approximate position 40°51′30.4″ N, 073°48′14.9″ W, thence to 40°51′29.9″ N, 073°48′20.7″ W, thence to 40°51′16.9″ N, 073°48′22.5″ W, thence to 40°51′07.5″ N, 073°48′18.7″ W, thence to 40°50′54.2″ N, 073°48′11.1″ W, thence to 40°50′48.5″ N, 073°48′04.6″ W, thence to 40°50′49.2″ N, 073°47′56.5″ W, thence to 40°51′03.6″ N, 073°47′47.3″ W, thence to 40°51′15.7″ N, 073°47′46.8″ W, thence to 40°51′23.5″ N, 073°47′41.9″ W, (NAD 1983) thence southwesterly along the shoreline to the point of origin.

(ii) *Location: 100-Yard Zone.* All waters of Eastchester Bay within approximately 100 yards of Rodman Neck bound by the following points: Onshore in approximate position 40°51′30.4″ N, 073°48′14.9″ W, thence to 40°51′30.1″ N, 073°48′19.0″ W, thence to 40°51′16.8″ N, 073°48′20.5″ W, thence to 40°51′07.9″ N, 073°48′16.8″ W, thence to 40°50′54.9″ N, 073°48′09.0″ W, thence to 40°50′49.7″ N, 073°48′03.6″ W, thence to 40°50′50.1″ N, 073°47′57.9″ W, thence to 40°51′04.6″ N, 073°47′48.9″ W, thence to 40°51′15.9″ N, 073°47′48.4″ W, thence to 40°51′23.5″ N, 073°47′41.9″ W, (NAD 1983) thence southwesterly along the shoreline to the point of origin.

(iii) *Enforcement period.* The zones described in paragraph (a)(9) of this section will be effective at all times. When port security conditions permit, the Captain of the Port will allow vessels to operate within that portion of the waters described in paragraph (a)(9)(i) that lies outside of the waters described in paragraph (a)(9)(ii). Authorization to enter the waters that lie between the outer boundaries of the zones described in paragraphs (a)(9)(i) and (a)(9)(ii) will be communicated by the Captain of the Port to the public by marine broadcast, local notice to mariners, or notice posted at *www.harborops.com*.

(10) *Port Newark/Port Elizabeth, Newark Bay, NJ.* All waters of Newark Bay bound by the following points: 40°41′49.9″ N, 074°07′32.2″ W, thence to 40°41′46.5″ N, 074°07′20.4″ W, thence to 40°41′10.7″ N, 074°07′45.9″ W, thence to 40°40′54.3″ N, 074°07′55.7″ W, thence to 40°40′36.2″ N, 074°08′03.8″ W, thence to 40°40′29.1″ N, 074°08′06.3″ W, thence to 40°40′21.9″ N, 074°08′10.0″ W, thence to 40°39′27.9″ N, 074°08′43.6″ W, thence to 40°39′21.5″ N, 074°08′50.1″ W, thence to 40°39′21.5″ N, 074°09′54.3″ W, (NAD 1983) thence northerly along the shoreline to the point of origin.

(11) *Global Marine Terminal, Upper New York Bay.* All waters of Upper New York Bay between the Global Marine and Military Ocean Terminals, west of the New Jersey Pierhead Channel.

* * * * *

Dated: December 31, 2003.

C.E. Bone,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 04–1136 Filed 1–16–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP NO. SD–001–0016a; FRL–7606–6]

Approval and Promulgation of Air Quality Implementation Plans; State of South Dakota; Regulations for State Facilities in Rapid City

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving State Implementation Plan (SIP) revisions submitted by the State of South Dakota on June 27, 2002. The June 27, 2002, submittal consists of revisions to the administrative rules of South Dakota. These revisions add a new chapter to regulate fugitive emissions of particulate matter from State facilities and State contractors that conduct a construction activity or continuous operation activity in the Rapid City air quality control zone. The intended effect of this action is to make the revisions to the administrative rules of South Dakota federally enforceable. This action is being taken under section 110 of the Clean Air Act.

DATES: This rule is effective on March 22, 2004, without further notice, unless EPA receives adverse comment by February 19, 2004. If adverse comment is 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: Written comments may be submitted by mail to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in sections (I)(B)(1)(i) through (iii) of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, EPA, Region 8, 999 18th Street, Suite 300, Mailcode 8P–AR, Denver, Colorado 80202, (303) 312–6144, e-mail *dygowski.laurel@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information ?

1. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* EPA has established an official public rulemaking file for this action under (SD–001–0016). The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air and Radiation Program, EPA Region 8, 999 18th Street, Suite 300, Denver, CO. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. You may view the public rulemaking file at the Regional Office Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays. Copies of the incorporation by reference material are also available at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108 (Mail Code 6102T), 1301 Constitution Ave., NW., Washington, DC 20460.

2. *Copies of the State submittal are also available for public inspection during normal business hours, by appointment at the State Air Agency.* Copies of the State documents relevant to this action are also available for public inspection at the South Dakota Department of Environmental and Natural Resources, Air Quality Program, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501.

3. *Electronic Access.* You may access this **Federal Register** document electronically through the Regulations.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on, Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other

information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking (SD–001–0016)'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. 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.

i. E-mail. Comments may be sent by electronic mail (e-mail). Please send any comments to *long.richard@epa.gov* and *dygowski.laurel@epa.gov* and include the text ''Public comment on proposed rulemaking (SD–001–0016)'' in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through ''Regulations.gov'' (*see* below), EPA's e-mail system will automatically capture your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. Regulations.gov. Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov,* then click on the button ''TO SEARCH FOR REGULATIONS CLICK HERE,'' and select Environmental Protection Agency as the Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail. Send your comments to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Please include the text ''Public comment on proposed rulemaking (SD–001–0016)'' in the subject line on the first page of your comment.

3. By Hand Delivery or Courier. Deliver your comments to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. Summary of SIP Revision

A. Background

In 1980, the Rapid City Area Air Quality Board (Air Quality Board) was created to address non-point source air pollution in Rapid City after Rapid City was designated nonattainment by EPA for violation of the National Ambient Air Quality Standards (NAAQS) for total suspended particulates (TSP). The Air Quality Board addresses non-industrial sources of fugitive emissions through the Rapid City Municipal Code Chapters 8:34 through 8:44 and Pennington County Ordinance No. 12, including the application of reasonable controls and permit requirements for dust producing activities, such as general construction and road construction.

When EPA changed the TSP standard to the PM10 standard, Rapid City was no longer considered nonattainment for TSP and was designated as unclassifiable for PM10. Subsequent to this, South Dakota determined that under South Dakota law, SDCL 34A–1–36, the Air Quality Board does not have the authority to regulate the State or State contractors since the area is not in violation of the PM10 standard. In addition, the Department of Environment and Natural Resources only addresses point source emissions and fugitive emissions from industrial sources, which means that there are no regulations for controlling fugitive emissions from State agencies and State contractors who conduct a construction activity or continuous operation activity. In addition, State agencies or State contractors who emit fugitive dust have less stringent requirements than contractors conducting non-State business.

To address this, the State of South Dakota developed new State air quality rules for the Rapid City area that establish a State permitting process for State facilities and State contractors that conduct a construction activity or continuous operation activity in the Rapid City air quality control zone. This would address the concern that State

contractors and State agencies would be contributing excessive amounts of fugitive dust that could lead to violations of the PM–10 NAAQS.

B. June 27, 2002, Submittal

On June 27, 2002, the State of South Dakota submitted a revision to the State Implementation Plan (SIP). The June 27, 2002, submittal consists of a revision to the Administrative Rules of South Dakota (ARSD). This revision adds chapter 74:36:18. Chapter 74:36:18, titled Regulations for State Facilities, applies to State contractors and State agencies that conduct a construction activity or continuous operation activity in the Rapid City air quality control zone. The Rapid City air quality control zone is defined as a 10-mile by 14-mile area within the following boundaries: (a) Commencing at the northwest corner of Section 15, Township 2 north, Range 6 east; (b) east to the northeast corner of Section 14, Township 2 north, Range 8 east; (c) south to the southeast corner of Section 35, Township 1 north, Range 8 east; (d) west to the southwest corner of Section 34, Township 1 north, Range 6 east; and (e) north to the point of beginning.

Chapter 74:36:18 was written to closely follow the existing Air Quality Board permitting requirements. Chapter 74:36:18 requires State contractors and State agencies that conduct a construction activity or continuous operation activity in the Rapid City air quality control zone that may cause fugitive emissions of particulate matter (PM) to be released into the ambient air to obtain a permit issued by the State prior to beginning the activity and to apply reasonably available control technology (RACT). RACT must be implemented to prevent fugitive emissions of PM from exceeding the visible emission limit of 20 percent opacity. The opacity limit of 20 percent does not apply if the following three meteorological conditions exist: (a) Five consecutive days of 0.02 inches or less of precipitation each day excluding dry snow; (b) forecasted peak wind gusts greater than 40 miles per hour; and (c) forecasted average hourly wind speed greater than 20 miles per hour.

III. Final Action

EPA is taking direct final action approving a State Implementation Plan (SIP) revision submitted by the State of South Dakota on June 27, 2002. The June 27, 2002, submittal consists of a revision to the administrative rules of South Dakota. This revision adds a new chapter that regulates fugitive emissions of PM from State facilities and State contractors that conduct a construction activity or continuous operation activity in the Rapid City air quality control zone. The intended effect of this action is to make the revision to the administrative rules of South Dakota federally enforceable.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the ''proposed rules'' section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective March 22, 2004, without further notice unless the Agency receives adverse comments by February 19, 2004. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Review

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. 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. 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 March 22, 2004. 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, Particulate matter, Reporting and recordkeeping requirements.

Dated: December 19, 2003.

Kerrigan G. Clough,

Acting Regional Administrator, Region 8.

■ 40 CFR part 52, subpart QQ 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 QQ—South Dakota

■ 2. Section 52.2170 is amended by adding paragraph (c)(22) to read as follows:

§ 52.2170 Identification of plan.

* * * * *

(c) * * *

(22) On June 27, 2002, the designee of the Governor of South Dakota submitted revisions to the State Implementation Plan. The June 27, 2002 submittal consists of revisions to the Administrative Rules of South Dakota. These revisions add a new chapter 74:36:18, ''Regulations for State Facilities in the Rapid City Area''. Chapter 74:36:18 regulates fugitive emissions of particulate matter from state facilities and state contractors that conduct a construction activity or continuous operation activity within the Rapid City air quality control zone.

(i) Incorporation by reference.

(A) Chapter 74:36:18 of the Administrative Rules of South Dakota, effective July 1, 2002.

[FR Doc. 04–1035 Filed 1–16–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7609–6]

Pennsylvania: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Pennsylvania has applied to EPA for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for final authorization and is authorizing Pennsylvania's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we receive written comments which oppose this authorization during the comment period, the decision to authorize Pennsylvania's changes to its hazardous waste program will take effect. If we receive comments that oppose this action, or portions thereof, we will publish a document in the **Federal Register** withdrawing the relevant portions of this rule, before they take effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize changes to Pennsylvania's program that were the subject of adverse comments.

DATES: This final authorization will become effective on March 22, 2004, unless EPA receives adverse written comments by February 19, 2004. If EPA receives any such comments, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization, or portions thereof, will not take effect as scheduled.

ADDRESSES: Send written comments to Charles Bentley, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–3379. Comments may also be submitted electronically to: *bentley.pete@epa.gov*, or by facsimile at (215) 814–3163. Comments in electronic format should identify this specific notice. You can view and copy Pennsylvania's application from 8 a.m. to 4:30 p.m., Monday through Friday at the following locations: Pennsylvania Department of Environmental Protection, Bureau of Land Recycling and Waste Management, P.O. Box 8471, Rachel Carson State Office Building, Harrisburg, PA 17105–8471, Phone number (717) 787–6239; Pennsylvania Department of Environmental Protection, Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA 15222–4745, Phone number: (412) 442–4120; and EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone number: (215) 814–5254. Persons with a disability may use the AT&T Relay Service to contact Pennsylvania Department of Environmental Protection by calling (800) 654–5984 (TDD users), or (800) 654–5988 (voice users).

FOR FURTHER INFORMATION CONTACT: Charles Bentley, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone number: (215) 814–3379.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes to become more stringent or broader in scope, States must change their programs and apply to EPA to authorize the changes. Authorization of changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must revise their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Has EPA Made in This Rule?

EPA concludes that Pennsylvania's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Pennsylvania final authorization to operate its hazardous waste program with the changes described in its application for program revisions,