

## EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
5-40-40 .....	Monitoring .....	8/1/02	3/15/00 69 FR 12074 ...	Revised paragraph B, and E.1; added paragraph E.12.
5-40-41 .....	Emission Monitoring Procedures for Existing Sources.	7/1/97	4/21/00 65 FR 21315 ...	Appendix J.
5-40-50 .....	Notification, records and reporting.	8/1/02	3/15/04 69 FR 12074 ...	Added new paragraph A.3; revised paragraphs C, C.1, C.2 and C.3., D, E and F.
* .....	* .....	* .....	* .....	* .....
CHAPTER 50 .....	NEW AND MODIFIED STATIONARY SOURCES [Part V]			
PART I .....	SPECIAL PROVISIONS			
5-50-10 .....	Applicability .....	8/1/02	3/15/04 69 FR 12074 ...	Revised paragraphs B and C, added paragraph F.
5-50-20 .....	Compliance .....	8/1/02	3/15/04 69 FR 12074 ...	Added new paragraph A.2, renumbered paragraphs A.3 through A.5, and revised paragraph A.3; Added new paragraph G; revised paragraphs H, H.2, H.2a, H.3 and H.4; added new paragraph I.
5-50-30 .....	Performance Testing ...	8/1/02	3/15/04 69 FR 12074 ...	Revised paragraphs A and F.1; NOTE: Revisions to paragraph C are not included in SIP revision.
5-50-40 .....	Monitoring .....	8/1/02	3/15/04 69 FR 12074 ...	Revised paragraphs C, and E.1 through E.8; Added new paragraph E.10.
5-50-50 .....	Notification, records and reporting.	8/1/02	3/15/04 69 FR 12074 ...	Revised paragraphs A.1 through A.4, C, C.1 through C.3, D, E and F.
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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MN79-3; FRL-7670-5]

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

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

**ACTION:** 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. EPA proposed approval of this SIP revision

and published a direct final approval on September 2, 2003. EPA received adverse comments on the proposed rulemaking, and therefore withdrew the direct final rulemaking on October 27, 2003.

**DATES:** This rule is effective July 8, 2004.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. MN-79. All documents in the docket are listed in the index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information where disclosure is restricted by statute. Publicly available docket materials are available in hard copy at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. The Docket Facility is open during normal business hours, Monday through Friday, excluding legal holidays. We recommend that you telephone Christos Panos at (312) 353-8328, before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Christos Panos, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch, United States Environmental Protection Agency, Region 5, Mailcode AR-18J, 77 West Jackson Boulevard, Chicago, Illinois

60604. Telephone: (312) 353-8328. E-mail address: [panos.christos@epa.gov](mailto:panos.christos@epa.gov).

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

- I. Does This Action Apply to Me?
- II. What Action Is EPA Taking Today?
- III. What Is the Background for This Action?
- IV. What Public Comments Were Received and What Is EPA's Response?
- V. Statutory and Executive Order Reviews

### General Information

#### *I. Does This Action Apply to Me?*

No, it applies to a single source, Xcel Energy's Inver Hills Generating Plant located in the city of Inver Grove Heights, Dakota County, Minnesota.

#### *II. 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 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 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.

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

The SIP revision submitted by MPCA on August 9, 2002, 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 of 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.

We concluded in our September 2, 2003, direct final action at 68 FR 52110 that the SIP revision for Xcel was approvable, 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 Clean Air Act (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.

We also concluded on September 2, 2003, that the Administrative Order for Ashbach was no longer necessary since the company has permanently ceased operations at the Saint Paul asphalt plant. Therefore, we took action to rescind the Administrative Order for Ashbach from the Ramsey County PM SIP.

The September 2, 2003, direct final action stated that if we received adverse comments by October 2, 2003, we would publish a timely notice of withdrawal in the **Federal Register**. Because we received an adverse comment, we withdrew the direct final approval of the revision to the Minnesota SO<sub>2</sub> SIP on October 27, 2003, at 68 FR 61105. As stated in the proposal, there will not be a second comment period on this action.

### *IV. What Public Comments Were Received and What Is EPA's Response?*

We received one comment opposing our September 2, 2003, approval of Minnesota's SIP revision. Although the comment does not specifically address the actual action taken in the SIP revision, it is "adverse" to the SIP action in that the commenter asks us to take a different action regarding this Minnesota power plant than the action we proposed to take. Below, we have paraphrased the comment and have responded to it.

*Comment:* When a power plant is fixed, there should be an improvement as to the amount of toxics being emitted. Any improvements in power plants should also reduce emissions. Toxins from Minnesota are transported east and negatively impact the health of citizens of the eastern United States. Minnesota power plants must be required to clean the air.

*Response:* This comment raises points that are unrelated to or outside the scope of this SIP revision, but are apparently directed to either the New Source Review program or the section 112 air toxics program. The commenter is asking EPA to impose substantive requirements that the Agency is not able to require in response to this SIP submission from the State.

As detailed in the September 2, 2003, direct final action, we are approving the current SIP submittal for Xcel because 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. Further, we are taking action to rescind the Administrative Order for Ashbach from the Ramsey County PM SIP because the company has permanently ceased operations at the Saint Paul asphalt plant. The commenter submitted no new information that would warrant a disapproval under the requirements of the Act.

### *V. Statutory and Executive Order Reviews*

#### **Executive Order 12866: Regulatory Planning and Review**

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.

#### **Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use**

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).

#### **Regulatory Flexibility Act**

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.*).

#### **Unfunded Mandates Reform Act**

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).

#### **Executive Order 13175: Consultation and Coordination With Indian Tribal Governments**

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).

#### **Executive Order 13132: Federalism**

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.

#### **Executive Order 13045: Protection of Children From Environmental Health and Safety Risks**

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.

## National Technology Transfer Advancement Act

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 program 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 program 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 program submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

## Civil Justice Reform

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.

## Governmental Interference With Constitutionally Protected Property Rights

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.

## Paperwork Reduction Act

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.*).

## Congressional Review Act

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, EPA 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 August 6, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action 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 20, 2004.

**Norman R. Niedergang,**

*Acting Regional Administrator, Region 5.*

■ For the reasons stated in the preamble, part 52, chapter I, of 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.*

■ 2. Section 52.1220 is amended by adding paragraph (c)(63) to read as follows:

## § 52.1220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(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>" and is removing from the state SO<sub>2</sub> SIP the Xcel Administrative Order previously approved in paragraph

(c)(46) and modified in paragraphs (c)(35) and (c)(41) of this section. In this same action, EPA is removing from the state particulate matter SIP the Administrative Order for Ashbach Construction Company previously approved in paragraph (c)(29) and modified in paragraph (c)(41) of this section.

(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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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[VA 148-5078a; FRL-7671-1]

## Approval and Promulgation of Air Quality Implementation Plans; Virginia; VOC Emission Standards for Portable Fuel Containers in the Metropolitan Washington, DC Ozone Nonattainment Area

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Commonwealth of Virginia State Implementation Plan (SIP). Specifically, EPA is approving new emission standards for portable fuel containers or spouts sold, supplied, offered for sale, or manufactured for sale in the Northern Virginia portion of the Metropolitan Washington, DC ozone nonattainment area (Northern Virginia area). EPA is approving the new portable fuel container standards to reduce emissions of volatile organic compounds (VOC) in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This rule is effective on August 9, 2004 without further notice, unless EPA receives adverse written comment by July 8, 2004. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by VA148-5078 by one of the following methods:

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

B. *E-mail:* [morris.makeba@epa.gov](mailto:morris.makeba@epa.gov).