for SO<sub>2</sub>".

(i) Incorporation by reference.  
 (A) AIR EMISSION PERMIT NO. 03700015-001, issued by the Minnesota Pollution Control Agency to Northern States Power Company Inver Hills Generating Plant on July 25, 2000, Title I conditions only.

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**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 271**

[FRL-7550-3]

**South Carolina: Final Authorization of State Hazardous Waste Management Program Revision**

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

**ACTION:** Immediate final rule.

**SUMMARY:** South Carolina has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule