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(2) Rule 1186, adopted on September 10, 1999.

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[SIP NO. SD-001-0012a; FRL-7216-1]

**Approval of an Air Quality Implementation Plan Revision; South Dakota; Rapid City Street Sanding Regulations To Protect the National Ambient Air Quality Standards for PM-10****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action approving a revision of the Administrative Rules South Dakota (ARSD) Chapter 74 Section 36:17 affecting South Dakota's Air Pollution Control Program for Rapid City, South Dakota. In particular, the revisions are regarding requirements for street sanding and deicing. These regulations were submitted to EPA on January 26, 1996. South Dakota submitted this revision to make the street sanding rules federally enforceable. EPA is approving the revision to Chapter 74 Section 36:17 of the ARSD as part of South Dakota's State Implementation Plan (SIP) under section 110 of the Clean Air Act (CAA).

**DATES:** This rule is effective on August 9, 2002, without further notice, unless EPA receives adverse comment by July 10, 2002. 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 mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202 and copies of the Incorporation by Reference material are available at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Copies of the State documents relevant to this action are 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.

**FOR FURTHER INFORMATION CONTACT:** Mark Komp, EPA, Region VIII, (303) 312-6022 or Laurel Dygowski, EPA, Region VIII, (303) 312-6144.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever "we," "us," or "our" are used, means Environmental Protection Agency.

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**I. Background Information***A. Events Leading to This Action*

Air quality monitoring for particulates in the Rapid City, South Dakota area in 1992 collected two samples that exceeded the 24-hour National Ambient Air Quality Standard (NAAQS) for particulates less than or equal to 10 microns in size (PM-10). The exceedances occurred on October 13 and 25, 1992 and were later documented to be the result of high winds blowing dust through the Rapid City, South Dakota area. An exceedance is a particulate concentration that is higher than 150 µg/m<sup>3</sup> calculated from a filter sample exposed to ambient air during a 24-hour period. An average of three exceedances over a 3-year period is considered a violation. Exceedances can include those that are expected, based on statistical analysis but not actually measured by the State. The two exceedances from filter samples taken in Rapid City, South Dakota were calculated to be a violation, based on statistical analysis involving the total number of filters exposed.

In a March 25, 1994 letter, South Dakota requested that we grant exceptional event status to these two exceedances rather than declare the area nonattainment for the PM-10 NAAQS. The State asserted that the exceedances were from uncontrollable natural sources, that the Rapid City area had been in the midst of a long-term drought, and winds during the days of the exceedance were high enough to

qualify as an "exceptional event". EPA's exceptional event guidance, 40 CFR part 50, appendix K, describes such events leading to exceedances as rare occurrences not likely to recur. EPA Region VIII concluded that the data could not be excluded from calculating exceedances of the PM-10 NAAQS, and after applying 40 CFR part 50, appendix K, to the data, determined that Rapid City violated the 24-hour PM-10 standard in 1992.

South Dakota's Department of Environment and Natural Resources (DENR) described in the March 25, 1994 letter certain corrective actions that had been taken by Pennington County, businesses, and industry to reduce particulate matter levels in Rapid City. DENR pointed out that these measures had been effective, as no further exceedances of the PM-10 standard had occurred in two and one-half years since the exceedances in 1992.

In recognition of DENR's position, EPA requested, in a letter from William Yellowtail, Regional Administrator, dated July 19, 1995, that the State outline a course of action that would serve as justification for EPA to suspend any further consideration of a nonattainment designation for the area. The course of action was to provide assurance that the State would maintain an adequate air monitoring network in Rapid City and would fulfill a commitment to incorporate into the SIP enforceable regulations that would embody the control strategies currently being implemented in Rapid City for both point and fugitive dust sources.

The State responded by adopting street sanding and deicing regulations for Rapid City and adding fugitive dust control requirements to industrial air quality permits. These permits were later incorporated into operating permits issued by the State under the CAA Title V permit program. South Dakota also expressed its continuing commitment to operate the Rapid City particulate matter monitoring network.

In 1996, a change in our policy related to exceptional events broadened EPA's interpretation of high PM-10 concentrations that are not considered exceedances. The new policy, called the Natural Events Policy, was expressed in a May 30, 1996 memorandum from EPA's former Assistant Administrator for Air and Radiation, Mary Nichols. The Natural Events Policy identified high wind events as one of three categories that affect the PM-10 NAAQS. The policy provides that EPA will exercise its discretion under section 107 (d)(3) of the CAA not to redesignate areas as nonattainment if the State develops and implements a plan to

respond to the health impacts of natural events.

Specifically the guiding principles followed in this policy are:

1. The protection of public health has the highest priority;
2. The public must be informed whenever the air quality in the area is unhealthy;
3. All valid ambient air quality data should be submitted to EPA and made available for public review;
4. State and local agencies must take appropriate and reasonable measures to safeguard public health regardless of the source of emissions;
5. Emission controls should be applied to sources that contribute to exceedances of the PM-10 NAAQS when those controls will result in fewer violations of the standards.

Despite the adoption of street sweeping and deicing regulations and controls on fugitive dust from industrial sources, the Rapid City area monitored PM-10 exceedances in 1996 and 1997. On July 14, 1997, the State sent information to EPA to support a finding that these exceedances were covered by the Natural Events Policy. We reviewed the data and agreed with the State's interpretation.

The State of South Dakota responded to the guiding principles set forth in the Natural Events Policy by developing a Natural Events Action Plan (NEAP). In the plan, the State committed to a public education program, developed Best Available Control Measures (BACM) for sources in the industrial complex in west Rapid City and committed to document all high wind events that occur and send the information to EPA. BACM measures were required to be implemented prior to the end of May 2000, with one exception. Fisher Sand and Gravel had been granted an extension until September 30, 2000, to implement emission controls for the rock crusher. All BACM measures are now in place in the Rapid City area.

Natural events in the future that lead to exceedances must be documented according to the State's NEAP. Sanding and deicing regulations and fugitive dust control measures will become federally enforceable upon EPA approval of the SIP revision and through permits issued under the State's Title V operating permit program respectively.

#### *B. What Action Is EPA Taking?*

EPA is approving South Dakota's revision to its SIP regarding the application and removal of street sanding and the application of deicing materials within the city limits of Rapid City. The revision was submitted on

January 22, 1996 and appears in South Dakota's Administrative Rule Chapter 74:36:17.

#### *C. What Is the State Process for Submitting These Materials to EPA?*

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan admitted by a State must be adopted after reasonable notice and public hearing. Section 110(1) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). EPA's completeness criteria are set out at 40 CFR part 51, appendix V. EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of submission. This submittal became complete by operation of law on July 22, 1996 in accordance with section 110(k)(1)(B) of the Act.

The South Dakota Board of Minerals and Environments held a public hearing and adopted the Rapid City sanding and deicing regulations on December 21, 1995. The rules became effective at the State level on February 12, 1996.

#### *D. What Was Included in South Dakota's Submittal?*

On January 22, 1996, the State of South Dakota submitted a revision to its SIP. The SIP revision consists of street sanding and deicing requirements that apply within the city limits of Rapid City, South Dakota. Sanding materials that do not break down into smaller particles under road traffic are specified for use within Rapid City. In addition, deicing chemicals are to be used to lessen the need for sanding the roads and will be used to the greatest extent possible. The January 22, 1996 submittal includes a letter from Nettie H. Myers, Secretary of the Department of South Dakota's Environment and Natural Resources. The letter makes commitments to requirements described in EPA's letter dated July 19, 1995. These commitments are to maintain a monitoring network for PM-10 in the Rapid City area, and include fugitive dust control plans in Title V permits for

major man-made sources of dust in the Rapid City area.

#### *E. Why Is EPA Approving This Adoption of Administrative Rule Article 74:36:17*

We are approving the revision to South Dakota's SIP because the revision is consistent with all requirements of the CAA and with EPA guidance. Specifically, we are approving ARSD Chapter 74:36:17 as part of the SIP section 110 (K) (3) of the CAA.

The effect of this approval is that ARSD Chapter 74:36:17 will be federally enforceable.

## **II. Final Action**

EPA is approving South Dakota's revision to its SIP regarding the application and the removal of street sanding and deicing materials within the city limits of Rapid City, submitted on January 26, 1996. The revision appears in ARSD Chapter 74:36:17.

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act. The South Dakota SIP revisions that are the subject of this document do not interfere with the maintenance of the NAAQS or any other applicable requirement of the Act because the State of South Dakota's street sanding rule is more stringent than what currently exists and this rule will enhance the State's efforts in implementing the Clean Air Act. Therefore, section 110(l) requirements are satisfied.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. South Dakota has had the rulemaking in place for several years with no adverse reaction. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposed rule to approve the SIP revision if adverse comments are filed. This rule will be effective August 9, 2002, without further notice unless the Agency receives adverse comments by July 10, 2002. 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.

### III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship 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 August 9, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: May 13, 2002.

**Robert E. Roberts,**

*Regional Administrator, Region VIII.*

40 CFR part 52, subpart QQ of chapter I, title 40 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)(20) to read as follows:

##### § 52.2170 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(20) On January 22, 1996, the designee of the Governor of South Dakota submitted provisions in Section 74:36:17 of the Administrative rules of South Dakota. The provisions consist of street sanding requirements that apply within the city limits of Rapid City, South Dakota.

(i) Incorporation by reference.

(A) Administrative Rules of South Dakota, Air Pollution Control Program, Chapter 74:36:17.

(ii) Additional materials.

(A) Letter of March 25, 1994 from South Dakota Department of Environment and Natural Resources discussing whether EPA should designate Rapid City as nonattainment for the PM-10 standard.

(B) Letter of July 19, 1995 from EPA Region VIII discussing with the South Dakota Department of Environment and Natural Resources the exceedances of the PM-10 standard measured in the Rapid City.

(C) Letter of November 16, 1995 from the South Dakota Department of Environment and Natural Resources describing the commitment the State of South Dakota has toward permit exceedances of the PM-10 standard in the future.

(D) Letter of January 22, 1996 from the South Dakota Department of Environment and Natural Resources transmitting Rapid City street sanding requirements.

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