

on May 23, 2009 through May 25, 2009. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *Designated representative*, means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Sector San Diego Command Center. The Command Center may be contacted on VHF-FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: May 12, 2009.

**T.H. Farris,**

*Captain, U.S. Coast Guard, Captain of the Port San Diego.*

[FR Doc. E9-11692 Filed 5-19-09; 8:45 am]

**BILLING CODE 4910-15-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2008-0786; FRL-8907-3]

#### Approval and Promulgation of Air Quality Implementation Plans; Minnesota

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a request submitted by the Minnesota Pollution Control Agency (MPCA) on October 9, 2008, to revise the Minnesota State Implementation Plan (SIP) for particulate matter less than 10 microns (PM<sub>10</sub>). The approval revises the Minnesota SIP by updating information

regarding the steel mini-mill facility located at 1678 Red Rock Road, St. Paul, Minnesota. The approval acknowledges the change of ownership and operation of the source from North Star Steel Company to Gerdau Ameristeel US Inc. The revision also amends the SIP by removing the Administrative Order issued to North Star Steel Company, and replacing the SIP conditions from the Administrative Order and placing those SIP requirements in a joint Title I/Title V document for Gerdau Ameristeel US, Inc. These revisions will not result in an increase in PM<sub>10</sub> emissions because no emission limits were increased.

**DATES:** This direct final rule will be effective July 20, 2009, unless EPA receives adverse comments by June 19, 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-2008-0786, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. *E-mail:* [mooney.john@epa.gov](mailto: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-2008-0786. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://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 <http://www.regulations.gov> or e-mail. The

<http://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 <http://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 <http://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 <http://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 Charles Hatten, Environmental Engineer, at (312) 886-6031 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Charles Hatten, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6031, [hatten.charles@epa.gov](mailto:hatten.charles@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
- II. What Revision did the State Request Be Incorporated into the SIP?
- III. What is EPA's Analysis of the State Submission?
- IV. What Action is EPA Taking?
- V. Statutory and Executive Order Reviews

## I. General Information

### A. Does this Action Apply to Me?

This action applies only to the Gerdau Ameristeel US, Inc. (Gerdau) steel mini-mill facility located at 1678 Red Rock Road, St. Paul, Minnesota (Ramsey County).

### B. Has Public Notice been Provided?

Minnesota published a public notice of the revisions to the SIP on July 25, 2008. The comment period began on July 26, 2008, and ended on August 25, 2008. In the public notice, Minnesota stated it would hold a public hearing if one were requested during the comment period. This follows the alternative public participation process EPA approved on June 5, 2006 (71 FR 32274). For limited types of SIP revisions that the public has shown little interest in, a public hearing is not automatically required. Because no one requested a public hearing, Minnesota did not hold a public hearing.

### C. What is the Background to this Action?

Gerdau owns and operates a steel mini-mill formerly owned and operated by North Star Steel Company. The mill receives recycled automobile bodies, tin cans from refuse-derived fuel recycling operations, recycled white goods, and other grades of scrap steel. These materials are shredded in a hammer mill and the shredded steel is separated from the non-ferrous materials. The scrap steel is refined and converted into a large number of steel alloys in an electric arc furnace (EAF) and ladle refining station (LRS). The molten steel is cast into billets by a continuous casting machine. The billets are sold as such or reheated in a reheat furnace and hot-rolled into various structural shapes in a rolling mill.

Gerdau is planning to make some physical changes at the steel mini-mill, generally, to update the facility. The changes at the facility will include: (1) Replacing the current additive silos with new lime additive silos, (2) replacing the current conveyor system with a new pneumatic system transferring the lime from the silos to the EAF, (3) the addition of lime injection ports on the EAF, and (4) removal of the fluff landfill and slag crushing operation (no longer in operation).

The State provided a modeling analysis of the effect of the above-mentioned changes at the facility on local PM<sub>10</sub> concentrations. Below in section III, a more detailed discussion of the modeling analysis and its results can be found.

## II. What Revision did the State Request Be Incorporated into the SIP?

The State has requested that EPA approve as a revision to the Minnesota SIP: (1) A change in the ownership of the source from North Star Steel Company to Gerdau Ameristeel US, Inc., (2) the replacement of the SIP conditions from the Administrative Order with the SIP conditions in the joint Title I/Title V document for Gerdau, and (3) the removal of the Administrative Order issued to North Star Steel Company.

### A. What Prior SIP Actions are Pertinent to this Action?

The Gerdau mini-mill steel facility, previously owned and operated by North Star Steel Company, was found to be a culpable source in the Red Rock Road area's nonattainment plan for the PM<sub>10</sub> National Ambient Air Quality Standard (NAAQS). However, the area currently meets the NAAQS for PM<sub>10</sub>, and was officially redesignated as attainment on September 24, 2002.

The facility has been subject to an Administrative Order (Third Amended Findings and Order) as part of Minnesota's SIP for attaining the PM<sub>10</sub> NAAQS. The Administrative Order (Order) to control PM<sub>10</sub> emissions was issued on April 22, 1993, and was approved into the SIP on February 15, 1994 (59 FR 7218). MPCA subsequently amended the Order: Amendment One was approved on June 13, 1995 (60 FR 31088) and Amendment Two on February 8, 1999 (64 FR 5936).

### B. What are Title I Conditions and Joint Title I/Title V Documents?

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. Minnesota then issued permanent Administrative Orders to culpable sources in nonattainment areas from 1991 to February of 1996.

Minnesota's consolidated permitting regulations, approved into its 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 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 Clean Air Act (CAA) (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.

## III. What is EPA's Analysis of the State Submission?

In late 2004, the steel mini-mill facility formerly owned and operated by North Star Steel Company was purchased by Gerdau. Gerdau operates the facility in an area that currently meets the NAAQS for PM<sub>10</sub>. Pursuant to paragraph VI.D. of the Administrative Order previously issued to North Star Steel Company, Gerdau's facility is subject to all of the same requirements of the Administrative Order for attaining the NAAQS for PM<sub>10</sub>. The requirements of the Order have been incorporated into a joint Title I/Title V document as non-expiring Title I conditions.

In order to replace the Administrative Order, MPCA has placed all the conditions necessary for maintaining the NAAQS for PM<sub>10</sub>, including those from the Administrative Order, in Air Permit No. 12300055-004. The permit serves as a joint Title I/Title V document to be incorporated into Minnesota's SIP, replacing the conditions from the Administrative Order. The SIP requirements in the joint Title I/Title V document submitted by MPCA are designated as "Title I Condition: SIP for PM<sub>10</sub> NAAQS" making it clear that the term is part of the SIP's source-specific requirements.

The SIP revision does not include any increases in PM<sub>10</sub> emission limits but, because some of the changes being made

to the facility may affect the release and dispersion of PM<sub>10</sub> emissions, Gerdau performed an air quality analysis to address the facility's impact on the PM<sub>10</sub> NAAQS. The facility was modeled with the AERMOD air dispersion model using the urban option and five years of meteorological data from Minneapolis. Gerdau modeled only the impact of its own facility and added a background

concentration provided by MPCA. The background concentrations were 28 micrograms/cubic meter (µg/m<sup>3</sup>) for the annual PM<sub>10</sub> averaging time and 70 µg/m<sup>3</sup> for the 24-hour averaging time. There is a PM<sub>10</sub> monitor very close to the Gerdau facility, which is likely to capture PM<sub>10</sub> emissions from Gerdau and its neighbors. From 2000 to 2006, that monitor recorded 24-hour values

which averaged about 35 µg/m<sup>3</sup>, half the magnitude of the background value used in the modeling. The monitor did not record any exceedances of the PM<sub>10</sub> standards during this period.

The following table shows the maximum annual and high, sixth high 24-hour PM<sub>10</sub> levels from the modeling of Gerdau's facility.

TABLE—MAXIMUM MODELED PM<sub>10</sub> CONCENTRATION, PRE- AND POST-MODIFICATION

Averaging time	Current operating scenario		Post-modification operating scenario	
	Max PM <sub>10</sub> concentration Gerdau	Max PM <sub>10</sub> concentration Gerdau + background	Max PM <sub>10</sub> concentration Gerdau	Max PM <sub>10</sub> concentration Gerdau + background
Annual .....	13.75	41.75	12.44	40.44
24-hour .....	63.70	133.70	62.24	132.24

The modeling results show that Gerdau's contribution to the ambient PM<sub>10</sub> concentrations will decrease from the current operations to the post-modification scenario. A full modeled attainment demonstration was performed for Gerdau's surrounding area in 1996. There have been only limited changes to the other nearby sources since then, and the existing SIP is expected to remain protective of the PM<sub>10</sub> NAAQS. Since Gerdau's modifications will decrease PM<sub>10</sub> impacts in the area, Gerdau's SIP revision will strengthen the existing PM<sub>10</sub> SIP.

**IV. What Action is EPA Taking?**

EPA is approving a revision to Minnesota's SIP changing the ownership of the steel mini-mill from North Star Steel Company to Gerdau Ameristeel US, Inc., and incorporating into the SIP those provisions in the joint Title I/Title V document No. 12300055-004 labeled as "Title I Condition: SIP for PM<sub>10</sub> NAAQS." EPA is also removing the Administrative Order issued to North Star Steel Company from the SIP. These revisions will not result in an increase in PM<sub>10</sub> emissions because no emission limits were increased.

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 July 20, 2009 without further notice unless we receive relevant adverse written comments by June 19, 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 July 20, 2009.

**V. Statutory and Executive Order Reviews**

Under the Clean Air 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 Clean Air 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 Clean Air 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 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 July 20, 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, Lead, Particulate matter, Reporting and recordkeeping requirements.

Dated: May 5, 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 removing the entry for "North Star Steel Co." and adding in alphabetical order an entry for "Gerdau Ameristeel US, Inc." 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
* * *	* * *	* * *	* * *	* * *
Gerdau Ameristeel US, Inc .....	12300055-004	09/10/08	05/20/09, [Insert page number where the document begins].	Only conditions cited as "Title I condition: SIP for PM <sub>10</sub> NAAQS."
* * *	* * *	* * *	* * *	* * *

[FR Doc. E9-11638 Filed 5-19-09; 8:45 am]  
BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 174**

[EPA-HQ-OPP-2009-0101; FRL-8417-3]

**Bacillus thuringiensis Cry1A.105 protein; Time Limited Exemption from the Requirement of a Tolerance**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an 18-month exemption from the requirement of a tolerance for residues of the *Bacillus thuringiensis* Cry1A.105 protein in or on the food and feed commodities cotton seed, cotton seed oil, cotton seed meal, cotton hay, cotton hulls, cotton forage and cotton gin byproducts when used as a plant-incorporated protectant. Monsanto Company submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting a time-limited exemption from the requirement of a tolerance. This

regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus thuringiensis* Cry1A.105 protein in or on the food and feed commodities cotton seed, cotton seed oil, cotton seed meal, cotton hay, cotton hulls, cotton forage and cotton gin byproducts. This tolerance exemption expires and is revoked on November 22, 2010.

**DATES:** This regulation is effective May 20, 2009. Objections and requests for hearings must be received on or before July 20, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2009-0101. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., 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 in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Denise Greenway, Biopesticides and Pollution Prevention Division (7511P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: 703-308-8263; e-mail address: [greenway.denise@epa.gov](mailto:greenway.denise@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially