

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[MN73-3; FRL-7794-8]

**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 particulate matter (PM) State Implementation Plan (SIP) for Lafarge Corporation's (Lafarge) facility located on Red Rock Road in Saint Paul, Ramsey County, Minnesota. By its submittal dated July 18, 2002, the Minnesota Pollution Control Agency (MPCA) requested that EPA approve Lafarge's State operating permit into the Minnesota 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 rule is effective September 20, 2004.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. MN-73. All documents in the docket are listed in the index. Although listed in the index, some information is not publicly available, *i.e.*, confidential business information (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:

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**General Information****I. Does This Action Apply to Me?**

This action applies to a single source, Lafarge Corporation's facility located on Red Rock Road in Saint Paul, Ramsey County, Minnesota.

**II. What Action Is EPA Taking Today?**

In this action, EPA is approving into the Minnesota PM SIP certain portions of Minnesota Air Emission Permit No. 12300353-002, issued to Lafarge Corporation—Red Rock Terminal on May 7, 2002. Specifically, EPA is only approving into the SIP those portions of the permit cited as "Title I condition: SIP for PM10 NAAQS."

**1. 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. The revised permit includes the addition of a pneumatic vacuum pump and a new cement silo. 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 pneumatic vacuum pump, which was in place and already controlled by a baghouse, had inadvertently been omitted from the Red Rock Road permit approved into the SIP by EPA in 1999. After consulting EPA, MPCA was advised that a major amendment to the permit was not needed to include this existing unit and that the pneumatic vacuum pump unit should be added into the permit during the next major amendment. Therefore, MPCA included the emission unit and baghouse in the 2002 permit amendment.

The 2002 permit includes a major amendment authorizing the additional emission point associated with a new cement silo. The silo emissions are to be controlled by a baghouse located on the top of the silo. Although actual emissions of PM from the facility would most likely decrease, the installation of the new unit did change the modeling parameters for the facility, thereby requiring a revision to the SIP.

**III. Background on Minnesota Submittal****1. What Is the Background for This Action?**

Lafarge's Red Rock Road facility is located at 1363 Red Rock Road in Saint Paul, Ramsey County, Minnesota. On July 22, 1998, MPCA submitted to EPA a SIP revision for Ramsey County, Minnesota, for the control of PM emissions from certain sources located along Red Rock Road. Included in this submittal was a State operating permit for Lafarge Corporation (Air Emission Permit No. 12300353-001 issued by MPCA on April 14, 1998), which includes and identifies the Title I SIP conditions for the Red Rock Road facility. The EPA took final action approving the Lafarge Red Rock Road permit into the PM SIP on August 13, 1999 (64 FR 44131).

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

The SIP revision submitted by MPCA on July 18, 2002, consists of a revised State operating permit issued to the Lafarge Red Rock Road facility. The State has requested that EPA approve the following:

"(1) The inclusion of only the portions of the revised Lafarge-Rock Terminal permit cited as "Title I condition: SIP for PM10 NAAQS" into the Minnesota PM 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 Title V permitting rule, 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. 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: SIP for PM<sub>10</sub> NAAQS,” 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 David Kee, EPA, to Michael J. Sandusky, MPCA). The MPCA has committed to using this procedure if the Title I SIP conditions in the permit issued to the Lafarge Red Rock Road facility and included in the SIP submittal need to be revised in the future.

#### IV. Final Rulemaking Action

EPA is approving the site-specific SIP revision for the Lafarge Red Rock Road facility, located in Saint Paul, Ramsey County, Minnesota. Specifically, EPA is approving into the SIP only those portions of Lafarge’s State operating permit cited as “Title I condition: SIP for PM<sub>10</sub> NAAQS.”

#### 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 (Public Law 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 October 18, 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.

Dated: July 21, 2004.

**Norman 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)(64) to read as follows:

#### § 52.1220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(64) On July 18, 2002, the State of Minnesota submitted a site-specific revision to the Minnesota particulate matter (PM) SIP for the Lafarge Corporation (Lafarge) Red Rock Road facility, located in Saint Paul, Ramsey County, Minnesota. Specifically, EPA is 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. 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. [FR Doc. 04-18953 Filed 8-18-04; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 65

#### Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** Modified Base (1% annual chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

**EFFECTIVE DATES:** The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

**ADDRESSES:** The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646-2903.

**SUPPLEMENTARY INFORMATION:** FEMA makes the final determinations listed below of modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in BFEs are in accordance with 44 CFR 65.4.

**National Environmental Policy Act.** This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act.** The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

**Regulatory Classification.** This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Executive Order 12612, Federalism.** This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

**Executive Order 12778, Civil Justice Reform.** This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.