

DDDD, respectively. The designated facility to which the EG apply is each existing CISWI unit, as defined in subpart DDDD, that commenced construction on or before November 30, 1999.

Section 111(d) of the CAA requires that "designated" pollutants, regulated under standards of performance for new stationary sources by section 111(b) of the CAA, must also be controlled at existing sources in the same source category to a level stipulated in an EG document. Section 129 of the CAA specifically addresses solid waste combustion and emissions controls based on what is commonly referred to as "maximum achievable control technology" (MACT). Section 129 requires EPA to promulgate a MACT based emission guidelines document for CISWI units, and then requires states to develop plans that implement the EG requirements. The CISWI EG under 40 CFR part 60, subpart DDDD, establish emission and operating requirements under the authority of the CAA, sections 111(d) and 129. These requirements must be incorporated into a State plan that is "at least as protective" as the EG, and is Federally enforceable upon approval by EPA. The procedures for adoption and submittal of State plans are codified in 40 CFR part 60, subpart B.

II. Review of West Virginia's CISWI Plan

EPA has reviewed the West Virginia CISWI plan in the context of the requirements of 40 CFR part 60, and subparts B and DDDD. A summary of the review is provided below.

A. Identification of Enforceable State Mechanism(s) for Implementing the EG

On September 25, 2002, the DAQ submitted to EPA a copy of the plan's enforceable mechanism, regulation 45CSR18, "To Prevent and Control Emissions from Commercial and Industrial Solid Waste Incinerator Units." The regulation, which became effective on May 1, 2002, contains a compliance schedule that is not considered expeditious by EPA. As a result, the DAQ amended its plan to include a State Consent Order (CO) with a revised compliance schedule, which is applicable to the only known affected facility, E.I. Du Pont de Nemours and Company, Washington Works ("DuPont"), located in Wood County, West Virginia.

A second state regulation, 45CSR6, effective July 1, 2001, establishes the air pollution control requirements for air curtain incinerator (ACI) units. 45CSR6, section 4.8, stipulates the air pollution

control requirements for both new and existing units. Affected facilities constructed on or before November 30, 1999 are subject to the same requirements as new units under 40 CFR part 60, subpart CCCC. The DAQ has made a conscious decision to subject these sources, if any, to the same standards as new sources. However, the DAQ is not aware of any affected ACI units.

B. Demonstration of Legal Authority

The DAQ states that it has sufficient statutory and regulatory authority to implement and enforce the plan. This is discussed in section VII of the plan narrative, a November 29, 2001 letter from DAQ Counsel, and the January 22, 2003 plan amendment. The DAQ cites the following references for legal authority: W.Va. Code section 22-5-1 *et seq.*, applicable state CISWI air quality regulations WV CSR18, and WV CSR6, section 4.8. The DAQ has the required legal authority based on EPA's review of the submitted legal opinions, statutes, and rules. This includes the West Virginia CISWI regulations and the Dupont Consent Order; each of which is considered as being at least as protective as the applicable Federal requirements for existing CISWI units.

C. Inventory of CISWI Units in West Virginia Affected by the EG

As noted above, there is only one known affected facility, Dupont, located in Wood County, West Virginia. There is no known affected ACI unit in West Virginia.

D. Inventory of Emissions From CISWI Units in West Virginia

The submitted plan contains an estimate of emissions from the Dupont facility. Emissions estimates are provided for organics (dioxins/furans), acid gases (hydrogen chloride, sulphur dioxide, and nitrogen oxides), and metals (cadmium, lead, mercury).

E. Emission Limitations for CISWI Units

The state CISWI regulations include emission limitation requirements that are at least as protective as those in the EG, subpart DDDD.

F. Compliance Schedules

The state CISWI regulation, 45 CSR18, which became effective on May 1, 2002, contains a compliance schedule, as noted above, that is not considered expeditious by EPA. As a result, the DAQ amended its plan to include the Dupont Consent Order, which includes a revised compliance schedule that requires final compliance on or before September 30, 2003. EPA believes the

revised compliance schedule is an expeditious one. This determination is based on a review of air pollution control retrofit case studies of smaller hospital/medical infectious waste incinerator units, which are similar in size and design to CISWI units. The retrofit case studies are referenced in EPA's November 25, 2002 proposed Federal plan (67 FR 70640) for CISWI units. See the proposed Federal plan preamble, section IV. F, "How Did EPA Determine the Compliance Schedule?" The Dupont Consent Order was executed on January 17 and 23, 2003, by DAQ and Dupont representatives, respectively. If an unknown individual CISWI unit is discovered after EPA approval of this plan, the unit will be subject to the Federal plan.

G. Testing, Monitoring, Recordkeeping, and Reporting Requirements

The state CISWI regulations include the applicable source compliance testing, monitoring, recordkeeping, and reporting requirements of the EG.

H. A Record of the Public Hearing on the State Plan

Public hearings were held in Charleston, West Virginia, on November 8, 2001 for the original plan, and then again on January 6, 2003 for the amended plan. The DAQ provided evidence of complying with the public notice and other hearing requirements of subpart B.

I. Provision for Annual State Progress Reports to EPA

The DAQ will submit to EPA on an annual basis a report which details the progress in the enforcement of the plan. The first progress report will be submitted to EPA within one year after approval of the state plan.

III. Final Action

EPA is approving the West Virginia CISWI plan for controlling designated pollutants under sections 111(d) and 129 of the CAA. Therefore, EPA is amending 40 CFR part 62 to reflect this action. This approval is based on the rationale discussed above and in further detail in the technical support document (TSD) associated with this action.

There are a number of plan elements which are not relevant or germane to this plan approval action. Accordingly, EPA is taking no action on the following plan elements:

- (1) The provisions of 45CSR6 that regulate incinerators other than affected ACI units;
- (2) The compliance date provisions codified at 45CSR18, section 7.1; and