Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation as the rule pertains to a temporary safety zone established and extended to address an emergency situation lasting more than one week. The written environmental analysis checklist and Categorical Exclusion Determination prepared for the initial effective period of this safety zone regulation is applicable to this extension. These documents are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise temporary § 165.T01–1272, to read as follows:

§ 165.T01–1272 Safety Zone: Underwater Object, Massachusetts Bay, MA.

(a) *Location.* The following area is a safety zone: All navigable waters, from surface to bottom, of Massachusetts Bay within a 500 yard radius of underwater object, in approximate position 42°24′27.34″ N, 70°27′17.23″ W.

(b) *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 Boston.

(c) *Regulations.* (1) The general regulations contained in 33 CFR § 165.23 apply.

(2) In accordance with the general regulations in § 165.23 of this part, all vessels and persons are prohibited from entering the safety zone without permission from the Captain of the Port Boston. In addition, all vessels and persons are prohibited from anchoring, diving, dredging, dumping, fishing, trawling, laying cable, or conducting salvage operations in this zone except as authorized by the Coast Guard Captain of the Port Boston.

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

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

(5) Persons desiring to enter the safety zone may request permission from the Captain of the Port Boston via VHF Channel 16 or via telephone at (617) 223–3201.

(d) *Enforcement Period.* This rule will be enforced from 11 p.m. January 8, 2009, until 11 p.m. April 28, 2009.

Dated: March 6, 2009.

G.P. Kulisch,

Captain, U.S. Coast Guard, Captain of the Port Boston.

[FR Doc. E9–7260 Filed 3–31–09; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2008–0509; FRL–8788–8]

Approval and Promulgation of Implementation Plans; New Mexico; Albuquerque/Bernalillo County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the New Mexico Albuquerque/Bernalillo County State Implementation Plan (SIP). This revision replaces Regulation 8, Airborne Particulate Matter, with New Mexico Administrative Code (NMAC), 20.11.20, Fugitive Dust Control. This rulemaking action is being taken under section 110 of the Clean Air Act (CAA).

DATES: This rule is effective on June 1, 2009 without further notice, unless EPA receives adverse comment by May 1, 2009. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2008–0509, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Mr. Guy Donaldson at *donaldson.guy@epa.gov*. Please also send a copy by email to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. 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–R06–OAR–2008–0509. 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 Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 am and 4:30 pm weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

The City of Albuquerque, Environmental Health Department, One Civic Plaza, Albuquerque, NM, 87102.

FOR FURTHER INFORMATION CONTACT: Joe Kordzi, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7186; fax number 214–665–7263; e-mail address *kordzi.joe@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

Outline

I. Background
II. Evaluation of the Albuquerque Fugitive Dust Control Rule
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

The Albuquerque/Bernalillo County Air Quality Control Board (AQCB) is the federally delegated air quality authority for Albuquerque and Bernalillo County. The AQCB is authorized to administer and enforce the CAA and the New Mexico Air Quality Control Act, and to require local air pollution sources to comply with air quality standards.

EPA approved the AQCB's Rule 8, Airborne Particulate Matter, on February 23, 1993 (58 FR 10970). The AQCB revised this regulation with NMAC 20.11.20, Airborne Particulate Matter, in 1996. The AQCB later substantially revised NMAC 20.11.20 on January 14, 2004, and renamed it ''Fugitive Dust Control.'' On September 7, 2004, the Governor of New Mexico submitted a SIP revision requesting that EPA revise the New Mexico Albuquerque/Bernalillo County SIP by replacing Regulation 8 with NMAC 20.11.20, Fugitive Dust Control. The AQCB later requested that this SIP submission be placed on hold, anticipating that NMAC 20.11.20 would again be revised. Subsequently, on April 3, 2008, the Governor of New Mexico submitted a SIP revision with the newly revised NMAC 20.11.20.

II. What did the state submit and how did we evaluate it?

The AQCB's SIP revision package included (1) Regulation 8, Airborne Particulate Matter; (2) NMAC 20.11.20, Fugitive Dust Control; (3) documents associated with a public hearing and a public meeting conducted on February 13, 2008; (4) evidence that legal notices were published in the local newspaper and the New Mexico Register, and (5) evidence NMAC 20.11.20, Fugitive Dust Control was filed with the New Mexico State Records Center on February 15, 2008.

NMAC 20.11.20, Fugitive Dust Control has a number of changes over Regulation 8, Airborne Particulate Matter, that will enable the City of Albuquerque Air Quality Division to improve its ability to address particulate matter emissions. In general, NMAC 20.11.20, Fugitive Dust Control is designed to capture all sources of fugitive dust, in contrast to Regulation 8, which targeted industrial and commercial activities. Examples of the improvements incorporated into NMAC 20.11.20, Fugitive Dust Control include the following:

- The use of reasonably available control measures identified in the regulation, or other effective control measures to prevent or abate fugitive dust leaving a property where human actions may or will generate fugitive dust.
- The stabilization of new and existing unpaved roadways and unpaved lots in Bernalillo County to abate fugitive dust.
- A requirement that permits be obtained for surface disturbing activities involving ¾ acre or more.
- Control of greenwaste (e.g., grass clippings or leaves) from being deposited on publicly owned properties, where it can become airborne.
- Provisions for programmatic permits for routine maintenance, routine surface disturbance activities, or routine ongoing active operations.
- Provisions for construction permits.
- Re-seeding specifications for native plants.
- Provisions for public outreach and training on fugitive dust for those involved in earthwork activities.
- Guidelines for responding to complaints, especially where damage to private property by fugitive dust is alleged.
- Appeal procedures for permits and enforcement actions.

See the Technical Support Document for a more detailed comparison of NMAC 20.11.20, Fugitive Dust Control with the earlier Regulation 8.

Under section 110(l), EPA cannot approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP), or any other applicable requirement of the CAA. As shown above, this revision makes the SIP more stringent and includes coverage of more sources. It will not result in increased emissions. Therefore, EPA's approval of this SIP revision will not interfere with any

applicable requirement concerning attainment and RFP or any other CAA requirement in compliance with the requirements of section 110(l) of the Act.

III. What is our final action?

The EPA is approving the April 3, 2008 revision to the New Mexico Albuquerque/Bernalillo County SIP regarding Fugitive Dust Control. This revision replaces Regulation 8, Airborne Particulate Matter, with NMAC 20.11.20, Fugitive Dust Control because it is a substantial improvement over the approved SIP. Furthermore, as the April 3, 2008 SIP submission is a replacement of the September 7, 2004 SIP submission, we are taking no action on the September 7, 2004 submission. This rulemaking action is being taken under section 110 of the CAA.

IV. Why is this a ''final action?''

EPA is publishing this rule 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 SIP revision if adverse comments are received. This rule will be effective on June 1, 2009 without further notice unless we receive adverse comment by May 1, 2009. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We 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 we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

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 June 1, 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, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 16, 2009.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

■ 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. 7402 *et seq.*

Subpart GG—New Mexico

■ 2. In § 52.1620(c), the second table entitled ''EPA Approved Albuquerque/Bernalillo County, NN Regulations,'' is amended as follows:

■ a. Under the centered heading ''Albuquerque/Bernalillo County, Air Quality Control Regulations,'' by removing the entry for ''Regulation No. 8, Airborne Particulate Matter;'' and

■ b. Under the centered heading ''New Mexico Administrative Code (NMAC) Title 20—Environment Protection, Chapter 11- Albuquerque/Bernalillo County Air Quality Control Board,'' immediately following the entry for ''Part 8 (20.11.8 NMAC),'' by adding a new entry for ''Part 20 (20.11.20 NMAC), Fugitive Dust Control,'' to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NN REGULATIONS

State citation	Title/subject	State approval/ effective date	EPA approval date	Explanation
* * *	*	*	*	*
New Mexico Administrative Code (NMAC) Title 20—Environment Protection, Chapter 11—Albuquerque/Bernalillo County Air Quality Control Board				
* * *	*	*	*	*
Part 20 (20.11.20 NMAC)	Fugitive Dust Control	3/17/2008	April 1, 2009 [Insert FR page where document begins].	
* * *	*	*	*	*

[FR Doc. E9–7296 Filed 3–31–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. EPA–R02–OAR–2008–0020; FRL–8775–6]

Approval and Promulgation of Implementation Plans; Variance Determination for Particulate Matter From a Specific Source in the State of New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the State Implementation Plan (SIP) submitted by the State of New Jersey. This SIP revision consists of a source-specific reasonably available control technology (RACT) determination for controlling particulate matter from the cooling tower operated by the PSEG Nuclear LLC Hope Creek and Salem Generating Stations. This action approves a source-specific variance determination and emission limitations that were made by New Jersey in accordance with the provisions of its rule to help meet the national ambient air quality standards (NAAQS) for particulate matter. The intended effect of this rule is to approve source-specific emissions limitations required by the Clean Air Act.

DATES: *Effective Date:* This rule will become effective on May 1, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R02–OAR–2008–0020. All documents in the docket are listed on the *http://www.regulations.gov* Web site. 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, 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 *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is 212–637–4249.

FOR FURTHER INFORMATION CONTACT: Paul Truchan, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10278, (212) 637–3711, *e-mail: Truchan.Paul@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What Action Is EPA Taking Today?

EPA is approving New Jersey's revision to the particulate matter (PM) State Implementation Plan (SIP) submitted on November 2, 2007. This SIP revision relates to New Jersey's PM variance determination for the cooling tower at the PSEG Nuclear LLC Hope Creek and Salem Generating Stations located in Lower Alloways Creek Township, Salem County. As part of this variance evaluation, alternate emission limitations are specified for total suspended particulates (TSP) and PM–10 (particles with an aerodynamic diameter of 10 micrometers or less). No variance was requested, or is being granted for PM2.5. This evaluation and variance only involves the operation of the cooling tower. The reader is referred to the proposed rulemaking on this action (May 29, 2008, 73 FR 30873) for additional details.

II. What Comments Were Received and What Is EPA's Response?

EPA received one anonymous comment which did not support the variance request. The commenter indicated concern with the health effects of particulate matter and the need to clean up our air. The commenter also stated that the plant should be forced to upgrade and that the proposed SIP revision should have included a discussion of particulates smaller than 2.5 parts per million (ppm).

EPA is also concerned with the health effects of particulates and revised the national ambient air quality standard (NAAQS) for PM2.5 in September 2006, lowering the 24-hour PM2.5 NAAQS from 65 μg/m^3 to 35 μg/m^3 and readopted the annual PM2.5 NAAQS at 15 μg/m^3. States were required to make recommendations for designating their counties as either attainment or nonattainment by December 2007. On December 18, 2008, EPA's Administrator signed a final rulemaking containing the new PM2.5 air quality designations.

Based on current air quality monitoring data, Salem County is in attainment of the new 24-hour PM2.5 standard. Salem County is currently designated as attaining the previous 24-hour PM2.5 standard, and annual PM2.5 standard, and this is confirmed with air quality monitoring data. Therefore, the County where the cooling tower is located is currently attaining the 65 μg/m^3 NAAQS and is also attaining the new lower 35 μg/m^3 NAAQS.