

definition of PM_{2.5} or PM₁₀ will result in unacceptable director discretion provisions. Specifically, PM₁₀ or PM_{2.5} will either be measured by ambient monitors or through stack performance testing specified in the federal rules. Section 74:36:02:03, Methods of sampling and analysis, discusses the methods to sample ambient concentrations of the NAAQS. This section reads, "air pollutants of particulate matter, sulfur dioxide, carbon monoxide, ozone, nitrogen dioxide, and lead listed in 40 CFR Part 50 shall be measured by the reference method or methods stated in 40 CFR Part 50, Appendix A to N, inclusive (July 1, 1999) or an *equivalent method* designated in accordance with 40 CFR Part 53" (emphasis added). 40 CFR part 53 indicates that for a method to be an equivalent method, it must be designated under 40 CFR part 53; equivalent methods are approved by EPA, and the State department cannot approve an equivalent ambient monitoring method. Section 74:36:11:01 of the State regulations, Stack performance testing or other testing methods, reads "all stack performance tests or other test methods must be made in accordance with the applicable method specified in 40 CFR 60.17; Part 60, Appendix A; § 63.14; Part 63, Appendix A; and Part 51, Appendix M (all July 1, 1999). To the extent that 40 CFR 60.17; Part 60, Appendix A; § 63.14; Part 63, Appendix A; or Part 51, Appendix M (July 1, 1999), is not applicable, methods shown to be capable of providing valid test results for the source in question may be used with prior department approval. The department may not accept a performance test conducted by unapproved methods." As discussed later, we are proposing to disapprove the second sentence of 74:36:11:01 because it contains a director discretion provision. We are proposing to approve the change in date for the reference to appendix M in the first sentence. Therefore, the approved SIP will not allow the State department to approve alternative stack performance test methods.

B. Chapter 74:36:02 SDAPCP—Ambient Air Quality

The State's May 6, 1999 and June 30, 2000 submittals made the following revisions to Chapter 74:36:02—Ambient Air Quality:

1. With the May 6, 1999 submittal, the State revised its Ambient Air Quality rule to incorporate a more recent version of the Code of Federal Regulations (CFR) and the revisions to the NAAQS promulgated by EPA in

1997. The changes to the NAAQS involve revisions to the 24-hour and annual standard for PM₁₀, revisions to the ozone standard, and the addition of 24-hour and annual standards for PM_{2.5}. The following sections of the State rules were revised: 74:36:02:02—Ambient air quality standards; 74:36:02:03—Method of sampling and analysis; 74:36:02:04—Air quality monitoring network; and 74:36:02:05—Ambient air monitoring requirements.

2. Because of the challenge to EPA's revised NAAQS decision, with the June 30, 2000 submittal the State is revising part of what it submitted on May 6, 1999 and incorporating into the ambient air quality rule in section 74:36:02:02 the following EPA NAAQS: (a) Sulfur oxides referenced in 40 CFR 50.4 and 50.5, as in effect July 1, 1999; (b) PM₁₀ referenced in 40 CFR 50.6, as in effect July 1, 1997; (c) PM_{2.5} referenced in 40 CFR 50.7(a)(1), (b), and (c), as in effect July 1, 1999; (d) carbon monoxide referenced in 40 CFR 50.8, as in effect July 1, 1999; (e) ozone referenced in 50 CFR 50.10, as in effect July 1, 1999; (f) nitrogen oxides referenced in 40 CFR 50.11, as in effect July 1, 1999; and (g) lead referenced in 40 CFR 50.12, as in effect July 1, 1999.²

The overall result is that the State is reincorporating our old PM₁₀ NAAQS (originally promulgated on July 1, 1987 (52 FR 24663) and contained in the July 1, 1997 edition of the CFR) into the SIP, incorporating the new PM_{2.5} and 8-hour ozone NAAQS (promulgated on July 18, 1997, 62 FR 38711 and 62 FR 38894, respectively) into the SIP, and *not* incorporating the new PM₁₀ NAAQS (promulgated on July 18, 1997, 62 FR 38711) or the prior 1-hour ozone NAAQS (reinstated on July 20, 2000, 65 FR 45200) into the SIP. Even though the State's rule does not include the 1-hour ozone NAAQS, which was reinstated on

July 20, 2000 (65 FR 45200), the federal 1-hour ozone NAAQS still applies in South Dakota. In the future, the State should revise its SIP to include the 1-hour ozone NAAQS.

In addition, the State revised its ambient air quality rule to incorporate a more recent version of the CFR. The following sections of the rule were revised: 74:36:02:03—Method of sampling and analysis; 74:36:02:04—Air quality monitoring network; and 74:36:02:05—Ambient air monitoring requirements.

We have reviewed the revisions identified in (1) and (2). We believe the revisions are acceptable and are proposing to approve them into the SIP.

C. Chapter 74:36:04 SDAPCP—Operating Permits for Minor Sources

The State's May 6, 1999 submittal made the following revisions to Chapter 74:36:04—Operating Permits for Minor Sources:

(1) Substantive changes were made to section 74:36:04:03, Operating permit exemptions. This section lists the types of facilities and units that are exempt from the requirement to obtain a minor air quality permit. An additional subsection is included that exempts units with the potential to emit two tons or less per year of any criteria pollutant before the application of control equipment. However, the criteria pollutant emissions from the unit must be included in determining if the source is a minor or major source. The State also revised some subsections of this rule to add the word "unit" in appropriate places. This will help clarify that this section also exempts certain units, not just facilities.

(2) Substantive changes were made to section 74:36:04:09, Permit application—Completeness review. This section identifies relevant deadlines for review of an application to determine if it is complete. This section is being revised to indicate that a facility has 20 working days (or longer if approved by the Department) to submit additional information if the application is determined to be incomplete or if additional information is necessary to evaluate the application.

(3) Substantive changes were made to sections 74:36:04:11 through 74:36:04:14—Permitting process. Sections 74:36:04:11 through 74:36:04:14 outline how the applicant and the public are involved in the permitting process. These revisions allow the applicant or public the choice of either commenting on or contesting the department's draft permit during the 30-day public notice period. If the department receives comments, the

² The 1997 revised NAAQS for ozone and PM₁₀ and new NAAQS for PM_{2.5} were challenged by industry groups and several States. As a result, the United States Court of Appeals for the District of Columbia Circuit vacated the 1997 NAAQS and remanded them to EPA. See, *American Trucking Ass'n, Inc. v. U.S. EPA*, 173 F.3d 1027 (D.C. Cir 1999). EPA petitioned for review in the United States Supreme Court, which reversed significant portions of the decision below, but affirmed on the issue of implementation of the revised NAAQS, holding EPA's implementation policy unlawful and remanding the case to the Court of Appeals for further proceedings. See, *Whitman v. American Trucking Ass'n, Inc.*, 531 U.S. 457, 121 S.Ct. 903, 149 L.Ed. 2d 1 (February 27, 2001). The revised ozone and PM-10 NAAQS are not being implemented at present. On May 18, 1999, the United States Court of Appeals for the D.C. Circuit; *American Trucking Association, Inc., et al. v. United States Environmental Protection Agency* vacated the 1997 PM₁₀ standard. Because of the Court ruling, we continue to implement the pre-existing PM₁₀ standard.