

Authority and Issuance

■ For the reasons set forth above, the interim final rule amending 31 CFR Part 50, which was published at 73 FR 53359 on September 16, 2008, is adopted as a final rule without change.

Kenneth E. Carfine,

Acting Under Secretary for Domestic Finance.

[FR Doc. E9-9007 Filed 4-20-09; 8:45 am]

BILLING CODE 4810-25-P?

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2007-1045; FRL-8894-1]

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 Olmsted Waste to Energy Facility (OWEF), located in Rochester, Olmsted County, Minnesota. In its September 28, 2007, submittal, the Minnesota Pollution Control Agency (MPCA) requested that EPA approve certain conditions contained in OWEF's revised Federally enforceable Title V operating permit into the Minnesota SO₂ 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 will be effective June 22, 2009, unless EPA receives adverse comments by May 21, 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-2007-1045, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail*: mooney.john@epa.gov.
3. *Fax*: (312) 886-5824.
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-2007-1045. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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 *www.regulations.gov* or e-mail. The *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 *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 *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 *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 legal holidays. We recommend that you telephone Christos Panos, Environmental Engineer, at (312) 353-8328 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT:

Christos Panos, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8328, *panos.christos@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. General Information

1. What is the Background for this Action?
2. What information did Minnesota submit, and what were its requests?
3. Why is EPA Taking this Action?
4. What is a "Title I Condition?"

II. What Action is EPA Taking?

III. Statutory and Executive Order Reviews

I. General Information

1. What is the Background for this Action?

OWEF, a municipal waste combustor facility owned by Olmsted County, is located at 301 Silver Creek Road Northeast, in Rochester, Olmsted County, Minnesota. The facility is a district heating and cooling plant as well as an electric power generating station. Energy is produced mainly through combustion of municipal solid waste in two mass burn combustion units. The other emission units are a diesel generator that provides emergency electrical power and occasional peaking capacity and an auxiliary boiler used when the waste combustor is going through maintenance. Minnesota originally submitted a Title V permit for OWEF as part of the Minnesota SO₂ SIP for Olmsted County on November 4, 1998. This Title V permit contains the SO₂ emission limits and operating restrictions imposed on the facility to provide for attainment and maintenance of the SO₂ National Ambient Air Quality Standards (NAAQS).

2. What information did Minnesota submit, and what were its requests?

The SIP revision submitted by MPCA on September 28, 2007, consists of Minnesota Air Emission Permit No. 10900005-002, issued to OWEF on August 23, 2007, which serves as a joint Title I/Title V document. The state has requested that EPA approve only the portions of the permit cited as "Title I

condition: State Implementation Plan for SO₂” into the Minnesota SO₂ SIP.

Minnesota held a public hearing regarding the SIP revision and the joint Title I/Title V document on August 2, 2007. No comments were received at the public meeting nor during the 30-day public comment period.

3. Why is EPA Taking this Action?

EPA is taking this action because the state's submittal for OWEF is fully approvable. The SIP revision provides for attainment and maintenance of the SO₂ NAAQS and satisfies the applicable SO₂ requirements of the Act.

Under current SIP conditions, waste combustor units (EU 001 and EU 002) are equipped with Continuous Emission Monitors (CEMs) to monitor SO₂ and are collectively limited to 67 pounds per hour (lbs/hr) SO₂ on a 24-hour block average and 154 lbs/hr on a 3-hour block average. Their combined SO₂ emissions are also limited to 22.6 lbs/hr using a 365 day rolling average through a non-SIP Title I condition which is necessary to keep the source at non-major levels for SO₂. The emergency diesel generator (EU 003) is limited to 48,000 gallons per year of 0.05 percent sulfur content fuel oil using a 12-month rolling sum. The auxiliary boiler (EU 004) is subject to operating restrictions when burning fuel oil and is limited to 286,000 gallons of 0.05 percent sulfur content fuel oil per year. The facility is required to retain fuel oil receipts or test for the sulfur content. The SIP also contains provisions relating to recordkeeping and the reporting of deviations from sulfur content requirements.

Requested changes to the facility include: (1) The addition of a new municipal waste combustor unit (EU 007) with a capacity of 200 tons per day, doubling the facility's total capacity; (2) the replacement of the existing 1200 kilowatt (kW) emergency diesel generator (EU 003) with a larger, 1750 kW emergency generator (EU 008); (3) the addition of a stack for the new emergency generator, raising the stack height from near ground level to about 50 feet; and, (4) the removal of the operating restriction that prevents the operation of the auxiliary boiler (EU 004) when more than one waste combustor is in operation, allowing the facility the flexibility to simultaneously operate all three combustor units and the auxiliary boiler.

The current SIP emission limits will be maintained for the existing waste combustor units (EU 001 and EU 002), but there will be additional emissions limits added to the SIP based on Federal standards in 40 CFR part 62, which will

result in limited emissions of 77 parts per million (ppm) or 16.3 lbs/hour, based on a 24-hour average. The new waste combustor (EU 007) will have limited SO₂ emissions in the SIP of 30 ppm by dry volume, using a 24-hour geometric average based on Federal standards found in 40 CFR part 62. The new emergency diesel generator (EU 008), primarily used for backup and shutdown purposes, will continue to be limited to 48,000 gallons per year of fuel oil using a 12-month rolling sum, and under most situations would not be used while all of the waste combustor units are in continuous operation. Finally, the auxiliary boiler (EU 004) can be fired on fuel oil or natural gas, with a limit of 286,000 gallons per year of fuel oil.

Further, since the last SIP revision to the facility, the existing waste combustor units (EU 001 and EU 002) have undergone an air pollution control retrofit project including installation of spray-dryer absorbers (SDAs) for control of SO₂ emissions. The emission rates from the auxiliary boiler (EU 004) and the new emergency diesel generator (EU 008), when in operation, will decrease based on a reduction in the allowable sulfur content of the fuel to 0.0015% by weight from the current limit of 0.05% by weight. The emergency diesel generator will also now exhaust through a 50 foot stack, rather than a ground-level grate, improving pollutant dispersion.

The previous air quality dispersion modeling for the SIP, conducted in 1998, was done prior to the installation of SO₂ controls on the existing waste combustor units (EU 001 and EU 002). The existing emergency diesel generator (EU 003) was modeled using “very low sulfur” (500 ppm) distillate oil, and exhausting through a ground-level grate. The auxiliary boiler (EU 004) was also modeled using very low sulfur distillate oil, resulting in various permit restrictions on the amount of distillate oil that could be fired relative to the operating state of Units 1 and 2.

Revised air dispersion modeling was conducted using the AERMOD model with Rochester meteorological data to ensure continued attainment of the SO₂ NAAQS in the area. Based on the modeling results, the requested changes to the SIP for OWEF described above have significantly less impacts than currently allowed under the existing SIP. The impacts of the desired future SIP scenario, when compared to the current operating scenarios in the SIP, were approximately 50% lower for average annual emissions, between 2–7% lower for 24-hour emissions and 2–12% lower for 3-hour emissions,

thereby demonstrating that emissions at OWEF will remain below the applicable SO₂ NAAQS.

4. 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 consolidated permitting regulations, approved into the Minnesota 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 also 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 Act (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.

II. What Action Is EPA Taking?

EPA is approving into the Minnesota SO₂ SIP certain portions of Minnesota Air Emission Permit No. 10900005–002, issued to OWEF on August 23, 2007.

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.” In addition, EPA is removing from the Minnesota SO₂ SIP all other references to Title I conditions for OWEF that are not relevant to attainment of the NAAQS.

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 22, 2009 without further notice unless we receive relevant adverse written comments by May 21, 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 22, 2009.

III. Statutory and Executive Order Reviews

Under the Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act 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 Act. 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 Act; 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 Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 22, 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 dioxide.

Dated: March 30, 2009.

Walter W. Kovalick Jr.,

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 “Olmsted County, Olmsted Waste-to-Energy Facility” 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
* * *	* * *	* * *	* * *	* * *
Olmsted County, Olmsted Waste-to-Energy Facility	10900005–002	08/23/07	04/21/09, [Insert page number where the document begins].	Only conditions cited as “Title I condition: SIP for SO ₂ .”

EPA-APPROVED MINNESOTA SOURCE-SPECIFIC PERMITS—Continued

Name of source	Permit No.	State effective date	EPA approval date	Comments
* * * * *				
<p>* * * * *</p> <p>[FR Doc. E9-9040 Filed 4-20-09; 8:45 am]</p> <p>BILLING CODE 6560-50-P</p> <p>ENVIRONMENTAL PROTECTION AGENCY</p> <p>40 CFR Part 52</p> <p>[R08-ND-2008-0001; FRL-8892-7]</p> <p>Approval and Promulgation of Air Quality Implementation Plans; North Dakota; Update to Materials Incorporated by Reference</p> <p>AGENCY: Environmental Protection Agency (EPA).</p> <p>ACTION: Final rule; Notice of administrative change.</p> <p>SUMMARY: EPA is updating the materials submitted by North Dakota that are incorporated by reference (IBR) into the State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the Governor of North Dakota and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC, and the Regional Office.</p> <p>DATES: <i>Effective Date:</i> This action is effective April 21, 2009.</p> <p>ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays, at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that, if at all possible, you contact the individual listed in the FOR FURTHER INFORMATION CONTACT section to arrange a time to view the hard copy of the North Dakota SIP compilation. An electronic copy of the North Dakota regulations we have approved for incorporation into the SIP are also available by accessing http://www.epa.gov/region8/air/sip.html. A hard copy of the regulatory and source-specific portions of the compilation will also be maintained at the Air and Radiation Docket and Information</p>	<p>Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460 and the National Archives and Records Administration (NARA). If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) Docket/Telephone number (202) 566-1742. For information on the availability of this material at NARA, call (202) 741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.</p> <p>FOR FURTHER INFORMATION CONTACT: Amy Platt, EPA Region 8, at (303) 312-6449, or Platt.Amy@epa.gov.</p> <p>SUPPLEMENTARY INFORMATION: Throughout this document, wherever “we” or “our” is used it means the EPA.</p> <p>I. Background</p> <p>The SIP is a living document that the State revises as necessary to address its unique air pollution problems. Therefore, EPA, from time to time must take action on SIP revisions containing new and/or revised regulations to make them part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and “Identification of plan” format are discussed in further detail in the May 22, 1997 Federal Register. On March 1, 2007 (72 FR 9263), EPA published a document in the Federal Register beginning the new IBR procedure for North Dakota. Today’s action is an update to the March 1, 2007 document.</p> <p>II. EPA Action</p> <p>In this document, EPA is doing the following: (1) Announcing an update to the IBR material for North Dakota’s revisions to its SIP as of March 1, 2009, including revisions that were approved by EPA on July 19, 2007 (72 FR 39564) and May 27, 2008 (73 FR 30308); and (2) Revising the entries in paragraphs 52.1820(b), (c), (d), and (e) to reflect this update.</p>			<p>III. Good Cause Exemption</p> <p>EPA has determined that today’s action falls under the “good cause” exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon a finding of “good cause,” authorizes agencies to dispense with public participation, and section 553(d)(3), which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today’s rule simply codifies provisions which are already in effect as a matter of law. Under section 553 of the APA, an agency may find good cause where procedures are “impractical, unnecessary, or contrary to the public interest.” Public comment is “unnecessary” and “contrary to the public interest” since the codification only reflects existing law. Likewise, there is no purpose served by delaying the effective date of this action. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect chart entries.</p> <p>IV. Statutory and Executive Order Review</p> <p>A. General Requirements</p> <p>Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and is therefore 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). Because the agency has made a “good cause” finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the SUPPLEMENTARY INFORMATION section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 <i>et seq.</i>), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA.</p>