

section 111 *applicable to a category of solid waste incineration units*, or (2) the effective date of a permit program under title V in the State in which the unit is located, whichever is later, *each unit in the category shall operate pursuant to a permit issued under this subsection and title V.*" (Emphasis added by commenter) He then combines the two passages cited to conclude that, "by definition, ACIs are not solid waste incineration units as long as they burn only the wastes which are narrowly defined in the Act. Therefore, ACIs are not required to operate under a title V permit."

A second State pollution control agency (IV-G-03) echoed the preceding rationale and conclusions.

We respond by first saying that we were specific in the proposal about the need for title V permits for ACI subject to the Federal plan for the purpose of clarifying that need. We did so in order to clearly present the Agency's view of these sources' title V obligations, and to answer questions such as those voiced by the commenter resulting from the absence of such specific language in the EG and NSPS. The Agency has consistently maintained that operating permits are needed for ACI subject to the NSPS and to State plans drafted pursuant to the EG. However, communications we have received since promulgation of the EG and NSPS pointed to the advisability of specifically clarifying the matter in the preamble to the Federal plan and in the rule itself. Thus, to facilitate the application of title V to these sources, we have specifically included in this Federal plan language describing the need for title V operating permits.

We disagree with the commenters' conclusion that ACI subject to the CISWI Federal plan need not obtain title V operating permits. As noted by the commenters, section 129 directs the Agency to develop requirements for ACI under the authority of section 111, as well as section 129. Thus, there are two potential origins of title V obligations: Section 129(e) and section 502(a). Accordingly, even if section 129(e) were not applicable, sources would clearly still be subject to title V, based on the general obligation for all sources subject to rules written under the authority of section 111 to have operating permits. Thus, all ACI subject to State plans, Federal plans, or NSPS must obtain title V operating permits.

With regard to the question of when such permit applications are due, we believe that the Act provides sufficient discretion for the Agency to require title V permit applications for ACI in a manner that is consistent with the

obligations of other sources regulated under section 129 and 111. While paragraph 129(g) clearly contemplates exempting certain ACI from the substantive emission standards under paragraphs 129(a) and (b), it is less clear what impact this limited exemption has on such sources' obligations under title V. In general, it is clear that section 129 is meant to apply to ACI; either in full for those ACI that do not meet the limited criteria of the section 129(g) exemption, or in a more limited fashion (including opacity standards) for those ACIs that qualify for the section 129(g) exemption. For ACIs subject to the opacity standards that EPA adopts under this section, the applicability of the 129(e) title V requirements are made somewhat ambiguous by the wording of paragraph 129(g). However, having established that title V operating permits for ACI are required as a matter of law (under either 129(e) or 502(a)), we believe that it is a reasonable exercise of the Agency's discretion to require all covered ACI (including those subject to the section 129/111 opacity standards) to apply for title V permits within the period of time permitted by section 129(e). We believe that the intent of section 129 is best served by maintaining consistency in the title V obligations among the universe of sources regulated under this section, thereby ensuring that the contemplated emissions reductions are achieved expeditiously for each category of sources regulated under this section. Moreover, for ACIs subject only to section 129/111 opacity standards, permit applications should be simpler to prepare than for sources subject to full regulation under the section 129 emission standards. Thus, the EPA is retaining the requirement for all sources regulated under section 129/111 (including ACI) to submit title V operating permit applications within the time frame described in section 129(e). Consistent with this requirement, a detailed explanation of when sources regulated under section 129/111 (again, including ACI) must apply for a title V permit, whether subject to a State plan, Federal plan, or NSPS, can be found in Table 6 included in section VIII. of the preamble (titled "Title V Operating Permits").

One of the State agency commenters (IV-G-03) also questioned the utility of requiring title V operating permits for ACI. He said that if ACI are operated properly, the opacity requirement is easily achieved and the Federal plan and the CISWI EG/NSPS rules appear to require nothing more than for the units to operate normally. If such were the

case, he would see requiring ACI to obtain title V operating permits to be a very protracted administrative effort that would achieve no air quality benefits.

As we discussed above, we have concluded that ACI need to obtain title V permits. However, we do not believe that the process for ACI to obtain title V operating permits needs to be as burdensome as suggested by the commenter. In terms of the burden of permitting, it is worth noting that there are only a minimal number of requirements in the Federal plan which apply to those ACI which burn 100% wood wastes, clean lumber, and/or yard waste. And, as noted by the commenter, these requirements are straightforward. Therefore, these requirements should not be difficult to incorporate into a title V application or permit.

In terms of air quality benefits, we believe that title V permits provide air quality benefits by helping to ensure that sources comply with the requirements to which they are subject. Title V requirements help ensure compliance with applicable requirements in a number of ways. For example, title V regulations at 40 CFR part 70 and 71 require sources to self-certify compliance with applicable requirements initially and annually, require sources to promptly report deviations from a permit, and require that title V permits contain monitoring sufficient to assure compliance. This last requirement may necessitate that additional monitoring be added to a permit to supplement the monitoring required by the relevant applicable requirement. In short, title V operating permit requirements can enhance the effectiveness of rules such as this Federal plan. In terms of this particular rule, a title V permit will help ensure that an ACI operates within the parameters established by the Federal plan whether it burns 100% wood wastes, clean lumber, and/or yard waste, or whether it burns other wastes and becomes subject to all of the requirements in the Federal plan.

The commenter also noted the number of exemptions resulting in negative declarations for CISWI and the similarly structured small municipal waste combustors (small MWC) rule. He was of the opinion that since both the CISWI rule and the small MWC rule have numerous exemptions for a wide variety of sources, most states have few if any sources covered by them. As an example, he said his State submitted negative declarations for the small MWC rule and many more States submitted negative declarations for the CISWI rule. In his State, out of hundreds of potential