

### B. Why Is EPA Approving the Virgin Islands' Negative Declaration?

EPA has evaluated the negative declaration submitted by the Virgin Islands for consistency with the Clean Air Act (Act), EPA guidelines and policy. EPA has determined that the Virgin Islands' negative declaration meets all applicable requirements and, therefore, EPA is approving the Virgin Islands' certification that there are no existing CISWI units in operation throughout the Territory. The Virgin Islands has certified in its negative declaration that there are no CISWI units that meet the EG criteria based on file review, inspections, and a territory-wide search.

EPA's approval of the Virgin Islands' negative declaration is based on the following:

(1) The Virgin Islands has met the requirements of § 60.23(b) in Title 40, part 60, subpart B of the Code of Federal Regulations (40 CFR part 60) for submittal of a letter of negative declaration that certifies there are no existing facilities within the Territory. Such certification exempts the Virgin Islands from the requirements to submit a plan.

(2) EPA's own source inventory files indicate there are no existing CISWI units operating within the Territory of the Virgin Islands.

### C. What if an Existing CISWI Unit Is Discovered in the Virgin Islands After Today's Action Becomes Effective?

Section 60.2530 of 40 CFR part 60, subpart DDDD (65 FR 75364, December 1, 2000) requires that if, after the effective date of today's action, an existing CISWI unit is found within the Virgin Islands, the Federal Plan implementing the EG would automatically apply to that CISWI unit until a State Plan is approved by EPA.

The Federal Plan was proposed on November 25, 2002 (67 FR 70640) and is expected to be promulgated in the near future. The Federal Plan will apply to CISWI units in states, commonwealths, and territories (1) where the EPA inventory identifies CISWI units and a plan is required and has not been submitted and approved by EPA and (2) where the EPA inventory did not identify any CISWI unit and a negative declaration has been received and approved by EPA (such as the Virgin Islands) and a CISWI unit is subsequently identified in the State or territory. If and when a State Plan, or in this case a Territorial Plan, for CISWI units is submitted and approved, the Federal Plan would no longer apply.

### D. What Is the Background for Emission Guidelines and State Plans?

Section 111(d) of the Act requires that pollutants controlled under New Source Performance Standards (NSPS) must also be controlled at existing sources in the same source category. Once an NSPS is issued, EPA then publishes an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop State Plans to adopt the EG into their body of regulations.

Under section 129 of the Act, the EG is not federally enforceable. Section 129(b)(2) of the Act requires states to submit State Plans to EPA for approval. State Plans must be at least as protective as the EG, and they become Federally enforceable upon EPA approval. The procedures for adopting and submitting State Plans, as well as state requirements for a negative declaration, are in 40 CFR part 60, subpart B.

EPA originally issued the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules (60 FR 65414).

### E. Where Can You Find the EG Requirements for CISWI Units?

On December 1, 2000, under sections 111 and 129 of the Act, EPA issued the NSPS applicable to new CISWI units and the EG applicable to existing CISWI units. The NSPS and EG are codified at 40 CFR part 60, subparts CCCC (65 FR 75350 December 1, 2000) and DDDD (65 FR 75362 December 1, 2000), respectively.

### F. Who Must Comply With the EG Requirements?

If you own or operate a combustion device that combusts commercial and industrial waste and you (1) began the construction of your CISWI unit on or before November 30, 1999 or (2) began reconstruction or modification of your CISWI unit prior to June 1, 2001, you must comply with these requirements. See § 60.2555 of 40 CFR part 60, subpart DDDD for a list of CISWI units exempt from the Federal requirements.

### G. What Are EPA's Conclusions?

EPA has determined that the Virgin Islands' negative declaration meets all federal requirements and, therefore, EPA is approving the Virgin Islands' certification that no applicable CISWI

units are in operation within the Territory of the U.S. Virgin Islands. If any existing CISWI units are discovered in the future, the Federal Plan implementing the EG would automatically apply to that CISWI unit until the State Plan is approved by EPA.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the Territory's submittal should adverse comments be filed. This rule will be effective April 28, 2003 without further notice unless the Agency receives adverse comments by March 31, 2003.

If the EPA receives adverse comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

### H. Statutory and Executive Order Reviews

#### *Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

#### *Executive Order 13045*

Executive Order 13045 entitled, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.