

74:36:07:06.01 into the SIP. However, on June 22, 2000 (65 FR 38732), we did approve this section as meeting section 111(d) of the Act. See 40 CFR 62.10360–10362. Also, the June 30, 2000 revision to section 74:36:07:06.1 updates the incorporation by reference to 40 CFR part 60 as of July 1, 1998. We are proposing to approve the update to the incorporation by reference and identify this change in 40 CFR 62.10360.

With respect to the rules added and modified for existing municipal solid waste landfills (sections 74:36:07:39–42), we believe we have no legal basis in the Act for approving these rules into the SIP because these rules are not generally related to attainment or maintenance of the NAAQS. Therefore, we are not taking action to incorporate sections 74:36:07:39–42 into the SIP. However, on June 3, 1999 (64 FR 29796), we did approve these rules as meeting section 111(d) of the Act. See 40 CFR 62.10350–10352. Also, the June 30, 2000 revision to sections 74:36:07:34–42.01 updates the incorporation by reference to 40 CFR 60, as of July 1, 1999. We are proposing to approve the update to the incorporation by reference and identify this change in 40 CFR 62.10350.

#### *G. Chapter 74:36:08 SDAPCP—National Emission Standards for Hazardous Air Pollutants*

The State's May 6, 1999 and June 30, 2000 submittals made revisions to Chapter 74:36:08, National Emission Standards for Hazardous Air Pollutants, by adding new standards as well as revising existing provisions. We believe we have no legal basis in the Act for approving these rules into the SIP. In addition, on May 16, 2000, we issued a letter indicating that we were delegating the authority of 40 CFR parts 61 and 63 to the State. Given that the State now has delegation of authority for the NESHAPs in 40 CFR part 61 and for the Maximum Achievable Control Technology (MACT) standards, in 40 CFR part 63, pursuant to 110(k)(6) of the Act, we are proposing to remove Chapter 74:36:08—National Emission Standards for Hazardous Air Pollutants from the SIP and not proposing to approve into the SIP any new or revised provisions adopted by the State to meet 40 CFR parts 61 and 63. We are proposing to update the table in 40 CFR 61.04(c)(8) to indicate that the 40 CFR part 61 NESHAPs are now delegated to the State.

#### *H. Chapter 74:36:11 SDAPCP—Performance Testing*

The State's May 6, 1999 and June 30, 2000 submittals made the following

revisions to Chapter 74:36:11—Performance Testing:

1. The State's May 6, 1999 SIP revision modified the requirements in section 74:36:11:04, Testing new fuels or raw materials. We already approved the May 6, 1999 revisions to the rule on February 3, 2000 (65 FR 5264).

2. The State's June 30, 2000 submittal incorporates a more recent version of the CFR referenced in section 74:36:11:01, Testing new fuels or raw materials. We believe this revision makes the State's rule consistent with ours and are proposing to approve it into the SIP.

However, 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.”

The above rule is problematic because the second sentence contains a director discretion provision (see footnote 1). Specifically, this rule allows the State to determine acceptable performance tests when Federal guidelines do not apply, without EPA approval and without the opportunity for public notice and comment. Our concern is that the State may determine that a required test method is not applicable when it really should be. Additionally, the State may determine a test method is applicable, when under federal law it would not be applicable. Under section 110(i) of the CAA, we interpret that director discretion provisions are prohibited. Therefore, we are proposing to disapprove the second sentence of section 74:36:11:01. To make the second sentence of section 74:36:11:01 an approvable SIP revision, it should be revised to read “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 and EPA approval.”

#### *I. Chapter 74:36:12 SDAPCP—Control of Visible Emissions*

The State's May 6, 1999 and June 30, 2000 submittals made the following revisions to Chapter 74:36:12—Control of Visible Emissions:

1. Section 74:36:12:01, Restrictions on visible emissions, limits visible emissions from permitted units to less than 20 percent opacity. This section lists an exception to the 20 percent limits as specified in chapter 74:36:15. However, chapter 74:36:15 was previously repealed. Therefore the State is deleting the exception and reference to chapter 74:36:15 with the May 6, 1999 submittal.

2. The June 30, 2000 submittal incorporates a more recent version of the CFR referenced in section 74:36:12:01, Restrictions on visible emissions.

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.

#### *J. Chapter 74:36:13 SDAPCP—Continuous Emission Monitoring Systems*

The State's May 6, 1999 and June 30, 2000 submittals made the following revisions to Chapter 74:36:13—Continuous Emission Monitoring Systems:

1. With the May 6, 1999 submittal, the State added section 74:36:13:08, Compliance assurance monitoring. This section requires that the owner or operator of a unit that is subject to 50 CFR 64.2 must comply with 40 CFR 64.1 and 64.3 to 64.10, inclusive, as published in 62 FR 54940–54946 (October 22, 1997).

2. With the June 30, 2000 submittal, the State incorporates a more recent version of the CFR referenced in the following sections: 74:36:13:02, Minimum performance specifications for all continuous emission monitoring; 74:36:13:03, Reporting requirements; 74:36:13:04, Notice to department of exceedance; and 74:36:13:07, credible evidence. In addition, the State has deleted the reference to the **Federal Register** in section 74:36:13:08, Compliance assurance monitoring, and instead references the July 1, 1999 CFR.

We have reviewed the revisions identified in (1) and (2). We believe we have no legal basis in the Act for approving the Compliance Assurance Monitoring rule in section 74:36:13:08 into the SIP. Therefore, we are not proposing to approve the revision identified in (1) above into the SIP. We believe the revisions identified in (2) above are acceptable and are proposing