

**West Virginia Department of Environmental Protection  
Division of Air Quality**

**Revision to the West Virginia Section 111(d)/129 Plan**

**Control of Air Pollution from Combustion of Solid Waste  
for  
Commercial and Industrial Solid Waste Incineration (CISWI) Units**

DRAFT

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**WEST VIRGINIA § 111(d)/129 PLAN FOR  
CONTROL OF AIR POLLUTION FROM COMBUSTION OF SOLID WASTE FOR  
COMMERCIAL AND INDUSTRIAL SOLID WASTE INCINERATION (CISWI) UNITS**

**I. EXECUTIVE SUMMARY**

Under Sections 111 and 129 of the CAA as amended in 1990, the EPA is required to develop regulations to control air pollutant emissions from CISWI. Section 111 addresses Standards of Performance for Stationary Sources. Section 129 addresses Solid Waste Combustion. Under the authority of these sections The EPA codified regulations governing emissions from new and existing CISWI in Title 40 of the Code of Federal Regulations (C.F.R.) Part 60, Subparts CCCC and DDDD, respectively.

This document serves as a revision to the West Virginia CISWI §111(d)/129 plan (the “plan”) which incorporates the February 7, 2013 reconsidered rules in 40 C.F.R. Part 60, Subparts CCCC and DDDD. Legislative rule 45 C.S.R. 18 - “Control of Air Pollution From Combustion of Solid Waste”, effective July 1, 2016, is included as Appendix A of the plan. Rule 45 C.S.R. 18 adopts standards of performance and establishes emission guidelines for commercial and industrial solid waste incineration units pursuant to Sections 111 and 129 of the CAA for the control of certain designated pollutants from commercial and industrial solid waste incineration units in West Virginia. This rule codifies general procedures and criteria to implement certain standards of performance for new stationary sources and emission guidelines for existing units promulgated by The EPA as set forth in 40 C.F.R. Part 60. The Secretary adopted 40 C.F.R. Part CCCC by reference under 45 C.S.R. 18.

**II. BACKGROUND**

The West Virginia DAQ last submitted a revision to the plan on May 11, 2009 which was approved by the EPA and published at 74 Fed. Reg. at 38344 (October 2, 2009). The background is from that time forward.

On March 21, 2011, the EPA promulgated final updates to the New Source Performance Standards (NSPS) and Emission Guidelines (EG) for Existing CISWI Units, collectively referred to as the “2011 CISWI Rules.” The 2011 CISWI Rules impacted facilities that own any emission unit that “combusts, or has combusted in the preceding six months, any solid waste as that term is defined in 40 C.F.R. Part 241. Along with the 2011 CISWI Rules, the EPA simultaneously initiated a reconsideration process for certain aspects. On May 18, 2011, the EPA published a notice delaying the effective date of the CISWI rule until the completion of the recently announced reconsideration or the completion of litigation on the rule, whichever is earlier. On December 23, 2011 the EPA published the CISWI reconsideration proposal (40 C.F.R. Part 60, Subparts CCCC and DDDD, Commercial and Industrial Solid Waste Incineration Units: Reconsideration and Proposed Amendments) and accepted comments until February 21, 2012. The delay of the effective date of the CISWI rule was vacated by the DC Circuit on January 9, 2012. Due to the vacatur, the CISWI rules were suddenly, and without warning, effective. On

February 7, 2012, the EPA issued a “No Action Assurance Letter” to establish enforcement discretion not to pursue enforcement action for violations of certain notification deadlines in the final CISWI rule. The West Virginia DAQ revised 45 C.S.R. 18 accordingly; however, a plan was not submitted in 2013 because the CISWI rule was revised again.

On February 7, 2013, the EPA issued the “reconsidered” rules for CISWI units, and promulgated 40 C.F.R. Part 60, Subparts CCCC and DDDD (Commercial and Industrial Solid Waste Incineration Units: Reconsideration and Final Amendments). In accordance with the reconsidered rules, a facility that commenced construction on or before June 4, 2010, or for which reconstruction or modification was commenced on or prior to August 7, 2013 are considered an existing source, otherwise the facility is considered a new source and must comply with NSPS, Subpart CCCC. West Virginia DAQ revised 45 C.S.R. 18 accordingly; however, a plan was not submitted in 2014 because the Affirmative Response provision were removed as a result of an April 18, 2014 Court ruling.

The affirmative defense provisions in section 9.6.n were removed along with minor revisions to the continuous oxygen emission monitoring for energy recovery units in section 9.10.q. The revisions to 45 C.S.R. 18 became effective July 1, 2016.

**III. PLAN REQUIREMENTS ( 40 C.F.R. Part 60, Subpart DDDD §60.2515)**

**1. SOURCE INVENTORY FOR AFFECTED CISWI FACILITIES  
[40 C.F.R. §60.2515(a)(1) and §60.25(a)]**

The plan shall include:

A complete source inventory of affected CISWI in West Virginia regulated by the Emission Guidelines must be submitted as part of the West Virginia Section 111(d)/129 plan. Sources affected by the CISWI Emission Guidelines are the following: (1) incinerators, (2) small remote incinerators, (3) energy recovery units, and (4) waste-burning kilns. The definition of these types of units can be found in 40 C.F.R. §60.2875.

Subpart B

Each plan shall include an inventory of all designated facilities.

West Virginia Plan:

The West Virginia source inventory continues to have one (1) operating CISWI unit. The facility name has been changed since the last plan revision. The updated information is provided below:

Facility Name	Address
The Chemours Company, Washington Works, WV	P.O. Box 1217, Parkersburg, WV 26181

Any other sources not identified above must be required to comply with the emission and performance standards, including compliance schedule and reporting requirements, established in this West Virginia Plan.

**2. EMISSION INVENTORY FOR AFFECTED CISWI FACILITIES  
[40 C.F.R. §60.2515(a)(2) and §60.25(a)]**

The plan shall include:

An emission inventory, based on the CISWI source inventory, for the nine designated pollutants of 40 C.F.R. Part 60, Subpart DDDD is also required to be included in the West Virginia Section 111(d)/129 plan.

Subpart B

Each plan shall include emission data for the designated pollutants.

West Virginia Plan:

The table below provides emission rates, emission concentrations and methods of emission estimation from the most recent performance test:

<b>Pollutant</b>	<b>Concentration Standard</b>	<b>Chemours Washington Works Average Test Result</b>	<b>Units</b>
Particulate Matter	70	7.2 <sup>a</sup>	mg/dscm
Lead	0.04	0.0062 <sup>b</sup>	mg/dscm
Hydrogen Chloride	62	0.0132 <sup>a</sup>	ppmdv
Mercury	0.47	0.0001 <sup>c</sup>	mg/dscm
Cadmium	0.004	0.0001 <sup>c</sup>	mg/dscm
Sulfur Dioxide	20	1.36 <sup>c</sup>	ppmdv
Nitrogen Oxides	388	15.07 <sup>c</sup>	ppmdv
Carbon Monoxide	157	1.57 <sup>c</sup>	ppmdv
Dioxin/Furan	0.41	0.003 <sup>c</sup>	ng/dscm (TEQ)
Opacity	10%	0.2 <sup>b</sup>	%

<sup>a</sup> From performance test conducted June 23, 2015

<sup>b</sup> From performance test conducted February 8, 2012

<sup>c</sup> From performance test conducted 2006

**3. COMPLIANCE SCHEDULES  
[40 C.F.R. §§60.2515(a)(3), 60.2535(b), and 60.24]**

Model Rule:

For CISWI facilities subject to the requirements of 40 C.F.R. 60, Subpart DDDD as promulgated on February 7, 2013, the facility must achieve compliance in accordance with the milestones shown below:

<b>MILESTONE</b>	<b>COMPLIANCE DATE</b>
Submit a final control plan	As expeditiously as practicable, but not later than February 7, 2016
Compliance Required	February 7, 2018

West Virginia Plan:

45 C.S.R. 18 §9.3 specifies compliance times and increments of progress. The owner or operator of an existing CISWI unit that cannot achieve compliance within one year after the effective date of West Virginia §111(d)/129 plan approval shall comply with the increments of progress set forth in Table 18-1C.

**4. EMISSION LIMITATIONS, OPERATOR TRAINING AND QUALIFICATION REQUIREMENTS, WASTE MANAGEMENT PLAN, AND OPERATING LIMITS [40 C.F.R. §§60.2515(a)(4)]**

The West Virginia Section 111(d)/129 plan must include emission limitations, operator training and qualification requirements, a waste management plan, and operating limits.

**a. Emission Limitations  
[40 C.F.R. §§ 60.2670, 60.2680, 60.2685, and 60.24(a)(b)]**

Model Rule:

The owner or operator must meet the emission limitations for each CISWI unit, including bypass stack or vent, specified in table 2 of this subpart or tables 6 through 9 of this subpart by the final compliance date. The emission limitations apply at all times the unit is operating including and not limited to startup, shutdown, or malfunction.

Subpart B:

Each plan shall include emission standards that shall either be based on an allowance system or prescribe allowable rates of emissions except when it is clearly impracticable. Where emission standards prescribing equipment specifications are established, the plan shall, to the degree possible, set forth the emission reductions achievable by implementation of such specifications, and may permit compliance by the use of equipment determined by the State to be equivalent to that prescribed. Emission standards shall apply to all designated facilities within the State.

West Virginia Plan:

Under 45 C.S.R. 18 §9.6, West Virginia requires existing CISWI units to comply with emission limits presented in Tables 18-2C or 18-6C through 18-9C of the rule, by the final compliance date set forth in §9.3.b. These tables specify emission limits for opacity and all nine pollutants identified in 40 C.F.R. Part 60, Subpart DDDD. The emission limits contained in 45 C.S.R. 18 are the same as those provided in the model rule and comply with the requirements of subpart B.

**b. Operator Training and Qualification  
[40 C.F.R. §60.2635 through §60.2665]**

Model Rule

The owner or operator of each CISWI facility must comply with the operator training and qualification requirements in 40 C.F.R. §60.2635 through 60.2665 and must have at least one fully trained and qualified CISWI operator on duty or available within one hour when operating the facility. The trained and qualified CISWI operator may operate the facility or directly supervise one or more CISWI operators. Each trained and qualified CISWI operator must meet the requirements specified in 40 C.F.R. §60.2635 through §60.2665.

The owner or operator of each CISWI must maintain at the facility, comprehensive documentation concerning operating procedures and requirements as set forth in 40 C.F.R. §60.2660. To maintain qualifications, the owner or operator must complete an annual review or

refresher course that meets the requirements of 40 C.F.R. §60.2650. As specified in 40 C.F.R. §60.2640, the operator training and qualification requirement shall be met by the later of the three dates specified in 40 C.F.R. §60.2640 (a) through (c).

West Virginia Plan

45 C.S.R. 18 §9.5 provides operating training and qualification requirements that adopted the provisions in the model rule.

**c. Waste Management Plan Requirements  
[40 C.F.R. §60.2620 through §60.2630]**

Model Rule

The owner or operator of the existing CISWI shall prepare a waste management plan which meets the requirements of 40 C.F.R. §60.2620 through §60.2630 and shall submit the plan to the Director within 60 days after the initial performance test. In order to reduce or eliminate toxic emissions from incinerated waste, the waste management plan shall specify the feasibility and the methods used to reduce components of solid waste from the waste stream.

West Virginia Plan

45 C.S.R. 18 subsection 9.4 includes waste management plan requirements that adopted the provisions of the model rule.

**d. Operating Limits [40 C.F.R. §§60.2675 and 60.2680]**

Model Rule

If you use a wet scrubber(s) to comply with the emission limitations, you must establish operating limits for up to four operating parameters (as specified in table 3 of this subpart).

West Virginia Plan

Under 45 C. S. R. 18 subdivision 9.6 (Emission Limitations and Operating Limits), West Virginia requires existing CISWI to comply with emission limits presented in Tables 18-2C, 18-4C, 18-6C, 18-7C, 18-8C, and 18-9C of the rule, that is included in this plan. These tables specify emission limits for opacity and all nine pollutants identified, and specify the toxic equivalency factors for dioxins/furans.

For facilities that use a wet scrubber to comply with the emission limitations, operating limits for up to four operating parameters (as specified in Table 18-3C of the rule) must be established.

**5. PERFORMANCE TESTING, MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS  
[40 C.F.R. §60.2515(a)(5)]**

The owner or operator of existing CISWI must demonstrate compliance with applicable testing, monitoring, recordkeeping and reporting requirements in 40 C.F.R. Part 60, Subpart DDDD.

**a. Compliance and Performance Testing  
[40 C.F.R. §60.2690 through §60.2800 and §60.24(b)(2)]**

Model Rule

Existing CISWI facilities which are subject to the emission limit tables of Subpart DDDD must comply with the compliance and performance testing requirements in 40 C.F.R. §60.2690 through §60.2800.

### Subpart B

Test methods and procedures for determining compliance with the emission standards shall be specified in the plan. Methods other than those specified in appendix A to this part may be specified in the plan if shown to be equivalent or alternative methods as defined in §60.2 (t) and (u).

### West Virginia Plan

Section 9.7 of 45 C.S.R. 18 defines the performance testing requirements, section 9.8 defines the initial compliance requirements, and section 9.9 defines the continuous compliance requirements. The performance test and compliance requirements provided in Tables 18-2C, 18-6C, 18-7C, 18-8C, and 18-9C of 45 C.S.R. 18 adopted the information provided in Tables 2, 6, 7, 8, and 9 of the Model Rule. The requirements of sections 9.7, 9.8, and 9.9 along with Tables 18-2C, 18-6C, 18-7C, 18-8C, and 18-9C meet the performance testing and compliance provisions of the model rule and comply with the subpart B requirements.

### **Initial Compliance Requirements [40 C.F.R. §60.2700 through §60.2705]**

40 C.F.R. §60.2700 and §60.2705 provide that a State Plan must require that the owner or operator of each CISWI that is subject to the emission limits conduct an initial performance test to determine compliance with the emission limitations in Table 2 of this Subpart and Tables 6 through 9 of this Subpart, to establish compliance with any opacity operating limits in §60.2675, and to establish operating limits using the procedures in §60.2675 or §60.2680. The initial performance test must be conducted using the test methods listed in Table 2 of this Subpart and Tables 6 through 9 of this Subpart and the procedures in §60.2690. The use of the bypass stack during a performance test shall invalidate the performance test. You must conduct a performance evaluation of each continuous monitoring system within 60 days of installation of the monitoring system.

Pursuant to 40 C.F.R. §60.2705 the initial performance test shall be conducted no later than 180 days after the final compliance date.

If a CISWI unit has commenced or recommenced combusting a solid waste at an existing combustion unit at any commercial or industrial facility and has conducted a test consistent with the provisions of this Subpart while combusting the given solid waste within the 6 months preceding the reintroduction of that solid waste in the combustion chamber the facility does not need to retest until 6 months from the date of reintroduction of that solid waste.

If a CISWI unit commences combusting or recommences combusting a solid waste at an existing combustion unit at any commercial or industrial facility and has not conducted a performance test consistent with the provisions of this Subpart while combusting the given solid waste within the 6 months preceding the reintroduction of that solid waste in the combustion chamber, the facility must conduct a performance test within 60 days commencing or recommencing solid waste combustion.

45 C.S.R. 18, section 9.8 defines the initial compliance requirements for CISWI units located in West Virginia including a requirement that performance tests be conducted to determine compliance with the emission limitations in Table 18-2C and Tables 18-6C through 18-9C, and to establish operating limits. The performance tests shall be conducted using the test methods listed in Table 18-2C and Tables 18-6C through 18-9C and the corresponding procedures in sections 9.6 and 9.7.

## **Continuous Compliance Requirements [40 C.F.R. §60.2710 through §60.2725]**

The state plan shall include the continuous compliance requirements in 40 C.F.R. §60.2710 through §60.2725.

The owner or operator of any existing facility shall conduct an annual performance test in accordance with the methods listed in Table 2 or Tables 6 through 9 and procedures in §60.2690, for particulate matter, hydrogen chloride, and opacity as specified under §60.8 to determine compliance with the emission limitations. The operating parameters specified in §60.2675 or established under §60.2680 shall be monitored continuously and only the same type of waste used to establish operating limits shall be burned during the performance test.

Pursuant to 40 C.F.R. §60.2715 and §60.2716, the owner or operator shall conduct an annual performance test for particulate matter, hydrogen chloride, and opacity between 11 and 13 months of the previous performance test. On an annual basis (no more than 12 months following the previous annual air pollution control device inspection), the facility must complete the air pollution control device inspection described in §60.2706. If compliance with all emission limits is demonstrated for 3 or more consecutive years, performance tests may then be conducted at 36 month intervals provided that full compliance is demonstrated.

45 C.S.R. 18, section 9.9 defines the continuous compliance requirements for CISWI units located in West Virginia including continuous monitoring requirements and the annual performance test requirements for the pollutants listed in Tables 18-2C or Tables 18-6C through 18-9C and opacity for each CISWI unit as required under subsection 9.7. The annual performance test shall be conducted using the test methods provided in Tables 18-2C or Tables 18-6C through 18-9C and the procedures in section 9.7.

### **b. Monitoring [40 C.F.R. §§60.2730, 60.2735, and 60.25(d)]**

#### Model Plan

Existing facilities must demonstrate compliance with the monitoring requirements in 40 C.F.R. Part 60, Subpart DDDD, §60.2730 through §60.2735. Existing CISWI facilities using a wet scrubber to comply with the emission limitation under section §60.2670, shall install, operate, calibrate (to manufacturer's specifications), maintain, and operate devices (or establish methods) for monitoring the value of the operating parameters used to determine compliance with the operating limits, measure and record the values for operating parameters at the frequencies listed in Table 3. If the owner or operator uses a fabric filter to comply with the emission limitation under Subpart DDDD, they shall install, calibrate, maintain, and continuously operate a bag leak detection system as specified in §60.2730(b)(1) through (8). Except for monitoring malfunctions, associated repairs, and required quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments of the monitoring system), the owner or operator shall conduct all monitoring at all times the CISWI unit is operating.

Pursuant to 40 C.F.R. §60.2730(c), the owner or operator using other emission control systems shall install, calibrate (to manufacturer's specification), maintain, and operate the equipment necessary to monitor compliance with the site-specific operating limits established using procedure in §60.2680.

Pursuant to 40 C.F.R. §60.2735(b), the owner or operator of the CISWI shall not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or quality control activities for meeting the requirements of Subpart DDDD, including data averages

and calculations. The owner or operator shall use the data collected during all other periods in assessing compliance with the operating limits.

Subpart B

(b) Each plan shall provide for monitoring the status of compliance with applicable emission standards. Each plan shall, as a minimum, provide for: (1) Legally enforceable procedures for requiring owners or operators of designated facilities to maintain records and periodically report to the State information on the nature and amount of emissions from such facilities, and/or such other information as may be necessary to enable the State to determine whether such facilities are in compliance with applicable portions of the plan. Submission of electronic documents shall comply with the requirements of 40 CFR part 3—(Electronic reporting). (2) Periodic inspection and, when applicable, testing of designated facilities.

(c) Each plan shall provide that information obtained by the State under paragraph (b) of this section shall be correlated with applicable emission standards and made available to the general public.

(d) The provisions referred to in paragraphs (b) and (c) shall be specifically identified.

West Virginia Plan

45 C.S.R. 18 §9.10 specifies the monitoring equipment and parameters requirements and Table 18-3C specifies the operating limits for wet scrubbers. 45 C.S.R. 18 §9.11 specifies the recordkeeping requirements and requires that the specified records specified be maintained for a period of at least five years. The reporting requirements are specified in section 9.12.

In accordance with 45 C.S.R. 18 §13.3, the owner or operator of an existing CISWI unit or air curtain incinerator subject to section 9 shall operate pursuant to a permit issued under §129(e) of the CAA and 45 C.S.R. 30. In accordance with 45 C.S.R. 18 §13.4, the owner or operator of a new CISWI unit shall operate pursuant to a CAA Title V permit in accordance with the requirements of 45 C.S.R. 30. Certified emissions statements are a requirement of the Title V permitting rule 45 C.S.R. 30.

Please refer to section III.4.d for additional information regarding operating limits.

Please refer to section III.8 of this plan for additional information pertaining to identification of enforceable state mechanism for implementation and section III.9 of this plan for additional information pertaining to legal authority.

Prior to adopting the Section 111(d)/129 State Plan, the DAQ allowed the opportunity for public comment and held a public hearing on this plan. Please refer to section III.6 for additional information pertaining to the public participation process.

The West Virginia plan adopts provisions of the model rule and complies with subpart B.

**c. Reporting and Recordkeeping [40 C.F.R. §60.2740 through §60.2800]**

Model Plan

Existing CISWI facilities shall comply with applicable reporting and recordkeeping requirements in 40 C.F.R. §60.2740 through §60.2800.

As required under 40 C.F.R. §60.2740 through §60.2800, the owner or operator of each CISWI unit shall maintain operating records for a period of at least 5 years. All reports must be certified by a responsible official of the CISWI facility and, following the initial report, must be submitted no later than 12 calendar months following the previous submittal. For purposes of

complying with Title V operating permit requirements, the reports shall be submitted on a semi-annual basis.

West Virginia Plan

45 C.S.R. 18 §9.11 specifies the recordkeeping requirements. Records shall be maintained for a period of at least 5 years. Section 9.12 specifies the reporting requirements that are also summarized in Table 18-5C. The recordkeeping and reporting requirements of 45 C.S.R. 18 adopt the corresponding provisions of the model rule and subpart B.

**6. PUBLIC PARTICIPATION [40 C.F.R. §§ 60.2515(a)(6) and 60.23]**

Prior to adopting the Section 111(d)/129 State Plan, the DAQ allowed the opportunity for public comment, held a public hearing on the plan, and provided notification to the EPA in a letter to Christina Fernandez dated September 26, 2016. The public hearing was held on November 1, 2016 at 601 57<sup>th</sup> Street, SE, Charleston, WV at 5:30 p.m. The notice of the public hearing was published as a Class 1 legal advertisement in the Charleston Newspapers and in the State Register. The DAQ has certified that the public hearing was held in accordance with 40 C.F.R. §60.23(d), and will maintain the hearing records required under 40 C.F.R. §60.23(e). The hearing records will be maintained at least 2 years. The public hearing certification, sign-in sheet, and transcript required under C.F.R. §60.23(f) are attached in Appendix B.

**7. PROGRESS REPORTS [40 C.F.R. §§ 60.2515(a)(7) and 60.25(e and f)]**

States must commit in the Section 111(d)/129 Plan to submit annual reports on progress in the implementation of the Emission Guidelines to the EPA. The first progress report concerning existing CISWI units will be submitted to the EPA within one year after approval of the Section 111(d)/129 State Plan. In addition, emission and compliance data must also be reported to Aerometric Information Retrieval System (AIRS).

The annual progress report must include the following information:

1. Enforcement actions initiated against designated facilities during the reporting period, under any emission standard or compliance schedule of the plan.
2. Identification of the achievement of any increment of progress required by the applicable plan during the reporting period.
3. Identification of designated facilities that have ceased operation during the reporting period.
4. Submission of emission inventory data as described in paragraph (a) of this section for designated facilities that were not in operation at the time of plan development but began operation during the reporting period.
5. Submission of additional data as necessary to update the information submitted under paragraph (a) of this section or in previous progress reports.
6. Submission of copies of technical reports on all performance testing on designated facilities conducted under paragraph (b)(2) of this section, complete with concurrently recorded process data.

West Virginia Plan

The West Virginia Department of Environmental Protection, Division of Air Quality last submitted the §111(d)/129 Plan Annual Progress Report for Existing Commercial and Industrial

Solid Waste Incineration Units to Regional Administrator Shawn Garvin, located at Region III of the EPA on July 6, 2016 in accordance with the requirements of 40 C.F.R. §60.25(e). West Virginia continues to commit to submit annual reports on progress in the implementation of the Emission Guidelines to the EPA.

**8. IDENTIFICATION OF ENFORCEABLE STATE MECHANISMS FOR IMPLEMENTATION [40 C.F.R. § 60.2515(a)(8)]**

**a. IMPLEMENTATION OF NEW SOURCE PERFORMANCE STANDARDS**

45 C.S.R. 18, “Control of Air Pollution From Combustion of Solid Waste” rule was approved by the 2016 West Virginia State Legislature with an effective date of July 1, 2016 and is included as Appendix A.

For CISWI Sources, 45 C.S.R. 18 §1.7 incorporates by reference 40 C.F.R. Part 60, Subpart CCCC. Section 8 specifies the requirements for new commercial and industrial solid waste incinerators. Section 8.1 states:

The owner or operator of a commercial and industrial solid waste incineration unit (CISWI unit) under subsection 8.2 shall comply with all applicable standards of performance, requirements and provisions of 40 CFR Part 60 Subpart CCCC, including any reference methods, performance specifications and other test methods associated with Subpart CCCC. No person shall construct, reconstruct, modify, or operate, or cause to be constructed, reconstructed, modified, or operated a new CISWI unit which results in a violation of 40 CFR Part 60 Subpart CCCC, or this rule.

**b. IMPLEMENTATION OF EMISSION GUIDELINES FOR EXISTING CISWI SOURCES**

45 C.S.R. 18 §9.1 requires the owner or operator of an existing CISWI unit to comply with the applicable emission guidelines, compliance times, requirements and provisions of 40 C.F.R. Part 60 Subpart DDDD set forth in section 9 and Tables 18-1C, 18-2C, 18-3C, 18-4C, 18-5C, 18-6C, 18-7C, 18-8C and 18-9C, including any reference methods, performance specifications and other test methods associated with Subpart DDDD. 45 C.S.R. 18 §9.1 also requires that no person shall reconstruct, modify, or operate, or cause to be reconstructed, modified, or operated an existing CISWI unit which results in a violation of the requirements for existing CISWI units set forth in section 9.

45 C.S.R. 18 adopts the provisions of the EPA’s emission guidelines and the model rules contained in 40 C.F.R. Part 60, Subpart DDDD and subpart B.

**9. LEGAL AUTHORITY [40 C.F.R. §§ 60.2515(a)(9) and 60.26(a)]**

Pursuant to 40 C.F.R. §60.26(a), state plans must show that states have legal authority to carry out the plan including the authority to adopt emission standards and compliance schedules applicable to existing facilities and to enforce applicable laws, regulations, standards, compliance schedules and seek injunctive relief.

The DAQ has the statutory and regulatory authority under W.Va. Code §§22-5-1 *et seq.* (Appendix C) to adopt and enforce rules and regulations to implement the State Plan. In particular, W. Va. Code §22-5-4(a)(4) authorizes the Director to promulgate legislative rules

relating to the control of air pollution. The DAQ, effective July 1, 2016, promulgated legislative rule, 45 C.S.R. 18, which incorporates by reference the New Source Performance Standards for CISWI (40 C.F.R. 60, Subpart CCCC). Such incorporation by reference of model legislation is a permissible means of enacting law under West Virginia law. See State v. Grinstead, 206 S.E. 2d 912 (W.Va. 1974). In addition, 45 C.S.R. 18 sets forth the Emission Guidelines contained in 40 C.F.R. Part 60, Subpart DDDD.

The applicable emission standards and other requirements for existing facilities are incorporated by reference in 45 C.S.R. 18 §9.1. The pertinent provisions from the federal regulations relating to compliance schedules for existing facilities are contained in subsections 9, of 45 C.S.R. 18.

Regarding the enforcement of applicable laws, regulations, standards, and compliance schedules, the DEP has several enforcement mechanisms available under State law, including permits, administrative orders, civil and criminal penalties, and injunctive relief.

Since the emission standards and compliance schedules included in the State Plan are codified in 45 C.S.R. 18, any violation of such standards or schedules constitutes a violation of a State rule and is therefore subject to civil penalties of up to \$10,000 for each day of violation and criminal penalties of up to \$25,000 for each day of violation and/or imprisonment for up to one year in jail (W.Va. Code §22-5-6). In addition to civil and criminal penalties, the DEP may seek injunctive relief against any person in violation of 45 C.S.R. 18 (W. Va. Code §22-5-7).

In addition to penalties and injunctive relief, the DEP may compel compliance with 45 C.S.R. 18 through the issuance of administrative orders. Under W. Va. Code §§22-5-4(a)(5) and (6) and 22-5-5, the DEP may issue administrative orders including cease and desist orders and order suspending, modifying or revoking permits. Such administrative orders may be appealed to the Air Quality Board, an administrative board with quasi-judicial powers. The DEP may also collect administrative penalties from a source in violation of a rule under an administrative consent order (W. Va. Code §22-5-4(a)(18)).

Existing facilities may also be required to obtain permits, in which case emission standards and compliance schedules from 45 C.S.R. 18 are included as enforceable permit conditions.<sup>1</sup> Depending upon the nature of the activity and the amount of the emissions, the existing facility may be required to obtain a preconstruction permit under W. Va. Code §22-5-11 and/or an operating permit under W. Va. Code §22-5-12.<sup>2</sup> The permit must ensure compliance with all applicable requirements, including the emission standards and compliance schedules required under 45 C.S.R. 18; W. Va. Code §§22-5-11 and 12; also see WV 45 C.S.R. 13 §5.7 and 5.11 and WV 45 C.S.R. 30 Section 5 and 45 C.S.R. 30 Section 12.

In addition to the authority to adopt and enforce the applicable emission standards and compliance schedules, the DEP has authority to obtain information necessary to determine the compliance status of existing facilities, including requiring facilities to maintain compliance records, pursuant to W.Va. Code §22-5-4(a)(14), which states:

(a) The director is authorized:

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<sup>1</sup> Under W. Va. Code §22-5-6, the violation of a permit is subject to the same enforcement remedies as the violation of a rule.

<sup>2</sup> The State's applicable preconstruction permit program rules consist of 45 C.S.R. 13 for minor sources, 45 C.S.R. 14 for major (PSD) sources, and 45 C.S.R. 19 for sources located in non-attainment areas. The State's operating permit program (Title V program) is found at 45 C.S.R. 30.

(14) To require any and all persons who are directly or indirectly discharging air pollutants into the air to file with the director such information as the director may require in a form or manner prescribed by him or her for such purpose, including, but not limited to, location, size and height of discharge outlets, processes employed, fuels used and the nature and time periods of duration of discharges. Such information shall be filed with the director, when and in such reasonable time, and in such manner as the director may prescribe.

The DEP also has the authority to conduct inspections and tests of existing facilities pursuant to W.Va. Code §22-5-4 (a)(6) and (9), which state:

(a) The director is authorized:

(6) To consider complaints, subpoena witnesses, administer oaths, make investigations and hold hearings relevant to the promulgation of rules and the entry of compliance orders hereunder; and

(9) To enter and inspect any property, premise or place on or at which a source of air pollutants is located or is being constructed, installed or established at any reasonable time for the purpose of ascertaining the state of compliance with this article and rules promulgated under the provisions of this article. No person shall refuse entry or access to any authorized representative of the director who requests entry for purposes of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection: Provided, That nothing contained in this article eliminates any obligation to follow any process that may be required by law.

An additional authority which must be demonstrated in the State Plan is the agency's authority to require the use of monitors and require emission reports of existing facilities. This authority exists in W.Va. Code §22-5-4 (a)(15), which states:

(15) To require the owner or operator of any stationary source discharging air pollutants to install such monitoring equipment or devices as the director may prescribe and to submit periodic reports on the nature and amount of such discharges to the director.

In addition to the general statutory authority discussed above, the DEP has specific regulatory authority under 45 C.S.R. 18 to require existing facilities to comply with operator training and qualification requirements, waste management plans, equipment inspections, monitoring of emissions, keeping of records, and submitting reports in accordance with the applicable provisions of 40 C.F.R. Part 60, Subpart DDDD, and 45 C.S.R. 18 §9.1. Furthermore, the DEP has authority to include conditions in any administrative orders or permits issued to existing facilities to ensure compliance with such conditions. W.Va. Code §§22-5-4(a)(5), 22-5-5, 22-5-11, and 22-5-12.

Lastly, the State must have authority to make emission data from existing facilities available to the public. The DEP has such authority under W.Va. Code §22-5-10, which states in pertinent part:

All air quality data, emission data, permits, compliance schedules, . . . shall be available to the public, except that upon a showing satisfactory to the director . . . that records,

reports, data or information . . . would divulge methods or processes entitled to protection as trade secrets . . . the director shall consider such records . . . confidential: Provided, That such confidentiality does not apply to the types and amounts of air pollutants discharged and that such records . . . may be disclosed to other officers, employees or authorized representatives of the state or of the federal environmental protection agency . . . Provided, however, That such officers, employees or authorized representatives . . . protect such records . . . to the same degree required of the director by this section. . . .

See, WV 45 C.S.R. 31 §2.4 for the definition of the term “types and amounts of pollutants discharged.”

In addition to W.Va. Code §22-5-10, the State’s Freedom of Information Act requires the DEP to make records available to the public upon request, unless such records specifically fall under one of the exemptions contained in the Act (one of which is an exemption for “trade secrets”). See, W.Va. Code §§29B-1-1 et seq.

In conclusion, the State DEP possesses the requisite authority to adopt, implement, and enforce all necessary elements of the West Virginia Section 111(d) and 129 plan for CISWI, except as outlined in 40 C.F.R. §60.50c(I).

