

### *B. What Is the Purpose of This Federal Plan?*

Section 129 of the CAA requires the EPA to develop emission guidelines under the authority of sections 111 and 129 of the CAA for existing "solid waste incineration units combusting commercial or industrial waste." The EPA refers to these units as "commercial and industrial solid waste incineration" (CISWI) units. The EPA proposed emission guidelines for CISWI units on November 30, 1999, and promulgated them on December 1, 2000, (65 FR 75338) (to be codified at 40 CFR part 60, subpart DDDD). In writing Section 129 of the CAA, Congress looked first to the States as the preferred implementers of emission guidelines for existing CISWI units. To make these emission guidelines enforceable, States with existing CISWI units must have submitted to the EPA within one year following promulgation of the emission guidelines (by December 1, 2001) State plans that implement and enforce the emission guidelines. For States or Tribes that do not have an EPA-approved and effective plan, the EPA must develop and implement a Federal plan within two years following promulgation of the emission guidelines (by December 1, 2002). The EPA sees this Federal plan as an interim measure to ensure that Congressionally mandated emission standards under authority of sections 111 and 129 of the CAA are implemented until States assume their role as the preferred implementers of the emissions guidelines. Thus, the EPA encourages States to either use the Federal plan as a template to reduce the effort needed to develop their own plans or to simply take delegation to directly implement and enforce the guidelines. States without any existing CISWI units are required to submit to the Administrator a letter of negative declaration certifying that there are no CISWI units in the State. No plan is required for States that do not have any CISWI units.

As discussed in section VII.E of this preamble, Indian Tribes may, but are not required to, submit Tribal plans to cover CISWI units in Indian Country. A Tribe may submit to the Administrator a letter of negative declaration certifying that no CISWI units are located in the Tribal area. No plan is required for tribes that do not have any CISWI units. CISWI units located in States or Tribal areas that mistakenly submit a letter of negative declaration would be subject to

the Federal plan until a State or Tribal plan has been approved and becomes effective covering those CISWI units.

Sections 111 and 129 of the CAA and 40 CFR 60.27(c) and (d) require the EPA to develop, implement, and enforce this Federal plan to cover existing CISWI units located in States that do not have an approved plan within two years after promulgation of the emission guidelines (by December 1, 2002, for CISWI units). Today's action promulgates a Federal plan for CISWI units that are not yet covered by an approved State or Tribal plan.

### *C. What Impact Does the U.S. Appeals Court Remand and the EPA's Granting of a Request for Reconsideration Have on This Federal Plan?*

Subsequent to the EPA's promulgation of the final rule establishing the New Source Performance Standards (NSPS and the Emission Guidelines (EG) for CISWI units, two events occurred that potentially could result in substantive changes to these standards. First, in August 2001, the EPA granted a request for reconsideration, pursuant to section 307(d)(7)(B) of the CAA, submitted on behalf of the National Wildlife Federation and the Louisiana Environmental Action Network, related to the definition of "commercial and industrial solid waste incineration unit" in the EPA's CISWI rulemaking. In granting this petition for reconsideration, the EPA agreed to undertake further notice and comment proceedings related to this definition. Second, on January 30, 2001, the Sierra Club filed a petition for review in the U.S. Court of Appeals for the D.C. Circuit challenging the EPA's final CISWI rule. On Sept. 6, 2001, the Court entered an order granting the EPA's motion for a voluntary remand of the CISWI rule without vacature. The EPA's request for a voluntary remand of the final CISWI rule was intended to allow the EPA to address concerns related to the EPA's procedures for establishing MACT floors for CISWI units in light of the DC Circuit Court's decision in *Cement Kiln Recycling Coalition v. EPA*, 255 F.3d 855 (DC Cir. 2001).

Neither the EPA's granting of the petition for reconsideration, nor the Court's order granting a voluntary remand, stay, vacate or otherwise influence the effectiveness of the currently existing CISWI regulations. Specifically, section 307(d)(7)(B) of the

CAA provides that "reconsideration shall not postpone the effectiveness of the rule," except that "[t]he effectiveness of the rule may be stayed during such reconsideration \* \* \* by the Administrator or the court for a period not to exceed three months." In this case, neither the EPA nor the court stayed the effectiveness of the final CISWI regulations in connection with the reconsideration petition. Likewise, the DC Circuit granted the EPA's motion for a remand without vacature. Therefore, the Court's remand order had no impact on the effectiveness of the current CISWI regulations. Because the existing CISWI regulations remain in full effect, the EPA's obligation under section 129(b)(3) of the CAA to promulgate a Federal plan (to implement those regulations for existing units that are not covered by an approved and effective State plan) remains unchanged.<sup>1</sup> Therefore, the EPA is complying with its statutory obligations by promulgating the Federal plan for CISWI units.

To the extent that the EPA might take action in the future that results in changes in the underlying CISWI rule, in response to the petition for reconsideration or in response to the voluntary remand, the EPA will simultaneously amend this Federal plan to reflect any such changes. If such changes become necessary, interested parties, including States and sources, will have the opportunity to provide comments, and the EPA will reasonably accommodate the concerns of commenters as appropriate.

### *D. Status of State Plan Submittals*

Sections 111(d) and 129(b)(2) of the CAA, as amended, 42 U.S.C. 7411(d) and 7429(b)(2), authorize EPA to develop and implement a Federal plan for CISWI located in States with no approved and effective State plan. Table 2 summarizes the current status of State plans. The CISWI covered in EPA-approved State plans are not subject to the CISWI Federal plan, as of the effective date specified in the Federal Register notice announcing the EPA's approval of the State plan. The EPA is not expecting State plans to be submitted by the States that submitted negative declarations. However, in the unlikely event that there are CISWI units located in these States, this Federal plan would automatically apply to such CISWI units.

<sup>1</sup> Similarly, the obligations of States and sources are unaffected by the reconsideration petition and the remand.