

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R05-OAR-2010-0037; FRL-9683-5]

Approval and Promulgation of Air Quality Implementation Plans; Minnesota; Regional Haze**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: EPA is approving revisions to the Minnesota State Implementation Plan (SIP) addressing regional haze for the first implementation period, extending through July 31, 2018. Minnesota submitted its regional haze plan on December 30, 2009. A draft supplemental submission was made on January 5, 2012, and in final on May 8, 2012. EPA proposed to approve this plan on January 25, 2012. In response to comments, EPA is deferring action on emission limitations that Minnesota intended to represent best available retrofit technology (BART) for taconite facilities. As proposed, EPA is also deferring action on the requirements for Xcel Energy's Sherburne County (Sherco) facility resulting from its certification as a source of reasonably attributable visibility impairment (RAVI). After reviewing the comments, EPA continues to believe approval is warranted for the remaining regional haze plan elements. This approval is being taken in accordance with the requirements of the Clean Air Act (CAA) and EPA's rules for states to prevent and remedy future and existing anthropogenic impairment of visibility in mandatory Class I areas through a regional haze program.

DATES: This final rule is effective on July 12, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2010-0037. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through 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 Federal holidays. We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886-6524 before visiting the Region 5 office.

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SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What action did EPA propose?
- II. What are EPA's responses to public comments it received?
- III. What is EPA's plan to address RAVI BART for Sherco?
- IV. What action is EPA taking?
- V. Statutory and Executive Order Reviews

I. What action did EPA propose?

Minnesota submitted its regional haze plan on December 30, 2009, a draft supplement on January 5, 2012, and a final supplement on May 8, 2012. This plan is intended to address regional haze requirements for the first implementation period, which extends through July 31, 2018. These requirements are given in CAA section 169A, and are implemented in the Regional Haze Rule (RHR) as codified at 40 CFR 51.308. This rule was promulgated on July 1, 1999 (64 FR 35713), and subsequently amended on July 6, 2005 (70 FR 39156), and on October 16, 2006 (70 FR 60631). The July 6, 2005, rule provides guidance on provisions related to BART.

EPA proposed approval of the Minnesota regional haze plan on January 25, 2012 (77 FR 3681). The proposed rule described the nature of the regional haze problem and the statutory and regulatory background for EPA's review of Minnesota's regional haze plan. The proposed rule described the regional haze plan requirements including requirements for mandating BART, consultation with other states in establishing goals representing reasonable further progress in mitigating anthropogenic visibility impairment, and adoption of limitations as necessary to implement a long term strategy for reducing visibility impairment.

EPA received comments on several elements of the Minnesota regional plan, including comments on the BART determinations for both the electric generating units (EGUs) and the taconite facilities.

II. What are EPA's responses to public comments it received?

In response to its proposed rulemaking, EPA received comments from ArcelorMittal Minorca Mine, Incorporated (ArcelorMittal), Cliffs Natural Resources (Cliffs), Earthjustice, Fresh Energy, the Fond du Lac Band of Lake Superior Chippewa (Fond du Lac), National Park Service (NPS), Xcel Energy, and many citizens. Earthjustice commented on behalf of the National Parks Conservation Association (NPCA), the Minnesota Center for Environmental Advocacy, the Friends of the Boundary Waters Wilderness, Voyageurs National Park Association, and the Sierra Club. Fresh Energy is a Saint Paul, Minnesota based nonprofit organization that focuses on the development of clean energy policy. ArcelorMittal and Cliffs operate taconite facilities, while Xcel Energy operates EGUs in Minnesota. The Fond du Lac Band is a tribe based in Cloquet, Minnesota. The comments are included in the docket, EPA-R05-OAR-2010-0037. The following discussion provides a summary of the comments and provides EPA's responses.

Comment: Several commenters, including Earthjustice, Fond du Lac, and Fresh Energy, urged that EPA not allow participation in the Cross-State Air Pollution Rule (CSAPR) to serve as a substitute for meeting the requirements for source-by-source BART for EGUs. These commenters believe that reliance on CSAPR fails to meet the CAA requirements for BART, and have asserted that EPA's determination that CSAPR is better than BART is flawed both as a national rule and as applied to Minnesota.

Response: EPA disagrees with the commenters. The requirements for a BART alternative program, specific to trading programs in 40 CFR 51.308(e)(2), state that "such an emissions trading program or other alternative measure must achieve greater reasonable progress than would be achieved through the installation and operation of BART." EPA has also completed an analysis and proposed CSAPR as an alternative to BART for EGUs located in the CSAPR states, which include Minnesota (76 FR 82219, December 30, 2011). In finalizing that rule on May 30, 2012, EPA responded to similar comments in the context of that rulemaking.

Comment: Several commenters stated that the emissions controls for the EGUs are inadequate and that EPA should require stricter emission limits.

Response: In a final rule signed on May 30, 2012, EPA finalized its

determination that CSAPR is an alternative program to source-specific BART for EGUs. This finding allows states to substitute participation in the CSAPR program for source-specific BART. Minnesota has elected to use CSAPR as an alternative to BART for sulfur dioxide (SO₂) and oxides of nitrogen (NO_x) emissions from its subject EGUs, as it is allowed to do. EPA is approving the CSAPR as an alternative means of satisfying the BART requirement for pertinent pollutants for Minnesota's EGUs.

Comment: Several commenters considered the emissions controls required for the taconite facilities to be inadequate and urged EPA to require stricter emission limits.

Response: Since proposing approval of Minnesota's regional haze plan, including the BART limits for taconite facilities, EPA has learned of control technology with the potential for further emission reductions from taconite facilities. EPA is now in the process of determining new BART emission limits for the BART-subject units at the taconite facilities. Therefore, EPA is deferring action on the proposed BART emission limits for the taconite facilities while proceeding with final approval of the other plan elements.

Comment: EPA received comments from a substantial number of citizens urging that EPA protect the air quality at Boundary Waters Canoe Wilderness, Isle Royale National Park, and Voyageurs National Park.

Response: EPA is committed to the goal of the regional haze program, that is, to achieve natural visibility conditions at mandatory Federal Class I areas by 2064. EPA is acting on the Minnesota regional haze plan for the first implementation period, which extends through July 31, 2018. Subsequent implementation periods are each for approximately 10 years. Future emission reductions will be evaluated by Minnesota and EPA during the midcourse review of Minnesota's regional haze plan and in future implementation periods. These further emission reductions in the future will result in better air quality. Minnesota has already developed its Northeast Minnesota Plan, which sets a target for the combined NO_x and SO₂ emissions in a six county area not to exceed 66,894 tons per year through 2018.

Comment: Earthjustice commented that the Sherco plant has been certified to impair visibility by the Department of Interior. Sherco is among the biggest contributors to visibility impairment in the state. The commenter believes that EPA needs to establish BART limits for

Sherco that comply with Federal requirements.

Response: RAVI involves separate requirements from the requirements for regional haze, to be met on a different timetable. In a separate action, which will be subject to public notice and comment, EPA will respond to the RAVI certification for Sherco. See the discussion on planned EPA actions in Section III.

Comment: A citizen commenter stated that EPA should not approve a plan that is not acceptable to the Federal land managers (FLMs). EPA should give due weight to the views of the FLMs.

Response: EPA has provided multiple opportunities for consultation on the Minnesota regional haze plan with the FLMs, and has evaluated and responded to, FLM comments on the draft plan, the final plan, and our proposed approval. EPA has given careful consideration to the comments from the FLMs on the Minnesota regional haze plan. EPA has agreed with many of the comments made by the FLMs and, correspondingly, has worked with the state to make appropriate revisions to the SIP. Nevertheless, final responsibility for approving or disapproving the plan solely belongs to EPA.

Comment: Earthjustice, Cliffs, ArcelorMittal, and several citizens commented that EPA could not have adequately considered public comments made to Minnesota during the comment period for its regional haze plan supplement as EPA issued its proposed rule prior to the state finalizing the supplement. Plainly, according to Earthjustice, the public comment period was not considered meaningful by Minnesota given that it had already decided to submit the supplement to EPA and EPA had already proposed approval, thereby frustrating the very goal of public process.

Response: As stated in the proposed rule, EPA proposed to approve Minnesota's SIP addressing regional haze for the first implementation period provided it adopted and submitted administrative orders consistent with its proposed orders. Minnesota submitted its regional haze plan supplement on May 8, 2012, with the final administrative orders. The state had a public comment period prior to finalizing its supplement. EPA also held a public comment period on the proposed rule. EPA uses the process, known as parallel processing, when a final action is warranted on a more expedited schedule than would be achieved if EPA waits for the state to finalize its submission. The criteria for parallel processing are given in section

2.3 of appendix V to 40 CFR part 51. Further discussion of this procedure is provided in the rulemaking promulgating appendix V, published in final on February 16, 1990, at 55 FR 5824. In this approach, EPA applies a premise that the final state submission will be sufficiently similar to the draft submission such that no significant issues are expected to arise in the final submission that were not included in EPA's proposed action on the draft submission. In cases where this premise holds true, the public has adequate opportunity to comment on the pertinent issues, and a more efficient and more expeditious rulemaking is achieved. In cases where this premise does not hold true, EPA will issue a subsequent proposed rule to solicit comment on issues that it did not anticipate in its initial proposed action. By this means, everyone has an opportunity to comment on pertinent issues, as mandated under Federal law. In the specific case of the Minnesota regional haze plan, based on comments received on the proposed rule, EPA has changed what it is approving in the final rule. Thus, this process did not preclude EPA from receiving new information that affected its final action. Further, Minnesota supplemented the regional plan it submitted on December 30, 2009. The supplement updated the BART determinations for the EGUs and taconite facilities as well as the Northeast Minnesota Plan. All other elements of the regional haze plan have not been changed since being finalized in December 2009.

Comment: The Fond du Lac tribe and several citizens commented on plans to expand certain existing taconite facilities in northeastern Minnesota. New taconite facilities are also being planned in northeastern Minnesota. The commenters noted that the proximity of the state's six taconite facilities to Class I areas, along with the magnitude of their emissions of haze-causing pollutants and the potential new sources, makes northeastern Minnesota an area of concern with regard to visibility.

Response: EPA is approving the Northeast Minnesota Plan as part of the Minnesota regional haze plan. The Northeast Minnesota Plan is written to restrict the total combined SO₂ and NO_x emissions from a six county area. Minnesota will consider the Northeast Minnesota Plan emission targets before it issues permits for new and expanding sources. There are also best available control technology requirements for new or expanding sources (that exceed certain emissions criteria) to ensure sources use the appropriate emission

control technology. Minnesota will submit an updated regional haze plan for each approximately 10-year implementation period. These plans will include state updates to its long term strategy to plan and implement visibility protection. Further tracking of changes in visibility over time at its Class I areas will be provided in midcourse reviews required during each 10-year progress review. EPA is confident that the state's Northeast Minnesota Plan, the requirements on new sources, and the mandated updates to the regional haze plan will adequately address potential visibility impairment from new or expanded sources.

Comment: Earthjustice commented that EPA should issue a Minnesota regional haze plan that ensures clean air in the Boundary Water Canoe Wilderness Area and Isle Royale and Voyageurs National Parks. Earthjustice believes that EPA should not approve the state's plan and should promulgate a replacement plan that more fully improves visibility.

Response: EPA's evaluation of the Minnesota regional haze plan led to the conclusion that many plan elements can be approved in accordance with the requirements of the RHR, and thus EPA has finalized its approval of those elements in this rule. As noted, EPA is not acting on the BART emission limits for taconite facilities. EPA is evaluating the appropriate emission controls for the taconite facilities. Once that is determined, EPA will go through a public notice and comment rulemaking on the BART emission limits for taconite facilities. When those BART emission limits are finalized, that will complete approval of the regional haze plan for the first implementation period.

Comment: Earthjustice commented that Minnesota has failed to demonstrate that it is unreasonable to achieve the Uniform Rate of Progress (URP). Minnesota will not attain natural visibility by 2064. Minnesota has proposed a reasonable progress goal (RPG) that will attain natural visibility conditions in Boundary Waters in 2093 and in Voyageurs in 2177. The state will consider the reductions that would be necessary to achieve the URP and demonstrate why such reductions are unreasonable.

Response: EPA's Reasonable Progress Guidance states that the URP is not a presumptive target for the RPG. The state followed the proper approach in setting its RPGs through 2018. Minnesota considered the four factors established in section 169A of the CAA and in EPA's RHR at 40 CFR 51.308(d)(1)(i)(A). The factors are

considered when selecting the RPGs for the best and worst days for each Class I area. Minnesota considered the costs of compliance, the time needed for compliance, the energy and non-air quality environmental impacts, and the remaining useful life of the facility. Minnesota also investigated additional control options. It investigated additional SO₂ and NO_x control on EGUs, SO₂ and NO_x control on industrial boilers, NO_x control from turbines, and mobile source NO_x reductions. The visibility improvement at issue here is the visibility improvement for the first implementation period, which extends until July 31, 2018. New control programs in the future that reduce emissions may be implemented, which would hasten visibility improvement and possibly yield an earlier year to achieve natural conditions. Minnesota will include any additional control measures it finds reasonable along with any additional measures implemented by contributing states in the next implementation period. For the first implementation period, EPA finds adequate Minnesota's assessment of reasonable measures for its long term strategy.

Comment: Earthjustice commented that Minnesota's 2009 source-specific BART determinations are wholly inadequate, because Minnesota failed to engage in a proper five-factor analysis as required by the BART guidance. The BART guidance provides a methodology that assures a careful and detailed analysis of the criteria as well as consistency within the regional haze program. Further, Earthjustice made specific comments on the BART determinations for the North Shore Mining—Silver Bay, Sherco, Minnesota Power—Taconite Harbor, Minnesota Power—Boswell, and Rochester—Silver Lake.

Response: Minnesota has elected in its supplement to use CSAPR participation in place of the source-specific BART determinations submitted in 2009, supplemented by the submission of limits for Sherco. EPA has determined in a final rule signed on May 30, 2012, that CSAPR is an alternative program to source-specific BART. Therefore, it is acceptable for Minnesota to substitute participation in the CSAPR trading programs for source-specific BART determinations it had originally submitted for the EGUs. Thus, aside from the limits for Sherco, the original BART determinations for the EGUs are thus replaced and no longer at issue. As for Sherco, EPA in this rulemaking is not evaluating whether the submitted limits would represent

BART on a source-specific basis. Instead, EPA views the limits for Sherco as an enhancement that make the Minnesota's submission more stringent than it would be if it simply relied on CSAPR to address EGU BART requirements. EPA notes that while this finding applies to BART requirements with respect to regional haze, EPA is separately evaluating the RAVI BART requirement as it applies to Sherco. EPA will consider the comments on the BART determination for Sherco during this process.

Comment: Earthjustice commented that the taconite facilities in Northern Minnesota, due to their discrete location and the size of this industry, have not been subject to many of the control requirements that have been imposed on other industrial sectors, such as power plants, cement kilns, or refineries. The taconite industry is responsible for a significant share of visibility impairment in Boundary Waters and Voyageurs, due to their proximity to the Class I areas and high NO_x and SO₂ emissions. Earthjustice commented that these facilities should be subject to adequate BART determinations and controls, and that neither Minnesota's 2009 regional haze plan submission nor the plan supplement provide for valid BART determinations that will result in any real reductions in pollution coming from taconite facilities.

Earthjustice further commented that "Minnesota has not done proper BART analyses for the taconite facilities and therefore the emission limits require no real pollution reductions and do not satisfy BART requirements." Earthjustice further asserted that Minnesota failed to conduct an adequate BART determination and rejected potential control technologies without an adequate explanation. Earthjustice commented that selective catalytic reduction (SCR) must be considered for controlling NO_x at taconite facilities and that low NO_x burners must be considered the absolute minimum NO_x control at taconite facilities.

Response: In response to this and other similar comments, EPA is reevaluating the emission controls that are warranted to satisfy the BART requirements at the taconite facilities in Michigan and Minnesota.

Comment: Earthjustice commented that because Minnesota calculated emission limits at a 99% confidence limit, on a 30-day rolling average, it is unlikely that pollution reduction will be achieved.

Response: EPA's reevaluation of the taconite facility emission limits will include a reassessment of appropriate

statistics to use in determining the appropriate limits.

Comment: Earthjustice echoed comments made by the NPS to EPA that the taconite facilities are major causes of visibility impairment in several Class I areas. Earthjustice (as well as NPS) further commented that US Steel recently installed modern emission monitoring systems and has proposed to install, or has already installed, emission controls for SO₂, NO_x, and mercury. Data from US Steel's Minntac facility demonstrate that low NO_x burners are economically achieving 70% reductions of NO_x at the facility. In its comments, Earthjustice encouraged Minnesota and EPA to apply this data to require taconite facilities to meet lower emission limits that reflect the capabilities of available technology.

Response: In light of this comment and related new information, EPA is reviewing the control technology proposed for the taconite facilities. EPA is also studying potential controls for each facility. Once this review is complete, EPA will propose a rule with the appropriate controls for those units of taconite facilities that are subject to BART. Thus, EPA is not taking final action on the taconite BART limits of the Minnesota regional haze plan.

Comment: Earthjustice commented that it does not agree that CSAPR is better than source-specific BART in Minnesota. Earthjustice commented that the U.S. Forest Service analysis (January 13, 2012 letter) shows that the predicted effect of CSAPR in 2014 is an increase in emissions over 2012 actual emissions and above what Minnesota proposed as source-specific BART and what FLMs proposed as source-specific BART. Earthjustice asserts that source-specific BART to be far superior to CSAPR.

Response: This comment pertains to a separate rulemaking where EPA proposed CSAPR as an alternative program to source-specific BART for EGUS in the CSAPR region. The rulemaking was made on May 30, 2012. A complete response to this and similar comments is provided in that rule and the associated response to comments document.

Comment: In its comments, Xcel Energy agrees with EPA's conclusion that, if implemented, CSAPR will achieve greater environmental improvement than BART. Based on the emission reductions already achieved on Xcel's units, including emission controls installed on Sherco Units 1 and 2, and the broad reductions that will be achieved if CSAPR is implemented in Minnesota, Xcel Energy concludes that compliance with CSAPR is superior to

unit specific requirements under section 169A. Nonetheless, because of the uncertain status of EPA's rulemakings and challenges to the CSAPR, Xcel Energy believes it is premature to rely solely on CSAPR for meeting BART requirement in Minnesota. In its comments, Xcel Energy urged Minnesota and EPA to eliminate the risks associated with one or more of these rules not proceeding by approving both the source-specific BART determinations and the BART alternative compliance option. If the alternative option could not go forward for any reason, the Minnesota regional haze plan would still contain the source-specific BART limits that source could use to satisfy their BART obligations without requiring Minnesota and EPA to undertake further SIP revisions. Xcel Energy asserts that Minnesota's BART determination is fully approvable, because Minnesota's December 2009 determination for Sherco Units 1 and 2 fully satisfies all applicable BART requirements. Xcel Energy believes that the BART determination for these units should be retained.

Response: EPA proposed approving CSAPR participation as a BART alternative for SO₂ and NO_x emissions from EGUs. Minnesota requested in its supplement to the regional haze plan to use the CSAPR participation as an alternative to the previously submitted source specific BART determination for EGUs. Thus, EPA did not propose approving source-specific BART determinations for the EGUs. EPA nevertheless believes that it can take final action to approve the new limits for Sherco units 1 and 2, as set in the May 2, 2012, administrative order, as a SIP strengthening measure. First, EPA received numerous comments urging substantial tightening of the limits for this plant, and even the source requested EPA approval of the tightened emission limits. In that respect, this final action may be considered to be in response to public comments. Second, EPA's action reflects a limited evaluation of the administrative order, evaluating only whether approving the order would result in a more stringent SIP. Although the order includes a statement that the state and the company find the limits to represent BART, EPA has not evaluated whether these limits would represent BART on a source-specific basis. EPA is expressly not rulemaking on this question. While the administrative order that EPA is approving states the opinion of Xcel Energy and Minnesota that the limits represent BART, EPA's approval of the

administrative order should not be construed as rendering any EPA opinion as to whether the limits would satisfy BART on a source-specific basis. Third, EPA intends to act in the future concerning the BART requirements that apply to Sherco as it has been certified as a source of RAVI. Rulemaking on that matter will provide an opportunity for public comment on the appropriate limits for Sherco.

Comment: Xcel Energy commented on its Metropolitan Emission Reduction Program projects, toward which Xcel Energy has invested one billion dollars to modernize and reduce emissions from three coal-fired generating stations, reducing NO_x and SO₂ emissions from those plants by approximately 90%. Xcel Energy's customers are paying for these reductions and the reductions are key to environmental progress in Minnesota. Xcel Energy further commented that it has installed the pollution controls for NO_x indicated by Minnesota's BART determination for Sherco. Furthermore, Xcel Energy is moving forward with the upgrades to its scrubbers to reduce SO₂ emissions from Sherco. Xcel Energy asserts that these projects achieve substantial improvements in visibility.

Response: Reductions in NO_x and SO₂ emissions from Minnesota EGUs will aid the state in improving visibility. The emission reductions will also provide health benefits resulting from the improved air quality. EPA acknowledges the emission reductions resulting from these investments and EPA is approving the limits submitted by Minnesota as strengthening the SIP. Nevertheless, EPA plans further rulemaking to address whether this plant has addressed its RAVI obligations.

Comment: In its comments, Xcel Energy asserts that it relied on EPA's statements in the proposed rule that requirements of the RAVI regulations, potentially applicable to Sherco, are not being addressed in the proposed rule. Xcel Energy has reviewed the RAVI regulations and seeks to reserve the right to comment to EPA on the interpretation of the RAVI requirements. Xcel Energy also noted that RAVI involves different analyses and applies different BART guidelines. Further, Xcel Energy commented that given that almost ten years have passed since the modeling baseline was developed for the Minnesota regional haze plan and emissions have declined significantly in the interim, EPA will need to commence a new RAVI analysis and implementation planning process for Minnesota.

Response: EPA has decided to address the RAVI BART emission requirements for Sherco separately from the regional haze program elements. EPA will offer a comment period during the Sherco RAVI BART rulemaking. Xcel Energy and other interested parties will be able to comment on the RAVI BART determination for Sherco at that time. During subsequent rulemaking on RAVI, EPA will take steps to solicit any further information that Xcel Energy wishes to provide for purposes of determining BART under RAVI.

Comment: In its comments, ArcelorMittal expresses its concern that EPA published its January 25, 2010, proposed rule before Minnesota had completed its public comment period and Citizens' Board meeting on the regional haze plan supplement.

Response: EPA's rulemaking is premised on Minnesota submitting a final supplement that is sufficiently similar to its proposed supplement such that the proposed rule provides adequate notice for comments. In fact, the final supplement does not propose any new issues, and therefore, EPA believes that its rulemaking on Minnesota's plan provided sufficient opportunity for public comment on the relevant issues to merit EPA granting final approval with respect to most SIP elements without requiring an amended proposed rule. Note, however, that on the issues most likely of concern to ArcelorMittal, that is BART for taconite plants, EPA plans further rulemaking with further opportunity for ArcelorMittal and other interested parties to comment.

Comment: ArcelorMittal commented that it worked extensively with Minnesota to gather the data necessary to propose appropriate BART limits for the taconite industry. ArcelorMittal commented that there is still significant work to be done to generate appropriate numeric BART limits for the taconite industry. It urged EPA to postpone action on Minnesota's SIP to give the state more time to fully evaluate the appropriate emission limits for the taconite industry and to extend the Federal comment period to allow a reasonable period of time for the public to comment.

Response: EPA agrees that more effort is needed to set apposite BART limits for the taconite facilities. EPA is studying potential controls for each taconite facility. Once this review is complete, EPA will propose a rule requiring the appropriate controls for the units subject to BART at the taconite facilities. There will be an opportunity for public comment during the rulemaking process.

Comment: Cliffs commented that it has worked extensively with Minnesota for the purpose of developing BART limits for the taconite industry. Cliffs commented that although Minnesota has identified BART determinations, developed and implemented administrative orders to gather emission information, and has proposed numeric emission limits, there is still significant work to be done to generate appropriate numeric limits for the taconite industry. Cliffs requested that Minnesota receive an opportunity to complete its SIP process before EPA proposed a Federal implementation plan (FIP) for applicable facilities in the taconite industry in Minnesota.

Response: EPA is evaluating the BART determinations for the taconite facilities in light of new information. EPA agrees that considerable work remains in determining the correct BART limits. EPA will continue to work with Minnesota in determining the correct limits. Once that is resolved, EPA and Minnesota will select the appropriate course of action for setting the final BART limits for taconite facilities.

Comment: Cliffs commented that it is inappropriate to approve Minnesota's SIP before all public comments have been submitted and considered, and asserts that EPA offered no indication as to how this parallel processing can comply with the procedural requirements of the CAA, the Administrative Procedures Act, and Minnesota law.

Response: Appendix V to 40 CFR part 51 provides relevant guidance on the completeness of SIP submissions. Section 2.3 of this appendix outlines the criteria for parallel processing. Further discussion of this procedure is provided in the rulemaking promulgating appendix V, published in final on February 16, 1990, at 55 FR 5824. That rulemaking addresses in more detail how parallel processing is consistent with the CAA and the Administrative Procedures Act. In the parallel process, EPA presumes that the final state submission will be sufficiently similar to the draft submission such that no significant issues would be expected to arise in the final submission that had not already been raised in the proposed rule. Where the premise is correct, the public has adequate opportunity to comment on the pertinent issues, and a more efficient and more expeditious rulemaking is achieved. Where the premise is not correct, EPA will issue a subsequent proposed rule to solicit comment on those issues that were not included in the initial proposed action. By this process, commenters are

provided an opportunity to comment on all pertinent issues, as mandated under Federal law.

In this particular case, EPA believed that the circumstances warranted parallel processing. EPA anticipated a final state regional haze plan supplement similar to the proposed supplement, such that a parallel processing approach would provide the public with an opportunity for comment on the pertinent issues. EPA followed this process in order to expedite action on Minnesota's plan. However, several of the comments that EPA received have led EPA to believe that more effective emission control at taconite plants is warranted. EPA intends to issue another proposed rule on emission limits for taconite plants to provide the public the opportunity to comment on EPA's revised views regarding taconite facility emission controls. Therefore, the commenter's concern about having an adequate opportunity to comment on EPA's proposed action on a final state submission is fully addressed.

Comment: In its comments, Cliffs asserts that the numeric limits that were included in the proposed Administrative Orders for the Cliffs' facilities in Minnesota's supplement were erroneously derived and do not reflect the application of BART. Cliffs asserts that alternate product lines, fuel flexibility, and other considerations must be included in developing numeric limits that Cliffs will be required to meet on a continuous basis.

Response: EPA is considering new information on the BART emission limits for taconite facilities. EPA will issue a subsequent proposed rule before taking final action on the emission limits for taconite facilities. EPA will consider information from Cliffs regarding its taconite facilities before taking final action.

Comment: In its comment letter, Cliffs states as follows,

"Minnesota is clearly under pressure from EPA to rush the SIP submission to the detriment of Cliffs and the rest of Minnesota's taconite industry. Rather than wait for Minnesota's SIP to be complete, EPA is proposing the highly unusual step of conditionally approving Minnesota's SIP before Minnesota has had a chance to gather all necessary data, let alone finalize its SIP. EPA should take all necessary steps to relax its own negotiated deadlines to relieve the pressure on Minnesota, so that the collaborative process that has brought us this far is not scuttled by an unfortunate and arbitrary rush to codify numeric limits before they have completed the critical public review process with adequate time and resources for reasoned consideration of those comments."

Response: The July 1, 1999 RHR (64 FR 35714) required states to submit a regional haze plan by December 17, 2007. However, many states still submitted regional haze plans late, including Minnesota, which submitted its plan on December 30, 2009. Therefore, the taconite industry clearly had sufficient time to work with Minnesota in setting appropriate BART limits. Nevertheless, comments on the proposed rule have yielded information indicating that greater control of taconite facilities is feasible and warranted. Consistent with the commenter's recommendation, EPA has negotiated additional time to perform a review of pollution control options for taconite facilities. EPA will issue another proposed rule before taking final action on emission limits for the taconite industry. This process will provide an adequate opportunity to review any information that the commenter provides EPA.

III. What is EPA's plan to address RAVI BART for Sherco?

On October 21, 2009, the Department of Interior certified that a portion of the visibility impairment in Isle Royale National Park and Voyageurs National Park is caused by emissions from Sherco, and thus certified that Sherco causes RAVI at these Class I areas. The RAVI requirements that were due prior to this certification were addressed by a Federally promulgated plan because Minnesota did not submit a plan addressing these requirements. See 40 CFR 52.1236. In its notice of proposed rulemaking, EPA stated its intention to act on RAVI requirements in separate rulemaking action. EPA is continuing to defer action in response to this certification of RAVI for Sherco.

EPA's final rule, signed on May 30, 2012, finding that CSAPR addresses pertinent EGU BART requirements predominantly addresses BART as a requirement for regional haze plans but also includes limited discussion of BART as a requirement for RAVI sources. In light of the fact that the pertinent notice of proposed rulemaking did not request comment on the interplay of the RAVI requirements in 40 CFR 51.302–306 with the requirements of the RHR and because EPA had not proposed any revisions to the applicable regulatory text, EPA did not adopt any clarifying interpretations of the applicable rules in that rulemaking. As a result, neither that final rule nor this final action on the regional haze SIP for Minnesota alters the authority of a FLM to certify RAVI nor the obligation of states (or EPA) to respond to a RAVI certification under 40

CFR part 51 subpart P (Protection of Visibility). EPA expects at a later date to clarify the scope of the RAVI requirements through a rule amendment, general guidance, or action on a SIP or FIP in the context of a specific RAVI case, such as that of Sherco. Whatever the form, we intend to provide an opportunity for public comment before applying a new interpretation.

EPA, in fact, intends to conduct further rulemaking regarding RAVI BART for Sherco within the next few months. EPA expects that this rulemaking will address the particular circumstances for Sherco. This rulemaking may also discuss the general criteria and considerations that apply in determining RAVI BART as compared to BART for regional haze purposes. Of note here is a letter sent on June 6, 2011, from Douglas Aburano, Chief of the Control Strategies Section of EPA Region 5. This letter states that to the extent that source-specific BART is required, the available evidence suggests that source-specific BART for this facility would include installation and operation of SCR of NO_x emissions. The contemplated rulemaking regarding RAVI BART for Sherco will provide full opportunity for public review of both the general issues regarding the relationship between BART for RAVI purposes and BART for regional haze purposes, as well as the particular, current facts regarding the circumstances at Sherco.

Xcel Energy commented on EPA's proposal for this final rule that if EPA concluded that source-specific BART was necessary and that if stricter limits than those submitted by the state (reflecting combustion controls) were required, Xcel Energy requested the opportunity to evaluate alternative strategies to achieve the emission reductions needed to satisfy such a BART requirement. Under this scenario, EPA would honor this request and would conduct discussions with the state and with Xcel Energy to assure both that the environmental objectives of the applicable visibility regulations are achieved and that alternate approaches allowed by these regulations are fully considered.

IV. What action is EPA taking?

EPA is approving Minnesota's regional haze plan as satisfying the applicable requirements in 40 CFR 51.308, except for BART emission limits for the taconite facilities. These requirements include identifying affected Class I areas, calculating the baseline and natural visibility, establishing RPGs, mandating BART

emission reductions for the five subject to BART EGUs (in this case through participation in CSAPR), adopting a long term strategy for making reasonable progress toward visibility goals, providing a monitoring strategy, and consulting with other states and the FLMs before adopting its regional haze plan.

EPA is deferring action on the BART emission limits for the taconite facilities. In the proposed rule, we stated that the taconite processing facilities are a small, unique industry with little known about potential emission controls. EPA received significant information about NO_x controls at one of the Minnesota taconite facilities in comments on EPA's proposed rulemaking. EPA has elected to defer acting on the BART determinations for the taconite facilities with the other regional haze plan elements. This allows EPA time to evaluate properly additional potential emission controls for the taconite facilities. Under a schedule mandated by NPCA consent decree, EPA plans additional review of the taconite BART determinations leading to a subsequent proposed rule by July 13, 2012, and a final rule by November 15, 2012. Once suitable limits satisfying BART requirements for taconite plants are established, all requirements for the first implementation period for regional haze for Minnesota will be satisfied.

As proposed, EPA intends to act on RAVI BART in a separate action. A BART determination under the RAVI is similar to, but independent from the BART determination made under the RHR. EPA views Minnesota's plan as addressing regional haze as regulated under 40 CFR 51.308 and not RAVI as regulated under 40 CFR 51.302 to 51.306. This rulemaking only addresses the regional haze requirements and does not address whether the plan addresses requirements that apply as a result of the certification of Xcel Energy's Sherco power plant as a RAVI source. Thus, EPA is not acting on RAVI BART for Sherco in this rule. EPA will address the requirements that apply based on Sherco's RAVI certification in a separate action. Further, while Minnesota provided emission limits for Sherco units 1 and 2, we are approving these limits solely as a SIP strengthening measure. EPA is not acting on any source-specific BART determinations in this rule.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the

CAA 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 CAA. 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 CAA; 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 13, 2012. 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, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, and Sulfur oxides.

Dated: May 30, 2012.

Susan Hedman,
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.*
- 2. Section 52.1220 is amended by adding an entry in alphabetical order in the table in paragraph (d) for "Xcel Energy—Northern States Power Company, Sherburne County Generating Station" and by adding an entry in alphabetical order in the table in paragraph (e) for "Regional Haze Plan" 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
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Xcel Energy—Northern States Power Company, Sherburne County Generating Station.	Administrative Order	05/02/12	6/12/2012, [Insert page number where the document begins].	See Final Rule for details.
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *

* * * * * (e) * * *

EPA-APPROVED MINNESOTA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Comments
* Regional Haze Plan	* statewide	* 12/30/2009 and 5/8/2012 ..	* 6/12/2012, [Insert page number where the document begins].	* Includes all regional haze plan elements except BART emission limitations for the taconite facilities.

* * * * *
[FR Doc. 2012-14101 Filed 6-11-12; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2012-0394; FRL-9684-9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Permit To Construct Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Maryland State Implementation Plan (SIP). The revisions pertain to sources which are exempt from preconstruction permitting requirements under Maryland's New Source Review (NSR) program. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on August 13, 2012 without further notice, unless EPA receives adverse written comment by July 12, 2012. 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 Docket ID Number EPA-R03-OAR-2012-0394 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *Email: cox.kathleen@epa.gov*.

C. *Mail:* EPA-R03-OAR-2012-0292, Kathleen Cox, Associate Director, Office of Permits and Air Toxics, Mailcode 3AP10, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2012-0394. 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 email. 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 email comment directly to EPA without going through *www.regulations.gov*, your email 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 electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other

material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: David Talley, (215) 814-2117, or by email at *talley.david@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. On October 17, 2011, the Maryland Department of the Environment (MDE) submitted a formal revision (#11-07) to its State Implementation Plan (SIP). The SIP revision consists of the addition of an exemption from preconstruction permitting requirements for insignificant sources of volatile organic compounds (VOC's).

II. Summary of SIP Revision

Regulation .10 under COMAR 26.11.02 (Permits, Approvals, and Registration) contains exemptions for certain sources that are not required to obtain approvals or permits to construct prior to the construction or modification of the affected source. Specifically, COMAR 26.11.02.10X (as it currently exists in the Maryland SIP) provides such an exemption for sources that emit less than one (1) ton per year (tpy) of each pollutant which is a Class II toxic air pollutant, or a pollutant for which there is a federal ambient air quality standard. Regulation .10X also provides such an exemption for sources that emit less than one (1) pound per day of a