

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 or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This rule also does 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), nor will it 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), because it 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 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) 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. 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). This rule will be effective April 22, 2002.

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 April 22, 2002. 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).)

V. List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur Oxide, Volatile organic compounds.

Dated: December 6, 2001.

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 52.1870 is amended by adding paragraph (c)(126) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(126) On March 1, 1996, Ohio submitted revisions to its Permit to Install rules as a revision to the State implementation plan. The request was supplemented on April 16, 1997, September 5, 1997, December 4, 1997, April 21, 1998, and August 19, 1999.

(i) *Incorporation by reference.*

(A) Ohio Administrative Code Rules 3745-31-01 through 3745-31-03, 3745-31-05, 3745-31-09, 3745-31-10, 3745-31-21 through 3745-31-27, effective April 12, 1996; 3745-31-04 and 3745-31-06, effective September 18, 1987; 3745-31-07 and 3745-31-08, effective August 15, 1982.

(B) Ohio Administrative Code Rules 3745-47-01, 3745-47-02, 3745-47-03, 3745-47-05, 3745-47-07 and 3745-47-08 (D), effective June 30, 1981.

[FR Doc. 02-3760 Filed 2-20-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN70-7295a; FRL-7136-4]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency is approving a site-specific revision to the Minnesota Sulfur Dioxide (SO₂) State Implementation Plan (SIP) for Koch Petroleum Group, LP (Koch). The Minnesota Pollution Control Agency (MPCA) submitted the SIP revision request on May 2, 2001. 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 document.

DATES: This direct final rule will be effective April 22, 2002, unless EPA receives adverse comment by March 25, 2002. If EPA receives adverse comments, 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: Written comments may be mailed to: Carlton 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.)

FOR FURTHER INFORMATION CONTACT: Christos Panos, 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.

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

I. General Information

1. What action is EPA taking today?
2. Why is EPA taking this action?
3. What is the background for this action?

II. Review of State Implementation Plan Revision

1. Why did the State submit this SIP Revision?
2. What did Minnesota submit for approval into the SIP?
3. How does the SIP revision show attainment of the SO₂ standards?

III. Final Rulemaking Action

IV. Administrative Requirements

I. General Information

1. What Action Is EPA Taking Today?

In this action, EPA is approving into the Minnesota SO₂ SIP a site-specific revision for Koch, located in the Pine Bend Area of Rosemount, Dakota County, Minnesota. Specifically, EPA is approving and thereby incorporating Amendment No. 5 to Koch's administrative order (order) into the Minnesota SO₂ SIP.

2. Why Is EPA Taking This Action?

EPA is taking this action because the state's submittal for Koch is fully approvable. The SIP revision provides for attainment and maintenance of the SO₂ National Ambient Air Quality Standards (NAAQS) and satisfies the applicable SO₂ requirements of the Act.

A more detailed explanation of how the state's submittal meets these requirements is in EPA's November 9, 2001 Technical Support Document (TSD).

3. What Is the Background for This Action?

EPA designated Air Quality Control Region (AQCR) 131, which contains Dakota County, as a primary SO₂ nonattainment area on March 3, 1978 (43 FR 8962) based on monitored violations of the primary SO₂ NAAQS from 1975 through 1977. In response to the Part D requirements of the Act, MPCA submitted a final SO₂ plan for AQCR 131 on August 4, 1980. EPA approved the Minnesota Part D SO₂ SIP for AQCR 131 on April 8, 1981 (46 FR 20996). Based on monitored violations recorded in 1982, EPA declared the Dakota County SO₂ SIP inadequate and issued a call for revisions to the Minnesota SO₂ SIP on December 5, 1984 (49 FR 47488).

On July 29, 1992 MPCA submitted to EPA a revision to the SO₂ SIP for the Dakota County/Pine Bend SO₂ nonattainment area demonstrating attainment of the SO₂ NAAQS in response to the SIP call. The modeling for the SIP attainment demonstration showed that Koch was a culpable source for the 1982 violations and therefore, MPCA issued an order to Koch based on the modeling. The state submitted the revised order for Koch to EPA on February 25, 1994 and EPA took final action on September 9, 1994 (59 FR 46553), to approve Minnesota's SO₂ SIP revision submittals for the Dakota County/Pine Bend area of AQCR 131.

On September 7, 1994, MPCA submitted to EPA a request to redesignate the Pine Bend area of AQCR 131 to attainment. EPA approved the state's request in a direct final action published on May 31, 1995 (60 FR 28339) redesignating the Pine Bend area to attainment of the SO₂ NAAQS.

On December 20, 2000, MPCA submitted a SIP revision consisting of Amendment No. 4 to Koch's order. Amendment No. 4 requires Koch to reduce emissions of nitrogen oxides (NO_x) and SO₂ at its #2 crude unit. EPA approved Amendment No. 4 into the SO₂ SIP on June 12, 2001 (66 FR 31545).

II. Review of State Implementation Plan Revision

1. Why Did the State Submit This SIP Revision?

The Fall 2001 Turnaround project is the second project initiated by Koch to reduce emissions of NO_x and SO₂ pursuant to a December 22, 2000

consent decree in *United States v. Koch Petroleum Group, L.P.*, Civil Action No. 00-2756-PAM-SRN. In this project Koch will modify the #2 crude unit, 32 unit, and 33 unit at the refinery. Koch addressed most of the #2 crude unit project in Amendment No. 4 of the order. Amendment No. 5 modifies the #2 crude unit by adding low-NO_x burners to heater 12H-4, includes the addition of low-NO_x burners to heaters 32H-4, 5, 6, 33H-31, and changes to the convection sections of heaters 33H-31 and 33H-32. Koch will use heaters 33H-31 and 33H-32 for heating process streams instead of steam generation. Because of these changes, the design stack temperatures for heaters 12H-4, 32H-5, 6, 7 and 33H-32 will drop below the stack temperatures used in the 1992 modeling. The current SIP for Koch requires a revision to the plan if it revises stack parameters.

2. What Did Minnesota Submit for Approval Into the SIP?

The May 2, 2001 revision submitted by MPCA requests that EPA approve Amendment No. 5 to Koch's order into the Minnesota SO₂ SIP. Amendment No. 5 authorizes the installation of low-NO_x burners to heaters 12H-4, 32H-4, 5, 6, 33H-31, and 33H-32. Heaters 33H-31 and 33H-32 will be used for heating process streams instead of steam generation. Within 180 days after the installation of the low-NO_x burners, heater 33H-31 will burn refinery gas and will no longer be able to burn fuel oil. The revised order allows heater 16H-1 to operate on refinery fuel gas or natural gas with allowable SO₂ emissions of 5.6 lb/hr on a 3-hour average, and 15.3 tons of SO₂ per year. The revised order also limits heater 11H-6 to SO₂ emissions of 9.3 lb/hr on a 3-hour average, and 25.2 tons of SO₂ per year.

3. How Does the SIP Revision Show Attainment of the SO₂ Standards?

The MPCA submitted air quality modeling in support of Koch's SO₂ SIP revision. MPCA's modeling demonstrates that the SO₂ emissions from the Fall 2001 Turnaround project do not threaten attainment of the SO₂ NAAQS when factored into the 1992 attainment demonstration modeling. As discussed below, SO₂ emissions will decrease.

Net baseline emissions are the allowable emission rates used in the approved 1992 SIP attainment demonstration for the Pine Bend Area. The SO₂ emissions for the units modified by the current project totaled 2443 tons/year in the 1992 SIP. Total SO₂ emissions associated with the

current project are 365 tons/year. The difference in SO₂ emissions from the 1992 SIP for the affected sources and the current project is a decrease of more than 2,000 tons/year. A more detailed discussion is in EPA's November 9, 2001 TSD.

III. Final Rulemaking Action

EPA is approving the site-specific SIP revision for Koch Petroleum Group, LP, located in the Pine Bend area of Rosemount, Dakota County, Minnesota. Specifically, EPA is incorporating Amendment No. 5 to Koch's Administrative Order into the Minnesota SO₂ SIP. The State submitted this SIP revision on May 2, 2001 as a result of negotiations to a consent decree between EPA, MPCA and Koch, in which Koch proposed a series of modifications at the Pine Bend refinery. This project consists primarily of the modification of existing process heaters by replacing existing burners with low-NO_x burners, thereby substantially decreasing SO₂ emissions at the facility. As described above, this project provides for attainment and maintenance of the SO₂ NAAQS in the Pine Bend area and is therefore fully approvable.

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 April 22, 2002, without further notice unless we receive relevant adverse comments by March 25, 2002. 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. We will then address all public comments received 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 April 22, 2002.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

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. 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 or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 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 (65 FR 67249, November 9, 2000). 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. 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.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority

to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. 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. 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. Section 804 exempts from section 801 the following types of rules: (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

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 April 22, 2002. 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, Reporting and recordkeeping requirements, Sulfur dioxide.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 16, 2002.

Gary Gulezian,

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. 7401–7671q.

2. Section 52.1220 is amended by adding paragraph (c)(60) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(60) On May 2, 2001, the State of Minnesota submitted a site-specific State Implementation Plan (SIP) revision for the control of emissions of sulfur dioxide (SO₂) for Koch Petroleum Group, L.P., located in the Pine Bend Area of Rosemount, Dakota County, Minnesota. Specifically, EPA is approving into the SO₂ SIP Amendment No. 5 to the Administrative Order previously approved in paragraph (c)(35) and revised in paragraph (c)(57) of this section.

(i) Incorporation by reference

(A) An administrative order identified as Amendment Five to Findings and Order by Stipulation, for Koch Petroleum Group, L.P., dated and effective April 30, 2001, submitted May 2, 2001.

[FR Doc. 02–3756 Filed 2–20–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[CA 253–0321c; FRL–7139–4]

Interim Final Determination That State Has Corrected the Rule Deficiencies and Stay of Sanctions, El Dorado County Air Pollution Control District, State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: Elsewhere in today's **Federal Register**, EPA has proposed conditional approval of revisions to the California State Implementation Plan (SIP). The revisions concern El Dorado County Air Pollution Control District (EDCAPCD) Rule 233. Based on the proposed conditional approval, EPA is making an interim final determination that the State has corrected deficiencies in the rule for which a sanction clock began on February 14, 2000. This action will stay the imposition of the offset sanctions and defer the imposition of the highway sanctions. Although this action is effective upon publication, EPA will take comment and will publish a final

rule taking into consideration any comments received on this interim final determination.

DATES: This document is effective February 21, 2002. Comments must be received by March 25, 2002.

ADDRESSES: Written comments must be submitted to Andrew Steckel, Rulemaking Section (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report for the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

El Dorado County Air Pollution Control District, 2850 Fairlane Court, Building C, Placerville, CA 95667.

FOR FURTHER INFORMATION CONTACT:

Charnjit Bhullar, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 972–3960.

SUPPLEMENTARY INFORMATION:**I. Background**

On October 20, 1994, the State submitted EDCAPCD Rule 233, for which EPA published a limited disapproval in the **Federal Register** on January 13, 2000 (65 FR 2052). The effective date of our limited disapproval was February 14, 2000. EPA's disapproval action started an 18-month clock for the imposition of one sanction (followed by a second sanction 6 months later) and a 24-month clock for promulgation of a Federal Implementation Plan (FIP). The State subsequently submitted a revised version of Rule 233 on November 09, 2001. In the Proposed Rules section of today's **Federal Register**, EPA has proposed conditional approval of the November 2001 submittal.

Based on the proposed conditional approval, EPA believes that it is more likely than not that the State has corrected the original disapproval deficiencies. Therefore, EPA is taking this interim final rulemaking action finding that the State has corrected the deficiencies. However, EPA is also

providing the public with a opportunity to comment on this interim final action. If, based on the comments on this action and the comments on EPA's proposed conditional approval, EPA determines that the State's submittal is not approvable and this interim final action was inappropriate, EPA will propose to disapprove the State's submittal and will take interim final action finding that the State has not corrected the original disapproval deficiencies. Upon a final disapproval of the State's submittal, EPA would finalize the interim final finding, finding that the State has not corrected the deficiencies.

This action does not stop the sanctions clock that started for this area on February 14, 2000, the effective date of our disapproval. However, this action will stay the imposition of the offset sanction and will defer imposition of the highway sanction. See 40 CFR 52.31(d)(2)(ii). If EPA takes final action conditionally approving the State's submittal, such action will continue any deferral or stay of the offset and highway sanctions. When the State meets its commitment and EPA takes final action fully approving the State's submittal meeting those commitments, such action will permanently stop the sanctions clock and will permanently lift any imposed, stayed or deferred sanctions. However, if at any time EPA determines that the State, in fact, did not correct the disapproval deficiencies, as appropriate, EPA either will withdraw this interim final determination or take final action finding that the State has not corrected the deficiencies. Such action will retrigger the sanctions consequences as described in 40 CFR 52.31.

II. EPA Action

EPA is taking interim final action finding that the State has corrected the disapproval deficiencies that started the sanctions clock. Based on this action, imposition of the offset sanction will be stayed and imposition of the highway sanction will be deferred until EPA takes final action fully approving the State's submittal or EPA takes action proposing or finally disapproving in whole or part the State submittal. If EPA takes final action conditionally approving the State's submittal, any deferral or stay of the sanctions clock will remain in place. If EPA subsequently takes final action fully approving the State submittal meeting its commitment, any sanctions clocks will be permanently stopped and any imposed, stayed or deferred sanctions will be permanently lifted.

Because EPA has preliminarily determined that the State has an