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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R05-OAR-2008-0240; FRL-8896-5]

Approval and Promulgation of Air Quality Implementation Plans; Minnesota**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: EPA is approving a site specific revision to the Minnesota sulfur dioxide (SO₂) State Implementation Plan (SIP) for the Rochester Public Utility's Cascade Creek Generating Facility (Cascade Creek), located in the city of Rochester, Olmsted County, Minnesota. On March 5, 2008, the Minnesota Pollution Control Agency (MPCA) requested that EPA approve certain portions of a joint Title I/Title V document into the Minnesota SO₂ SIP for the Cascade Creek facility. This SIP revision includes the addition of two new oil and gas fired turbines and modification of the starter engine on the No. 1 turbine. This SIP revision will show reduced emissions of SO₂ from this facility and the SO₂ National Ambient Air Quality Standards (NAAQS) will be maintained in the area. Because the SO₂ emission limits are being reduced, the air quality of Olmsted County will be protected.

DATES: This direct final rule will be effective June 23, 2009, unless EPA receives adverse comments by May 26, 2009. If adverse comments are 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: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2008-0240, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail*: mooney.john@epa.gov.
3. *Fax*: (312) 692-2551.
4. *Mail*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77

West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R05-OAR-2008-0240. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, 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 <http://www.regulations.gov> or e-mail. The <http://www.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 <http://www.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.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday

through Friday, excluding Federal holidays. We recommend that you telephone Gilberto Alvarez, Environmental Scientist, at (312) 886-6143 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT:

Gilberto Alvarez, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6143, alvarez.gilberto@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What Is EPA Approving?
- II. What Is the Background for This Action?
- III. What Is EPA's Analysis of the State Submission?
- IV. What Are the Environmental Effects of This Action?
- V. What Action Is EPA Taking?
- VI. Statutory and Executive Order Reviews

I. What Is EPA Approving?

EPA is approving into the SO₂ SIP for Minnesota a joint Title I/Title V document for the Rochester Public Utility's Cascade Creek Facility (Cascade Creek), located in Rochester, Olmsted County, Minnesota. This SIP amendment approval will replace the current Title I SIP conditions under Air Emission Permit No. 00000610-001.

II. What Is the Background for This Action?**A. What Prior SIP Actions Are Pertinent to This Action?**

Cascade Creek is an electrical generation facility consisting of three combustion turbines and a diesel starter engine. The facility was identified as a culpable source in the Rochester area at the time the area was designated as nonattainment for the SO₂ NAAQS. The facility is now part of the SIP to maintain attainment of the SO₂ NAAQS in the Rochester area. On February 7, 2008, the Minnesota Pollution Control Agency (MPCA) issued an Air Emission Permit No. 10900020-003 to Rochester Public Utilities. The permit is a joint Title I/Title V document and will replace Permit No. 00000610-001, the joint document currently approved into the SIP. Air Permit Nos. 10900020-001 and 002 were adopted at the state level, but the joint documents were not submitted to EPA for approval into the SIP. These permits authorized the modification of the existing turbine to allow for burning of natural gas and distillate fuel oil and established facility-wide Federally-enforceable

emission limits that restrict potential emissions to less than major source levels under the Federal Prevention of Significant Deterioration and New Source Review programs. These changes are being addressed through EPA's action on joint Title I/Title V document 10900020-003. Because the facility is located in the Rochester/Olmsted County SO₂ maintenance area, changes to the facility's operations must be submitted to EPA as SIP revisions.

B. What Are the Revisions to the SIP?

The revision involves changes to Cascade Creek's current operating conditions and revisions to the applicable SO₂ SIP conditions currently listed in the Joint Title I/Title V document and incorporated into Minnesota's SIP. The facility has accepted fuel sulfur content limits that reduce SO₂ beyond previously permitted levels. This SIP revision also includes the addition of two new oil and gas fired turbines and modification of the starter engine on the No. 1 turbine.

C. Has Public Notice Been Provided?

Minnesota published public notices for the Cascade Creek Facility on December 20, 2007. No comments were received during the comment period which ended on February 4, 2008. In the public notices, Minnesota stated it would hold a public hearing if one were requested during the comment period. This follows the alternative public participation process EPA approved on June 5, 2006 (71 FR 32274). For limited types of SIP revisions that the public has shown little interest in, a public hearing is not automatically required. If anyone requests a public hearing during the comment period, Minnesota will hold a public hearing. Because no one requested a public hearing, Minnesota did not hold a public hearing for this SIP revision.

D. What Are Title I Conditions and Joint Title I/Title V Documents?

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. Minnesota then issued permanent Administrative Orders to culpable sources in nonattainment areas from 1991 to February of 1996.

Minnesota's consolidated permitting regulations, approved into the state SIP on May 2, 1995 (60 FR 21447), include the term "Title I condition" which was written, in part, to satisfy EPA requirements that SIP control measures

remain permanent. 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 initiated using joint Title I/Title V documents as the enforceable document for imposing emission limitations and compliance requirements in SIPs. The SIP requirements in joint Title I/Title V documents submitted by MPCA are cited as "Title I conditions," therefore ensuring that SIP requirements remain permanent and enforceable. EPA reviewed the state's procedure for using joint Title I/Title V documents to implement site-specific SIP requirements and found it to be acceptable under both Titles I and V of the Clean Air Act (CAA) (July 3, 1997 letter from David Kee, EPA, to Michael J. Sandusky, MPCA). Further, a June 15, 2006, letter from EPA to MPCA clarifies procedures to transfer requirements from Administrative Orders to joint Title I/Title V documents.

III. What Is EPA's Analysis of the State Submission?

Cascade Creek owned units included in the SO₂ SIP for the Rochester area. The facility has accepted fuel sulfur content limits that reduced SO₂ beyond previously permitted levels. This SIP revision also includes the addition of two new oil and gas fired turbines and modification of the starter engine on the No. 1 turbine.

A modeling analysis conducted for the Cascade Creek Facility SIP revision showed that incorporating a reduced fuel oil sulfur limit resulted in less total SO₂ impacts from operation of the modified three-turbine system, as opposed to the single-turbine system. Additionally, modeling shows that the location of the significant impact area is much smaller for the modified facility and does not include any new areas. Based on these modeled results, MPCA concluded that the addition of the two new turbines did not jeopardize NAAQS attainment.

IV. What Are the Environmental Effects of This Action?

Due to the decrease in fuel oil sulfur content, overall emissions of SO₂ will decrease from current SIP conditions. Thus, the Rochester area in Minnesota is expected to remain in attainment of the SO₂ NAAQS.

SO₂ causes breathing difficulties and aggravation of existing cardiovascular disease. It is also a precursor of acid rain and fine particulate matter formation. Sulfate particles are a major cause of visibility impairment in the United States. Acid rain damages lakes and streams, impairing aquatic life, and causes damage to buildings, sculptures, statues and monuments. SO₂ also causes the loss of chlorophyll leading to vegetation damage.

V. What Action Is EPA Taking?

EPA is approving site specific revisions to the Minnesota SO₂ SIP for the Cascade Creek Facility, located in the city of Rochester, Olmsted County, Minnesota. Specifically, EPA is only approving into the SIP those portions of the joint Title I/Title V document cited as "Title I condition: State Implementation Plan for SO₂."

We are 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 written comments are filed. This rule will be effective June 23, 2009 without further notice unless we receive relevant adverse written comments by May 26, 2009. 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 June 23, 2009.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices,

provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because

application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action 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 June 23, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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 oxides.

Dated: April 9, 2009.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ 40 CFR 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.*

Subpart Y—Minnesota

■ 2. In § 52.1220 the table in paragraph (d) is amended by revising the entry for “Rochester Public Utilities, Cascade Creek Combustion” to read as follows:

§ 52.1220 Identification of plan.

* * * * *
(d) * * *

EPA-APPROVED MINNESOTA SOURCE-SPECIFIC PERMITS

Name of source	Permit No.	State effective date	EPA approval date	Comments
* * * * * Rochester Public Utilities, Cascade Creek Combustion.	100900020–003	12/28/07	4/24/09, [Insert page number where the document begins].	* Only conditions cited as “Title I condition: SIP for SO ₂ NAAQS.”
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[FR Doc. E9-9368 Filed 4-23-09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R05-OAR-2008-0683; FRL-8895-8]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Finding of Attainment for 1-Hour Ozone for the Milwaukee-Racine, WI Area**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: EPA is approving a July 28, 2008, request from the Wisconsin Department of Natural Resources (WDNR) that EPA find that the Milwaukee-Racine, Wisconsin (WI) nonattainment area has attained the revoked 1-hour ozone National Ambient Air Quality Standard (NAAQS).

DATES: This direct final rule will be effective June 23, 2009, unless EPA receives adverse comments by May 26, 2009. If adverse comments are 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: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2008-0683, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *E-mail*: mooney.john@epa.gov.

3. *Fax*: (312) 692-2551.

4. *Mail*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

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Instructions: Direct your comments to Docket ID No. EPA-R05-OAR-2008-0683. EPA's policy is that all comments received will be included in the public

docket without change and may be made available online at <http://www.regulations.gov>, 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 <http://www.regulations.gov> or e-mail. The <http://www.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 <http://www.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.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. We recommend that you telephone Gilberto Alvarez, Environmental Scientist, at (312) 886-6143 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Gilberto Alvarez, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6143, alvarez.gilberto@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What Is EPA Approving?
- II. What Is the Background for This Action?
- III. What Is the Impact of a December 22, 2006, United States Court of Appeals Decision Regarding EPA's Phase 1 Ozone Implementation Rule on This Rule?
- IV. Attainment Finding
- V. What Action Is EPA Taking?
- VI. Statutory and Executive Order Reviews

I. What Is EPA Approving?

EPA is approving a July 28, 2008, request from WDNR that EPA find that the Milwaukee-Racine, WI nonattainment area attained the revoked 1-hour ozone NAAQS.

II. What Is the Background for This Action?

Under section 107(d)(1)(C) of the Clean Air Act (CAA), the Milwaukee-Racine, WI area was designated nonattainment for the 1-hour ozone NAAQS by operation of law upon enactment of the 1990 CAA amendments. Under section 181(a) of the CAA, each ozone area designated nonattainment under section 107(d) was also classified by operation of law as "marginal," "moderate," "serious," "severe-15," "severe-17," or "extreme," depending on the severity of the area's air quality problem and the number of years needed to reach attainment from the 1990 CAA amendments. These nonattainment designations and classifications were codified in Title 40 of the Code of Federal Regulations (CFR) Part 81 (see 56 FR 56994, November 6, 1991).

The ozone design value for an area, which characterizes the severity of the air quality problem, is represented by the highest ozone design value at any of the individual ozone monitoring sites in the area. Table 1 in section 181(a) of the CAA provides the design value ranges for each nonattainment classification. Ozone nonattainment areas with design values between 0.190 parts per million (ppm) and 0.280 ppm for the three-year period, 1987-1989, were classified as severe-17. Because the Milwaukee-Racine, WI area's 1988 ozone design value fell between 0.190 and 0.280 ppm, this area was classified as severe-17 nonattainment for the 1-hour ozone NAAQS. Under section 182(c) of the CAA, states containing areas that were classified as severe-17 nonattainment were required to submit State Implementation Plans (SIPs) to provide for certain emission controls, to show progress toward attainment, and to