

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 emission 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, establishes 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. Puerto Rico's Submittal

On May 20, 2003, the Puerto Rico Environmental Quality Board (PREQB) submitted to EPA a section 111(d)/129 plan to implement 40 CFR part 60, subpart DDDD—Emission Guidelines, for existing CISWI units located in the Commonwealth of Puerto Rico. PREQB's submittal included: Enforceable mechanisms; the necessary legal authority; inventory of CISWI units; emissions inventory; enforceable compliance schedules; testing, monitoring, recordkeeping, and reporting requirements; record of public hearing; and a provision for annual state progress reports.

III. Review of Puerto Rico's Submittal

A. Identification of Enforceable Mechanism for Implementing the EG

40 CFR 60.24(a) requires that a section 111(d) plan include emissions standards, defined in 40 CFR 60.21(f) as "a legally enforceable regulation setting forth an allowable rate of emissions into the atmosphere, or prescribing equipment specifications for control of air pollution emissions."

On June 4, 2003, Puerto Rico adopted revisions to Rule 102 and Rule 405 of the Puerto Rico Regulations for the Control of Atmospheric Pollution (PRRCAP), entitled "Definitions" and "Incineration", respectively. Revised rules 102 and 405 became effective on July 4, 2003, and are intended to control air emissions from existing CISWI units located in Puerto Rico.

B. Demonstration of the State's Legal Authority to Carry Out the Section 111(d) State Plan as Submitted

40 CFR 60.26 requires that a section 111(d) plan demonstrate that the state has the necessary legal authority to adopt and implement the plan. In order to make this demonstration, the plan must show that the state has the legal authority to adopt emission standards and compliance schedules for the designated facilities; enforce the applicable laws, regulations, emission standards and compliance schedules, including the ability to obtain injunctive relief; the authority to obtain information from the designated facilities in order to determine compliance, including the authority to require recordkeeping from the facilities, to make inspections and to conduct tests at the facilities; the authority to require designated facilities to install, maintain and use emission monitoring devices; the authority to require periodic reporting to the state on the nature and amounts of emissions from the facility; and the authority for the state to make such emissions data available to the public. Puerto Rico has demonstrated all these elements. As a result, Puerto Rico has demonstrated that it has sufficient authority to adopt rules governing existing CISWI units and that the PREQB has sufficient legal authority to enforce these rules and to develop and administer this CISWI plan.

C. Inventory, Including Emissions, of Existing CISWI Units in Puerto Rico Affected by the State Plan

40 CFR 60.25(a) requires that a section 111(d) plan include a complete source inventory of all existing CISWI units (i.e., those CISWI units that commenced construction on or before November 30, 1999) in Puerto Rico that are subject to the plan. 40 CFR 60.25(a) also requires an estimate of the regulated pollutants. A list of the existing CISWI units in Puerto Rico and emission estimates for organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter (including opacity) for each existing CISWI unit located in Puerto Rico, has been submitted as part of Puerto Rico's CISWI plan.

D. Emission Limitations for CISWI Units

40 CFR 60.24(c) specifies that a state plan must include emission standards that are no less stringent than the EG (except as specified in 40 CFR 60.24(f) which allows for less stringent emission limitations on a case-by-case basis if

certain conditions are met). 40 CFR 60.2875 contains the emissions standards applicable to existing CISWI units. Subsection 405(c)(2) of the PRRCAP includes emission limitation requirements consistent with 40 CFR 60.2875.

E. Compliance Schedules

A state's section 111(d) plan must include a compliance schedule that owners and operators of affected CISWI units must meet in complying with the requirements of the plan. 40 CFR 60.2535 indicates that final compliance should be achieved as expeditiously as practicable after EPA approval of the state plan but no later than December 1, 2005 or three years after the effective date of the state plan approval, whichever is sooner. If the owner or operator of a CISWI unit plans to achieve compliance more than one year following the effective date of the state plan approval, then two increments of progress must be met, which are; submit a final control plan; and achieve final compliance.

Subsection 405(c)(8) of the PRRCAP includes the increments of progress and the dates by which those increments must be met, which are, submit final control plan six months after the effective date of EPA plan approval and achieve final compliance 18 months after the effective date of EPA plan approval, or by December 1, 2005, whichever date is earlier.

F. Testing, Monitoring, Recordkeeping and Reporting Requirements

Subsection 405(c)(5) of the PRRCAP includes the performance testing requirements and testing methods. Subsection 405(6) includes the monitoring requirements including the monitoring equipment and parameters to be used. Subsection 405(c)(7) requires that all designated CISWI facilities subject to the rule keep appropriate records of the operation and maintenance of the CISWI units. Subsection 405(c)(7) also includes the reporting requirements.

G. Record of the Public Hearing on the State Plan

On January 15, 2003, Puerto Rico held a public hearing on its CISWI plan, including the revisions to Rules 102 and 405 of the PRRCAP. PREQB included in its May 20, 2003, submittal to EPA, copies of the public notices and public hearing record.

H. Submittal of Annual State Progress Reports to EPA

40 CFR 60.25(e) and (f) requires states to submit to EPA annual reports on the