

Power-Inver Hills Station on June 13, 1995 (60 FR 31088), and October 13, 1998 (63 FR 54585), respectively.

The state submitted a request to redesignate the Twin Cities and Pine Bend areas of AQCR 131 (excluding the Saint Paul Park area), to attainment of the SO<sub>2</sub> NAAQS on September 7, 1994. EPA approved the redesignation request on May 31, 1995 (60 FR 28339).

#### Ashbach Construction Company

Ashbach was located in Saint Paul, Ramsey County, Minnesota. A portion of the Saint Paul area was designated nonattainment of the PM NAAQS upon enactment of the 1990 Amendments to the Act. The State submitted SIP revisions satisfying the attainment demonstration requirements of the Act in 1991 and 1992. The enforceable element of the State's submittals were administrative orders for nine facilities in the Saint Paul area. An Administrative Order for Ashbach was included in these submittals. EPA took final action on February 15, 1994 at 59 FR 7218, to approve Minnesota's submittals as satisfying the applicable requirements for the Saint Paul PM nonattainment area. The facility ceased operations at the end of the 1996 asphalt producing season and was permanently shut down in 1997.

On June 20, 2002, MPCA requested that EPA redesignate the Saint Paul PM nonattainment area to attainment. EPA took final action on July 26, 2002 at 67 FR 48787, redesignating the Saint Paul PM nonattainment area to attainment of the PM NAAQS.

#### 2. What Information Did Minnesota Submit, and What Were Its Requests?

The SIP revision submitted by MPCA on February 6, 2000, 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 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.

#### 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 operating permitting program, 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 and requires all state permits, not only Title V permits, to contain all applicable requirements. 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: State Implementation Plan for SO<sub>2</sub>," 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 EPA to MPCA). The MPCA has committed to using this procedure if the Title I SIP conditions in the permit issued to Xcel and included in the SIP submittal need to be revised in the future.

#### IV. Final Rulemaking Action

EPA is approving the SIP revision for Xcel's Inver Hills Generating Plant 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 Inver Hills Generating Plant 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.

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 November 3, 2003 without further notice unless we receive relevant adverse written comments by October 2, 2003. 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 November 3, 2003.

#### V. Statutory and Executive Orders Reviews

Under Executive Order 12866, "Regulatory Planning and Review" (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 nor does it significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 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