

permit application, even if the source has not yet received a final title V operating permit from the permitting authority.<sup>2</sup> As a result, the EPA interprets the dates in section 129(e) to be the dates by which complete title V applications need to be submitted. In the absence of such an interpretation, a section 129 source may be required to prepare and submit a complete title V application and the permitting authority would have to issue a permit to this source in a very short period of time.<sup>3</sup>

As a result of the EPA's interpretation, existing CISWI units must submit complete title V applications by the later of the following dates: Not later than 36 months after the promulgation of 40 CFR part 60, subpart DDDD or by the effective date of the State, Tribal, or Federal title V operating permits program that covers the area in which the unit is located. As of today's action, all areas of the country are covered by effective title V programs. As a result, the relevant section 129(e) date for existing CISWI units is 36 months following promulgation of 40 CFR part 60, subpart DDDD, *i.e.*, December 1, 2003. Therefore, December 1, 2003, is the latest possible date by which complete applications for existing CISWI units can be submitted and still be considered timely. This date applies regardless of when the CISWI Federal plan becomes effective or when an EPA approved section 111(d)/129 plan for existing CISWI units becomes effective. If, however, an earlier application deadline applies to an existing CISWI unit, then this deadline must be met in order for the unit to be in compliance

<sup>2</sup> A title V application should be submitted early enough for the permitting authority to find the application either complete or incomplete before the title V application deadline. In the event the application is found incomplete by the permitting authority, the source must submit the information needed to make the application complete by the application deadline in order to obtain the application shield. *See* 40 CFR 62.14835(b) and 40 CFR 70.5(a)(2) and 71.5(a)(2).

<sup>3</sup> For example, in the absence of such an interpretation, if a final Federal plan were to become effective more than 24 months after the promulgation of emission guidelines promulgated under sections 111 and 129, a source, if subject to the Federal plan, would have less than 12 months to prepare and submit a complete title V permit application and to have the permit issued. The EPA's interpretation allows section 129(e) to be read consistently with section 503(d) of the CAA and 40 CFR 70.7(b) and 71.7(b). The EPA's interpretation is also consistent with section 503(c) of the CAA which requires sources to submit title V applications not later than 12 months after becoming subject to a title V permits program. If a permit, as opposed to a title V application, were required by the later of the two deadlines specified in section 129(e), some section 129 sources would be required to have been issued final title V permits in potentially much less time than allotted for non-section 129 sources to submit their title V applications.

with section 502(a) of the CAA. To determine when an application is due for an existing CISWI unit, section 129(e) of the CAA must be read in conjunction with section 503(c) of the CAA.

As stated in section 503(c), a source has up to 12 months to apply for a title V permit once it becomes subject to a title V permitting program.<sup>4</sup> For example, if an existing CISWI unit becomes subject to a title V permitting program for the first time on the effective date of this Federal plan, then the source must apply for a title V permit within 12 months of the effective date of this Federal plan in order to operate after this date in compliance with Federal law.

An application deadline earlier than either of the two dates noted above, *i.e.*, December 1, 2003, or not later than 12 months after the effective date of this Federal plan, may apply to an existing CISWI unit if it is subject to title V for more than one reason. For example, an existing CISWI unit may already be subject to title V as a result of being a major source under one or more of three major source definitions in title V—section 112, section 302, or part D of title I of the CAA. *See* 40 CFR 70.3(a)(1) and 71.3(a)(1) (subjecting major sources to title V permitting) and 40 CFR 70.2 and 71.2 (defining major source for purposes of title V). *See also* 40 CFR 70.3(a) and (b) and 71.3(a) and (b) for a list of the applicability criteria which trigger the requirement to apply for a title V permit.

If an owner or operator is already subject to title V by virtue of some requirement other than this Federal plan and has submitted a timely and complete permit application, but the draft title V permit has not yet been released by the permitting authority, then the owner or operator must supplement the title V application by including the applicable requirements of this Federal plan in accordance with 40 CFR 70.5(b) or 71.5(b). If an existing CISWI unit is a major source or is part of a major source, is subject to this Federal plan, and is already covered by a title V permit with a remaining permit term of three or more years on the effective date of this Federal plan, then the owner or operator will receive from his permitting authority a notice of intent to reopen his source's title V

<sup>4</sup> If a source is subject to title V for more than one reason, the 12-month time frame for submitting a title V application is triggered by the requirement which first causes the source to become subject to title V. As provided in section 503(c) of the CAA, permitting authorities may establish permit application deadlines earlier than the 12-month deadline.

permit to include the requirements of this Federal plan. Reopenings required for such CISWI units must be completed not later than 18 months after the effective date of this Federal plan in accordance with the procedures established in 40 CFR 70.7(f)(1)(i) or 71.7(f)(1)(i). If an existing CISWI unit subject to this Federal plan does not meet the above criteria, *e.g.*, the unit is part of a nonmajor source or is covered by a permit which has a remaining term of less than 3 years on the effective date of this Federal plan, then the permitting authority does not need to reopen the source's permit, as a matter of Federal law, to include the requirements of this Federal plan.<sup>5</sup> However, the owner or operator of a source subject to a section 111/129 Federal plan remains subject to, and must act in compliance with, section 111/129 requirements and all other applicable requirements to which the source is subject regardless of whether these requirements are included in a title V permit. *See* 40 CFR 70.6(a)(1), 70.2, 71.6(a)(1) and 71.2.

The EPA has recently become aware that there has been some confusion regarding the title V obligations of section 129 sources that are subject to standards or regulations under sections 111 and 129. We are therefore including Table 6 to help clarify when CISWI units (even those not subject to this Federal plan) must apply for a title V permit. While Table 6 provides specific information relative to CISWI units, the same title V obligations apply to all section 129 sources subject to standards or regulations under sections 111 and 129. Of course, specific deadlines will vary for other section 129 sources depending on when the relevant NSPS is promulgated, when the relevant State or Tribal section 111(d)/129 plan is approved by the EPA and becomes effective, etc. Lastly, Table 6 takes into account that as of the promulgation date, *i.e.*, December 1, 2000, for the NSPS (subpart CCCC of part 60) and emission guidelines (subpart DDDD of part 60) for CISWI units, every area of the country was covered by a title V permits program under 40 CFR part 70 or part 71. This point is relevant because a section 111/129 standard cannot trigger the requirement for a source to apply for a title V permit unless a title V permits program is in

<sup>5</sup> *See* The CAA section 502(b)(9); 40 CFR 70.7(f)(1)(i) and 71.7(f)(1)(i). Owners or operators of CISWI units, which have been permitted and are subject to this Federal plan, may wish to consult their operating permits program regulations or permitting authorities to determine whether their permits must be reopened to incorporate the requirements of this Federal plan.