

compliance and how to accomplish this procedurally. The Federal plan is being implemented under the legal authority of section 111 as well as section 129. For plans to implement EG under section 111 of the CAA, the broad procedural approach to be followed is given in the Code of Federal Regulations at 40 CFR part 60, subpart B. Specifically, paragraphs 60.24(f)(1) to (3) provide criteria for resolving the question of how to decide when it is appropriate to allow affected facilities additional time to achieve compliance. In particular, there must be a determination that meeting the initial compliance date would be unreasonably costly, physically impossible, or otherwise unreasonable. The petition requirements in § 62.14536 for sources to request one-year compliance extensions were included in the proposed rule for the express purpose of addressing these requirements.

We have consistently advised States developing State plans to look to the HMIWI Federal plan for guidance regarding a detailed process for addressing compliance extensions. Similarly, we are following the general procedural approach of the HMIWI Federal plan for the CISWI Federal plan. Our decision to take this path was based upon the knowledge that the HMIWI Federal plan approach had previously undergone notice and comment and that its efficacy had been tested in practice through implementation of the HMIWI Federal plan. Thus, we believe that the proposed criteria for compliance extensions constitute a reasonable and appropriate solution to a known problem and are leaving those criteria in the final rule.

The same commenter (IV-G-02) asked us to revise the performance test timing requirements in § 62.14665 to allow at least 180 days after final compliance date for the initial performance test. He claimed that 90 days after the final compliance date would be insufficient time to coordinate the operations and emissions test schedules and complete the final performance test. He noted that § 60.2705 of the CISWI emissions guidelines allows CISWI units subject to a State plan up to 180 days after the final compliance date for conducting an initial performance test. The commenter believes the performance test timing requirements for the CISWI units subject to Federal plan should be consistent with the performance test timing requirements for the CISWI units subject to a State plan. The commenter noted that such a change would make the CISWI Federal plan consistent with the CISWI emission guidelines.

The 180-day time period to conduct compliance testing originated in the 1970s, when industry commented that there were not enough qualified testers to perform the surge of testing that was expected as the original major rules took effect. At the time, there was enough credibility to the argument that rule writers allowed a full 180 days (6 months) to conduct compliance testing. This then became a common allowance in subsequent NSPS and EG. Under this Federal plan, there are relatively few CISWI units to be tested, qualified testers are abundant, and there is sufficient lead time for CISWI owners and operators to coordinate operations and emissions testing.

While, as the commenter observes, the EG allow States to give sources up to 180 days after the final compliance date to complete performance testing, 180 days is the maximum amount of time that may be allowed. Implementing authorities may require performance testing more quickly. As discussed above, sufficient test equipment and personnel are available. In this case, the EPA expects that 90 days is appropriate and sufficient time to coordinate the operations and emissions test schedules and complete the final performance test.

This approach has the advantage of reducing the duration of the period of uncertainty about compliance status between the actual compliance date and the time that a final test report has been submitted and approved. While sources are liable for their compliance, or lack thereof, from the compliance date onward, there exists a time of uncertainty until testing has been completed and approved by all relevant parties. Since the proposed plan allows sources two months following the initial performance test to submit test reports, the actual period of uncertainty over compliance status is potentially eight months with a 180 day testing delay. Should a source fail its performance test, it is immediately subject to enforcement consequences for its actions dating from the compliance date until such time as a performance test is successfully passed. However, the task of the agency responsible for enforcement is complicated by forced reliance upon a combination of data obtained at an unsuccessful performance test and data obtained from continuous monitoring systems. In developing the Federal plan, we have sought to reduce the potential negative impacts associated with this period of uncertainty. At the same time, we are not entirely satisfied that the complete elimination of a delay in performance testing after the compliance date is appropriate and, hence, we proposed a

three month period. In this specific case, some sources may receive compliance extensions allowing up to two years from the date of publication of the this final rule. It seems reasonable that such sources would have more than enough time to arrange and complete performance testing ahead of their extended compliance date. For most sources, which will spend the next year planning and installing emission control systems, we concluded that some additional time after the compliance date may be needed to complete performance testing. Thus, we have retained the requirement to conduct the initial performance test no later than 90 days after the final compliance date. In doing so, we have balanced the need for timely assurance of compliance with the practicalities of scheduling and completing performance testing.

C. Air Curtain Incinerators

We received two statements of opinion arguing against requiring title V operating permits for air curtain incinerators (ACI). One commenter (IV-D-01) representing a State air pollution control agency noted that the proposed rules were clearly written to specify that ACI would be required to obtain title V operating permits. He correctly observed that the EG and the NSPS do not specify that ACI should obtain a title V permit and requested that we change the final rule language in the Federal plan to read the same as EG and NSPS. He went on to express his opinion that doing so would result in ACI not being permitted under title V. This would be acceptable to the commenter who expressed his belief that the CAA does not require existing ACI (which burn only the particular wastes specified under the CAA) to operate under a title V permit. He presented a rationale for this belief. He first noted that section 129 of the CAA provides for State plans (and Federal plans) for CISWI under the combined authority of sections 129 and 111 of the CAA. His rationale first quotes section 129(g) of the CAA which states that the term "solid waste incineration unit" does not include, among other things, "air curtain incinerators provided that such incinerators only burn wood wastes, yard wastes and clean lumber and that such air curtain incinerators comply with opacity limitations to be established by the Administrator by rule."

His next step is to focus upon the language specific to title V operating permits in section 129(e) wherein the CAA states "Beginning (1) 36 months after the promulgation of a performance standard under subsection (a) and