

Headquarters Files (NLRB-30). Pursuant to 5 U.S.C. 552a(k)(2), limited categories of information from the following four proposed systems of records shall be exempted from the provisions of nl;5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f), insofar as the systems contain investigatory material compiled for law enforcement purposes, other than material within the scope of 5 U.S.C. 552a(j)(2):

(1) the Judicial Case Management Systems—Pending Case List (JCMS—PCL) and Associated Headquarters Files (NLRB-21)—information relating to requests to file injunctions under 29 U.S.C. 160(j), requests to initiate federal court contempt proceedings, certain requests that the Board initiate litigation or intervene in non-Agency litigation, and any other investigatory material compiled for law enforcement purposes;

(2) the Solicitor's System (SOL) and Associated Headquarters Files (NLRB-23)—information relating to requests to file injunctions under 29 U.S.C. 160(j), requests to initiate federal court contempt proceedings, certain requests that the Board initiate litigation or intervene in non-Agency litigation, and any other investigatory material compiled for law enforcement purposes;

(3) The Special Litigation Case Tracking System (SPLIT) and Associated Headquarters Files (NLRB-27)—information relating to investigative subpoena enforcement cases, injunction and mandamus actions regarding Agency cases under investigation, bankruptcy case information in matters under investigation, Freedom of Information Act cases involving investigatory records, certain requests that the Board initiate litigation or intervene in non-Agency litigation, and any other investigatory material compiled for law enforcement purposes; and

(4) The Freedom of Information Act Tracking System (FTS) and Associated Agency Files (NLRB-32)—information requested under the Freedom of Information Act, 5 U.S.C. 552, that relates to the Agency's investigation of unfair labor practice and representation cases or other proceedings described in paragraphs (m)(1) through (3) of this section.

(n) The reasons for exemption under 5 U.S.C. 552a(k)(2) are as follows:

(1) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at such individual's request. These accountings must state the date, nature, and purpose of each disclosure of a record, and the name and address of the recipient. Providing such an accounting of

investigatory information to a party in an unfair labor practice or representation matter under investigation could inform that individual of the precise scope of an Agency investigation, or the existence or scope of another law enforcement investigation. Accordingly, this Privacy Act requirement could seriously impede or compromise either the Agency's investigation, or another law enforcement investigation, by causing the improper influencing of witnesses, retaliation against witnesses, destruction of evidence, or fabrication of testimony.

(2) 5 U.S.C. 552a(d) requires an agency to permit an individual to gain access to records pertaining to such individual, to request amendment to such records, to request review of an agency decision not to amend such records, and, where the Agency refuses to amend records, to submit a statement of disagreement to be included with the records. Such disclosure of investigatory information could seriously impede or compromise the Agency's investigation by revealing the identity of confidential sources or confidential business information, or causing the improper influencing of witnesses, retaliation against witnesses, destruction of evidence, fabrication of testimony, or unwarranted invasion of the privacy of others. Amendment of the records could interfere with ongoing law enforcement proceedings and impose an undue administrative burden by requiring investigations to be continuously reinvestigated.

(3) 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or by executive order of the President. This requirement could foreclose investigators from acquiring or receiving information the relevance and necessity of which is not readily apparent and could only be ascertained after a complete review and evaluation of all the evidence.

(4) 5 U.S.C. 552a(e)(4)(G) and (H) require an agency to publish a **Federal Register** notice concerning its procedures for notifying an individual, at the individual's request, if the system of records contains a record pertaining to the individual, for gaining access to such a record, and for contesting its content. Because certain information from these systems of records is exempt from subsection (d) of the Act concerning access to records, and consequently, from subsection (f) of the Act concerning Agency rules governing

access, these requirements are inapplicable to that information.

(5) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a **Federal Register** notice concerning the categories of sources of records in the system of records. Exemption from this provision is necessary to protect the confidentiality of sources of information, to protect against the disclosure of investigative techniques and procedures, to avoid threats or reprisals against informers by subjects of investigations, and to protect against informers refusing to give full information to investigators for fear of having their identities as sources revealed.

(6) 5 U.S.C. 552a(f) requires an agency to promulgate rules for notifying individuals of Privacy Act rights granted by subsection (d) of the Act concerning access and amendment of records. Because certain information from these systems is exempt from subsection (d) of the Act, the requirements of subsection (f) of the Act are inapplicable to that information.

Dated: Washington, DC, November 15, 2006.

By direction of the Board.

**Lester A. Heltzer,**

*Executive Secretary.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 69

[Docket No. EPA-R02-OAR-2005-VI-0001, FRL-8254-6]

### Clean Air Act Section 325 Exemption for Virgin Islands Water and Power Authority

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed Grant of Petition under section 325 of the Clean Air Act.

**SUMMARY:** The Environmental Protection Agency is proposing to grant, with conditions, a Petition, from the Governor of the Virgin Islands, submitted under section 325 of the Clean Air Act (CAA). The Petition requests that EPA exempt the Virgin Islands Water and Power Authority (VIWAPA) from its obligation to comply with the continuous emission monitoring system (CEMS) conditions contained in Prevention of Significant Deterioration (PSD) permits issued pursuant to section 165 of the CAA to VIWAPA for nine PSD permitted units

located on St. Thomas and St. Croix at two of its facilities.

This approval will exempt VIWAPA from its obligation to comply for a period of five (5) years with the PSD permit CEMS conditions at seven of its eight PSD permitted combustion turbines and at its two PSD permitted Heat Recovery Steam Generator (HRSG) units. These PSD permit CEMS conditions address monitoring of Nitrogen Oxides (NO<sub>x</sub>), Carbon Monoxide (CO) and opacity emissions. Additionally, VIWAPA sought to extend the Petitioner's request to include waiver of PSD permit CEMS conditions for a new unit, Unit 23. While this approval will not exempt VIWAPA from the CEMS obligations for Unit 23, it does provide VIWAPA additional time to comply with the CEMS permit conditions.

This approval may be revoked or modified if significant changes in circumstances occur at either one or both of the two VIWAPA facilities. Failure to comply with the conditions included in this approval at Section VII (Conditions of Approval), hereinafter called "Conditions," could result in the approval of the exemption being revoked by the Administrator as well as civil and/or criminal enforcement action under the Clean Air Act.

**DATES:** Comments must be received on or before January 12, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R02-OAR-2005-VI-0001, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* [Eng.Ken@epa.gov](mailto:Eng.Ken@epa.gov).

- *Fax:* 212-637-3998.

- *Mail:* Kenneth Eng, Chief, Air Compliance Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 21st Floor, New York, New York 10007-1866.

- *Hand Delivery:* Kenneth Eng, Chief, Air Compliance Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 21st Floor, New York, New York 10007-1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays

*Instructions:* Direct your comments to Docket ID No. EPA-R02-OAR-2005-VI-0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any

personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through

<http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Copies of the Governor's Petition, additional submittals relied upon in evaluating this Petition, and the Technical Support Document explaining the Environmental Protection Agency's rationale are available on line at <http://www.regulations.gov> in docket EPA-R02-OAR-2005-VI-0001 and at the following address for inspection during normal business hours: Environmental Protection Agency, Region 2 Office, Air Compliance Branch, 290 Broadway, 21st Floor, New York, New York 10007-1866, Attn: Gaetano LaVigna, (212) 637-4069.

**FOR FURTHER INFORMATION CONTACT:**

Gaetano LaVigna, Air Compliance Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 21st Floor, New York, New York 10007-1866, (212) 637-4069 or at [LaVigna.Gaetano@epa.gov](mailto:LaVigna.Gaetano@epa.gov).

**SUPPLEMENTARY INFORMATION:** The following table of contents describes the format for the Supplementary Information section:

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- IV. What are Grounds for Revocation of the Exemption?
- V. What is EPA's Conclusion?
- VI. What is the Effective Date of the Approval of Petition and Timing of the Requirements?
- VII. What are the Conditions of Approval?
- VIII. Statutory and Executive Order Review

**I. What Action is the Environmental Protection Agency (EPA) Taking Today?**

EPA is proposing a five (5) year approval, with Conditions, of the Governor of the Virgin Islands' March 7, 2002 Clean Air Act (CAA) section 325 Petition ("Petition"). On behalf of the Virgin Islands Water and Power Authority (VIWAPA or "the Authority"), the Governor of the Virgin Islands requested that the Authority be exempted from continuous emission monitoring system (CEMS) conditions, which are contained in Prevention of Significant Deterioration (PSD) permits issued to VIWAPA pursuant to section 165 of the CAA. If finally approved, this exemption will become effective for a period of five (5) years from the date of final publication.

For the effective period of the exemption, VIWAPA will not be required to comply with the CEMS conditions in its PSD permits for seven of its PSD permitted combustion turbines and its two PSD permitted Heat Recovery Steam Generating (HRSG) units. EPA is not granting the Petition with respect to the newly permitted eighth combustion turbine, Unit 23. However, the exemption provides VIWAPA additional time to comply with the CEMS conditions in its PSD permit for Unit 23, as delineated in the Conditions provided in Section VII. The PSD permit CEMS conditions relate to monitoring of NO<sub>x</sub>, CO and opacity emissions. All of the units subject to this proposed approval are located at VIWAPA's two facilities in St. Thomas and St. Croix. Failure to comply with the Conditions could result in the exemption being revoked by the Administrator as well as civil and/or criminal enforcement action under the CAA.

The Petitioner's request, supporting documents submitted and presentations given by VIWAPA are summarized in this notice and detailed in a Technical Support Document available from EPA at the addresses listed above.

## II. What are the Regulatory Requirements for Authorizing an Exemption Under the CAA?

Section 325(a) of the CAA authorizes the Administrator of EPA, upon a Governor's petition, to exempt any person or source or class of persons or sources in the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands from CAA requirements other than section 112 or any requirements of section 110 or part D of subchapter I of the CAA necessary to attain or maintain a national primary ambient air quality standard (NAAQS). EPA may grant a petition for exemption if the Administrator finds that compliance with such a requirement is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or other local factors that the Administrator deems significant. The CAA further provides that any such petition shall be considered in accordance with section 7607(d) of the Act and any exemption granted shall be considered final action by the Administrator for the purposes of section 7607(b) of the CAA.

Further, EPA is required to notify the Committees on Energy and Commerce and on Natural Resources of the House of Representatives and the Committees on Environment and Public Works and on Energy and Natural Resources of the Senate upon receipt of a petition under section 325(a) of the CAA and upon approval or rejection of a petition under section 325(a). EPA notified the appropriate committees and will also notify them upon final action on this Petition.

## III. What are the Bases for the Petitioner's Request and What Is EPA's Analysis of the Petition?

The Governor in his Petition and VIWAPA in support of the Petition seek a CAA section 325 exemption from its PSD permit CEMS conditions because, they argue, compliance with these conditions is not feasible or reasonable due to unique geographical, meteorological, economic and other local factors in the Virgin Islands. The Petition and VIWAPA provide a number of arguments in support of an approval of an exemption. EPA analyzed each basis for the Petitioner's and VIWAPA's request as follows:

### A. Attainment and Maintenance of National Ambient Air Quality Standards

Pursuant to section 325 of the Act, the Administrator is not authorized to

exempt a source from requirements under CAA section 110 or part D of subchapter I of the Act necessary to attain or maintain a national primary ambient air quality standard (NAAQS). Therefore, whether the requested exemptions will result in nonattainment of a NAAQS is a threshold requirement for consideration of this, and any other, CAA section 325 petition. This threshold requirement was addressed in the Petition and in subsequent information provided by VIWAPA.

Because EPA had obtained modeling data from another facility suggesting that the Island of St. Croix may be close to exceeding the NAAQS for NO<sub>x</sub>, EPA requested and reviewed new NO<sub>x</sub> modeling data submitted by VIWAPA. EPA sought to determine whether the Air Quality Control Regions of both St. Croix and St. Thomas as well as the Class I area of St. John would still be in attainment if EPA were to approve the Petition for exemption. One of VIWAPA's PSD permits requires that the nitrogen content of the fuel oil be no greater than 150 ppm. VIWAPA's exclusive fuel oil supplier indicated that it can no longer supply VIWAPA fuel oil with a nitrogen content specified in the PSD permit. VIWAPA's supplier will only guarantee fuel oil with a nitrogen content of no more than 1,000 ppm. Therefore, VIWAPA submitted air modeling of the potential emissions from combustion of fuel with a nitrogen content of up to 1,000 ppm. The modeling demonstrates that properly controlled use of fuel oil with a nitrogen content of 1,000 ppm at VIWAPA's two facilities will not cause an exceedance of the NAAQS. The modeling demonstrates that VIWAPA has met this threshold requirement for consideration of the Petition.

### B. Statutory and Regulatory Authority for Requiring CEMS

The Petitioner contends that there is no statutory or regulatory requirement that mandates the use of CEMS. However, the units in question are subject to PSD. In PSD permits, like the ones issued to VIWAPA, EPA routinely requires the use of CEMS to directly and continuously measure emissions as a means of determining compliance with PSD Best Available Control Technology (BACT) limits. In the VIWAPA permits, EPA established BACT limits for NO<sub>x</sub> and CO and set limits for opacity and required CEMS to ensure compliance with these limits. EPA's 1990 Draft New Source Review Workshop Manual indicates that continuous and quantitative measurements be obtained where feasible; if not, surrogate parameters must be expressed in the

permit. EPA has consistently applied this policy in its issuance of PSD permits.

In reviewing VIWAPA's PSD applications for its PSD affected units, EPA determined that VIWAPA had not demonstrated that continuous, quantitative measurements are infeasible, therefore all of VIWAPA's PSD permits include CEMS requirements to ensure that VIWAPA continually meets the BACT limits established in its PSD permits.

### C. Unique Geographical Location as it Relates to Difficulties in Obtaining and Retaining CEMS Operators and Contractors

The Petitioner and VIWAPA indicate that because VIWAPA is located approximately 1,100 miles from the mainland of the United States, the Authority has had significant difficulties hiring full-time qualified technical and engineering personnel to maintain and service CEMS at the VIWAPA facilities. In addition they indicate that when necessary, the Authority had been unable to timely obtain contractor assistance due to difficulties in contractors obtaining flights. Furthermore, the Petitioner and VIWAPA assert that there are no locally available vendors that can provide hardware and/or software service. In addition, the Petitioner and VIWAPA indicated that off-island contractors are not always available for the extra two (2) days needed to travel to and from the Virgin Islands.

EPA investigated the Petitioner's and VIWAPA's assertions, and has determined that while some of VIWAPA's difficulties are attributable to its location, its difficulties with contractors are more likely attributable to other issues discussed in later sections. In addition, even sources on the mainland are located in areas which are difficult to get to within a day. Thus, while EPA recognizes that the travel distance presents some support for the exemption, it would not, on its own, be a sufficient basis for approval of the exemption.

### D. VIWAPA's Financial Condition as it Relates to Difficulties in Obtaining and Retaining CEMS Operators and Contractors

Documents provided by VIWAPA show that it often cannot pay its contractors on a timely basis. The Virgin Islands Government frequently delays payments to VIWAPA which, in turn, delays payments to its contractors. This leads to difficulties in retaining contractors, resulting in poorly maintained equipment. EPA recognizes

that VIWAPA's financial circumstances create difficulties in obtaining and retaining CEMS expertise. EPA has determined that these difficulties warrant a five (5) year approval of the Petition, with the Conditions specified in Section VII.

#### *E. Summary of Difficulties in Obtaining and Retaining Expertise To Manage and Maintain Old CEMS*

VIWAPA identified numerous difficulties in obtaining and retaining qualified technical and engineering personnel and contractors to maintain and service its CEMS and related data acquisition software. VIWAPA's CEMS vendor indicated to EPA that it is no longer providing hardware and software services for VIWAPA's old CEMS because its staff is no longer trained in supporting systems that are as old as the ones in place at VIWAPA. VIWAPA has told EPA that it does not have trained in-house personnel to manage and maintain these systems, and has indicated that there are no local vendors available to provide such hardware and software service, and there exists no alternatives for VIWAPA to keep these old CEMS-related equipment operating. Based upon VIWAPA's representations as well as our discussions with VIWAPA's CEMS vendor, EPA agrees that VIWAPA is likely to experience continued difficulties in obtaining and retaining expertise to manage and maintain the current antiquated CEMS.

#### *F. Other Relevant Financial Considerations*

The Petitioner stated that VIWAPA's "scarce resources should not be wasted on unnecessary and unreliable monitoring." EPA does not agree that such monitoring is unnecessary and unreliable. Monitoring is a necessary tool for determining compliance with the PSD permit emission limits. VIWAPA also contends that the CEMS replacement alone will cost between \$900,000 and \$1,600,000. EPA hired a financial analyst to review VIWAPA's financial statements, annual budgets and other documents submitted in support of the Petition's position on financial considerations. The analyst determined that the cost of installation, operation and maintenance of the PSD-required CEMS is financially feasible. EPA also researched the costs of replacement and determined them unlikely to be as high as VIWAPA stated.

#### *G. Current Condition of PSD Permit-Required CEMS and Supporting Software*

The Petitioner and VIWAPA stated that the monitors and data acquisition system (DAS), which are installed on all but the newly permitted and constructed Unit 23, have reached the end of their useful lives. The NO<sub>x</sub>, CO and old opacity CEMS have been unable to meet the minimum monitor availability requirements and the monitors themselves have not been functioning properly, in part, because of excessive stack flexing and vibration resulting in improper alignment, etc. EPA's position is that CEMS replacement is expected during the life of a combustion turbine, as is servicing and repair of CEMS in order to comply with PSD permit CEMS conditions. EPA has decided that during the period of the exemption, VIWAPA shall make necessary improvements to its gas turbines and their associated stacks, to address the problems that adversely impacted on the operation of the CEMS at the PSD-permitted units. Addressing the problems and improving the alternative monitoring system (AMS) will facilitate better operation and maintenance of new generation CEMS that will be installed in the future.

#### *H. Attempts To Replace PSD Permit-Required CEMS*

Prior to the Governor's submission of the Petition, VIWAPA sent out an RFP for purchase, installation and support of new CEMS. Vendors responding to the RFP indicated that they could not fully accept the terms specified in the RFP. Upon reviewing the RFP, EPA found that the RFP required not only that a vendor install, operate and maintain the CEMS in compliance with the PSD permits, but also that the vendor bear the liability of any civil penalties resulting from noncompliance with the PSD permits. EPA determined that this was an unreasonable requirement to place in the RFP and that it created a barrier to engaging a CEMS replacement contractor. The Agency also has determined that commercially available CEMS are far more reliable and easier to operate than the monitors and data acquisition systems that VIWAPA currently operates; therefore, VIWAPA should be able to operate these systems with relatively fewer difficulties. EPA concluded that a permanent exemption from the CEMS conditions is not warranted based on VIWAPA's prior contracting experience with vendors. However, as stated in section III(G), above, a five (5) year exemption will provide sufficient time for VIWAPA to

improve its facilities and, in particular, its turbines, so that they can effectively use new monitors and data acquisition systems.

#### *I. Proposed Alternative Monitoring*

The Petitioner and VIWAPA propose using an alternative monitoring system (AMS) in lieu of compliance with the PSD permit-required CEMS. EPA determined that using the AMS system instead of CEMS for monitoring NO<sub>x</sub> emissions is acceptable for a five (5) year period provided VIWAPA monitors its compliance by conducting visible emission readings, performing stack testing and using the portable analyzers. The AMS would compare the actual water and/or steam injection rates with the injection rates established through the permit-required stack testing as well as the stack testing conditions in this proposed exemption. The AMS includes an alarm system to alert operating personnel trained to respond whenever operating levels approach or exceed permit limits. This exemption conditions the use of the proposed AMS on specific improvements to include recording the hours of operation, turbine operation load, compliance parameters, and minimum data availability requirements. The exemption also includes additional conditions on reporting and recordkeeping to alleviate any ambiguity as to required submissions and the schedule for such submissions.

The Agency is proposing additional periodic monitoring conditions, including the use of portable analyzers to measure CO, O<sub>2</sub> and NO<sub>x</sub> emissions from the stacks. In addition, the Agency also has determined that the exemption will require annual stack tests, as discussed in the Governor's petition. During stack testing, VIWAPA shall establish additional parameters that correlate with compliance and VIWAPA shall add these parameters to its automated AMS. Properly operated, an improved AMS should provide necessary compliance information during the five (5) year period of the exemption and provide a foundation for determining compliance with the PSD limits after the exemption terminates. VIWAPA may choose to terminate the AMS upon implementing CEMS in compliance with Section 165 PSD permit requirements, this may occur prior to but not later than the end of the five (5) year period of the exemption.

#### *J. Fuel Supply Changes*

As stated earlier, VIWAPA indicated that its fuel supplier is currently able to guarantee fuel oil with no greater than 1,000 ppm nitrogen, rather than fuel oil

with 150 ppm nitrogen-in-fuel content used to establish the BACT limits in all of VIWAPA's PSD permits other than Unit 23. While EPA has reviewed and analyzed modeling and other information that VIWAPA provided in support of the Governor's Petition regarding VIWAPA's use of fuel oil with greater than 150 ppm nitrogen content, the Agency is not approving such a fuel change in this exemption. Action on the section 325 Petition is not the appropriate forum for EPA approval of PSD permit modification requests. VIWAPA has recently submitted an application to revise its PSD permits to reflect the higher nitrogen fuel that is presently being combusted. The Agency is currently evaluating this application.

#### *K. Status of Recently Installed Opacity CEMS*

VIWAPA argues that, due to geographic and financial difficulties, it is currently unable to obtain appropriate contractor support for a CEMS data acquisition system necessary to collect CEMS data including data relating to opacity monitoring. EPA includes visible emission (VE) reading requirements in this exemption in lieu of operating the Opacity CEMS. The Agency determined that for the duration of the approval, VIWAPA should be exempted from its obligation to comply with PSD conditions relating to opacity CEMS in part because the Agency recognized that it would take time to improve the physical condition of the older existing gas turbines and their associated stacks (e.g., reduce excessive stack vibration, stack flexing, and maintain proper alignment, etc.), which adversely affects the performance of the opacity monitors. The temporary exemption allows VIWAPA time to improve the condition of the older existing turbines so that they will not contribute to poor performance of new opacity CEMS.

#### *L. VIWAPA's Request for Consideration of Exemption From Obligation To Comply With Unit 23 PSD Permit CEMS Conditions*

Although the Governor submitted the Petition prior to the construction of Unit 23, VIWAPA claims that the request for an exemption from CEMS requirements was non-specific and applies to all of its PSD permitted units. Representatives of the Governor's office and VIWAPA have repeatedly asserted in subsequent meetings and correspondence with EPA that the Petition also applies to Unit 23. Accordingly, EPA reviewed information provided by VIWAPA relating to the possibility of exempting the Authority

from compliance with CEMS conditions in Unit 23's PSD permit.

The Agency is not convinced that an exemption of Unit 23 CEMS is justified. Current generation CEMS and DAS are much easier to operate and maintain than those currently in place at VIWAPA's other units. Since Unit 23 is new, it does not suffer from the various operational problems of the older turbines and its condition will not have a negative impact on the operation of CEMS. Moreover, EPA has determined that by operating CEMS at Unit 23, VIWAPA will gain the knowledge and experience that will assist it in phasing in CEMS installation and operation at all its units. However, although EPA is not exempting Unit 23 from the CEMS requirements, the exemption provides VIWAPA additional time to fully comply with the CEMS installation and operation requirements in its PSD permit for Unit 23. The Conditions pertaining to Unit 23 are delineated in section VII, entitled "Conditions of Approval."

#### **IV. What are Grounds for Revocation of the Exemption?**

This approval may be revoked or modified in whole or in part, by the Administrator, if significant changes in circumstances at the facility occur, if significant violations of the exemption occur, or if significant changes in the factual circumstances upon which the approval is based occur. These changes include, but are not limited to, changes in commitments and modeling information made in the Petition or in support of the Petition, changes at the facility or in the status of the Air Quality Control Region, changes in financial status, and changes in ownership (including privatization—in whole or in part) that could have an impact upon the facilities' finances or ability to hire and retain technical and engineering personnel.

Significant violations also include, but are not limited to, failures to meet any and all conditions of this exemption, such as stack testing, periodic monitoring, improvement of the AMS and water injection system, and failures to adhere to established compliance parameters. The exemption requires VIWAPA to bring any such changes to the attention of the Agency for review as soon as practicable.

In addition to revocation and/or modification, failure to comply with the Conditions could result in civil and/or criminal enforcement action under the CAA.

#### **V. What is EPA's Conclusion?**

Based on EPA's review of the Petition, information and presentations provided in support of this Petition, EPA has determined that VIWAPA's unique geographical location and financial circumstances have caused it difficulties in operating existing CEMS at its older turbines and difficulties in obtaining and retaining contractors and staff with expertise to operate and maintain the CEMS. EPA is, therefore, proposing to approve, with Conditions specified in Section VII, the Governor's Petition for exemption for a period of five (5) years. The approval will exempt VIWAPA from its obligation to comply with the PSD permit CEMS conditions at seven of its eight PSD permitted combustion turbines and at its two PSD permitted HRSG units. These PSD permit CEMS conditions address monitoring of NO<sub>x</sub>, CO and opacity emissions. During the five (5) year period of the exemption, VIWAPA is required, in accordance with good air pollution control practice, to make improvements to its facilities, including but not limited to the turbines, necessary to ensure proper operation of new generation CEMS upon termination of this exemption. Additionally, the Administrator is providing, in this notice, a set period of time for VIWAPA to comply with its PSD permit CEMS requirements for Unit 23, as delineated in the Conditions. During the period of this exemption, it is EPA's expectation that VIWAPA's staff will gain the necessary experience to properly operate and maintain such equipment at Unit 23, and then apply this knowledge to the operation of CEMS at the rest of their units upon termination, if not earlier, of this exemption.

In summary, the Conditions require: (a) Improvements to VIWAPA's AMS and water injection system; (b) initial and periodic (annual) stack tests, (c) ongoing portable analyzer monitoring, (d) visible emissions readings, (e) record keeping and reporting, and (f) planning for and installation of new CEMS.

One of the reasons for EPA's inclusion of Conditions to the exemption relating to stack testing and portable analyzer monitoring in conjunction with AMS and water injection system improvement is to ensure the creation and maintenance of operating parameters which accurately correlate with VIWAPA's operating conditions at the time of opacity, NO<sub>x</sub> and CO limit compliance demonstrations made during compliance tests conducted in accordance with the New Source Performance Standards, PSD and this exemption.

## VI. What is the Effective Date of the Approval of Petition and Timing of the Requirements?

The effective date of the approval is the date of final publication of the EPA exemption in the **Federal Register**. The exemption will be in effect for a period of five (5) years from such date. Under the proposed exemption, VIWAPA will be allowed to discontinue operation of its CEMS at all of the PSD affected units, except for Unit 23, which is being provided a limited time to achieve permanent, consistent compliance with its PSD permit CEMS conditions, as delineated in section VII, below.

Once VIWAPA complies with conditions 2, 3, 4, 6, 7, 8, 9, 10, 11 and 23, operation of CEMS at PSD permitted units other than Unit 23 can be discontinued. VIWAPA shall submit Monthly Status Reports delineating its progress in complying with these Conditions. Once VIWAPA has complied with the above conditions, VIWAPA shall submit Quarterly Reports as directed in the Conditions.

## VII. What are the Conditions of Approval?

### *Conditions of Approval*

All of the units affected by this exemption, with the exception of Unit 23, are subject to conditions 1–32, and conditions 36 and 37 below. The Unit 23 conditions are separately specified. Condition 38 applies to all units. The Conditions are to be in effect for a period of no more than five (5) years from the effective date of the approval.

VIWAPA shall conduct initial stack testing, prior to the discontinuation of the CEMS operation, to establish the water and fuel injection rates as well as to establish additional compliance monitoring parameters and their associated compliance values. VIWAPA shall monitor all of these parameters using its alternate monitoring system. Any necessary changes to accommodate monitoring of these parameters shall be in place prior to discontinuation of the CEMS operation. In addition, a number of Conditions require other methods of monitoring in lieu of the CEMS operation. These monitoring measures shall be available and in place prior to discontinuation of the CEMS operation. For example, the exemption requires VIWAPA to purchase portable analyzers as well as to submit for EPA approval a sampling protocol for use of the portable analyzers. In addition, the exemption requires VIWAPA to have certified visible emissions readers available on staff to conduct required visible emissions readings. Furthermore, the exemption requires VIWAPA to

complete a third-party audit of the water injection system to identify any problems associated with the operation of the system and to correct these problems. Proper operation of the water injection system is critical because it is the only form of control of NO<sub>x</sub> emissions from the affected units.

Once VIWAPA has complied with conditions 2, 3, 4, 6, 7, 8, 9, 10, 11, and 23, the operation of the CEMS at PSD permitted units other than Unit 23 can be discontinued. VIWAPA shall submit Monthly Status Reports delineating its progress in complying with these specific conditions until the specific conditions have been adequately addressed. Thereafter, VIWAPA shall submit Quarterly Reports on ongoing compliance with these conditions.

### *Heat Recovery Steam Generator (HRSG) Stack Damper*

1. VIWAPA shall demonstrate that, prior to required stack testing, during simple cycle operation, no air flow goes to the HRSG. Provisions for making this demonstration shall be included in the stack test protocol submitted for performance testing. This is necessary to show that all emissions are correctly recorded by the CEMS when the monitors are reinstalled. In addition, VIWAPA has agreed and the exemption requires the elimination of the capability of firing fuel in the HRSG unit for turbines 15 and 18. VIWAPA shall eliminate the capability of firing fuel in the HRSG unit for turbines 15 and 18. Within one hundred twenty (120) days of the approval of the exemption, VIWAPA shall provide to EPA a certification signed by a corporate representative indicating that the capability to fire fuel in the HRSG for turbines 15 and 18 has been eliminated.

### *Stack Testing*

2. VIWAPA shall plan, conduct, and report upon stack emission tests to be conducted at each PSD permitted gas turbine. VIWAPA shall conduct stack tests initially within thirty (30) days of EPA protocol approval. VIWAPA shall complete no later than one hundred eighty (180) days from publication of the final approval of the Petition, and shall repeat stack testing every twelve (12) months thereafter. VIWAPA shall provide EPA at least two (2) weeks notice prior to the date proposed for conducting stack tests.

3. VIWAPA shall submit stack testing protocols covering all testing scenarios and all parameters to be tested and measured (including load, fuel bound nitrogen, and all AMS parameters, including but not limited to water/steam and fuel rates) to EPA for review,

revision and approval at least sixty (60) days before each stack test. VIWAPA may, at its option, submit a separate protocol for each test or combined protocols covering more than one unit. If combined protocols are submitted, VIWAPA shall submit for each unit, separate sections, figures, and/or tables clearly indicating the specific unit, load, fuel, AMS, stack and sampling configurations and all other unit-specific information. VIWAPA shall conduct stack tests for each PSD permitted gas turbine during at least the four loads required by NSPS Subpart GG, or more, as specified in VIWAPA's current PSD permit. VIWAPA shall include in the stack testing protocols, provisions for verifying that all flow from units connected to the HRSG passes through the turbine stack in simple cycle mode.

4. VIWAPA shall conduct stack tests to determine compliance with PSD NO<sub>x</sub>, and CO emissions limits, and opacity limits as well as to establish and then assure maintenance of AMS compliance parameters, which shall be utilized to ensure Federal enforceability. VIWAPA's Title V permits also require these tests as well as stack tests for VOC, PM and PM<sub>10</sub>.

5. VIWAPA shall determine the nitrogen content of fuel combusted during stack testing using any of the following ASTM Test Methods: D2597–94 (reapproved 1994), D6366–99, D4629–02, or D5762–02.

6. VIWAPA shall recalibrate the water injection system before each stack test. VIWAPA shall establish new compliance parameter values including but not limited to water-to-fuel ratios after each stack test. Periods in which compliance parameters are exceeded shall be considered violations of the NO<sub>x</sub> limit.

### *Periodic Monitoring*

7. VIWAPA shall purchase two (2) Portable Flue Gas Emission Analyzers, one each for its St. Thomas and St. Croix facilities. In addition to these analyzers, VIWAPA shall purchase all appropriate calibration and operational equipment and supplies, and thereafter shall maintain a sufficient inventory of such on each island. VIWAPA shall calibrate and operate the instruments in accordance with the manufacturer's instructions. VIWAPA shall monitor every week for NO<sub>x</sub>, CO, O<sub>2</sub> and SO<sub>2</sub> emissions from the stack of each PSD affected gas turbine "available to operate" (excluding units that are "down for service") and that operate a minimum of five (5) hours per week. VIWAPA shall sample the nitrogen content of the fuel combusted at the

time of portable analyzer monitoring. VIWAPA shall submit a sampling protocol which includes a monitoring period it believes acceptable for determining compliance. This protocol is subject to EPA review, revision and approval. Should any concentrations measured by the portable analyzer be in excess of the emission limits in the applicable permit, VIWAPA shall make any adjustments necessary to the affected unit to return it to compliance with the emission limit. Within two (2) days of making any necessary adjustments, VIWAPA shall re-monitor the affected unit, in accordance with the protocol, to demonstrate compliance with the emission limit. VIWAPA shall continue this process until VIWAPA achieves compliance with each PSD-permit emission limit.

After VIWAPA demonstrates continual compliance with the emission standards using the portable analyzer for a period of six (6) months, VIWAPA shall reduce the initial frequency of monitoring to biweekly (once every two (2) weeks). VIWAPA shall further reduce the subsequent frequency of monitoring to monthly after a demonstration of continual compliance of the emission standards using the portable analyzer for a period of six (6) months. VIWAPA shall not reduce the frequency of the periodic monitoring using the portable analyzer any further than once every month. VIWAPA shall revert back to the prior frequency of periodic monitoring if two (2) consecutive measurements with the portable analyzer indicate noncompliance with the emission limit.

During periods that the PSD affected gas turbines operate less than five (5) hours per week, the exemption allows VIWAPA to forgo the required portable analyzer monitoring for that weekly period. Where VIWAPA has not operated a unit for a two-week period and such unit begins operation greater than five (5) hours per week, VIWAPA shall conduct the monitoring with the portable analyzer within two (2) days of the day in which the unit had been operated for more than five (5) hours that week. If VIWAPA does not operate a unit or operates a unit for less than five (5) hours per week, VIWAPA shall monitor such a unit at a lower frequency of no less than once every two (2) months. A unit shall be considered to be operating when fuel is being combusted regardless of the capacity at which it is burning the fuel.

VIWAPA shall submit copies of all data relating to the periodic sampling and shall be submitted with VIWAPA's quarterly reports. During periods when stack tests are performed, VIWAPA shall

use the portable flue gas emission analyzer for correlation purposes to verify accuracy. VIWAPA shall submit for EPA approval its selection of the portable flue gas analyzer it proposes to use for the periodic sampling. (Examples of such portable devices include but are not limited to Lancom III by Land Instrument, Enerac 3000 by Energy Efficiency Systems and PEM 9002 by Teledyne Analytical Instruments.) This list of examples is not an EPA pre-endorsement of any of these devices.

All exceedances of the NO<sub>x</sub> emission limits measured by the portable analyzer for the sampling period determined through the EPA approved sampling protocol shall be considered violations of the emissions standards.

#### *Improving the Alternative Monitoring System (AMS)*

8. VIWAPA shall monitor the water injection rates and the established compliance parameters.

9. VIWAPA shall ensure that the AMS be completely automated and that mechanisms or safeguards are implemented to ensure that the raw data cannot be altered.

10. VIWAPA shall design a data logging system to function and continue to function at all times, including but not limited to instances when the water injection system is switched from automatic operation to manual operation, when water injection pumps are switched, when the water injection system trips and when sensors malfunction.

11. VIWAPA shall ensure that the AMS record the specific hours of operation and operating load of each turbine.

12. VIWAPA shall keep a log that indicates any instances in which a compliance parameter is exceeded, the reasons for the exceedance, and the corrective action(s) taken (Compliance Parameter Log).

13. VIWAPA shall keep logs of all parameters manually which include the reasons for system failure and corrective measures when the AMS system is unable to log data.

14. VIWAPA shall test alarms weekly to ensure proper operation.

15. VIWAPA shall ensure that the AMS monitoring system maintains a data availability of 95% per quarter over all of the hours of the quarter. VIWAPA shall ensure that the AMS monitoring system, in conjunction with the manual logging during any period where the AMS is not in operation, maintain a data availability of 98% per quarter over all the hours of the quarter.

#### *Water Injection System*

16. Within sixty (60) days of the approval, VIWAPA shall complete a third-party system-wide evaluation of the water injection system of each PSD permitted turbine. VIWAPA shall perform the evaluation to identify and to determine the causes of any system failure, to determine the integrity of the water injection system, to determine why operators continually switch water injection pumps and why some pump switches result in excess emissions being measured at the CEMS and not the AMS.

17. Within sixty (60) days of completion of the third-party system-wide evaluation, VIWAPA shall implement a capital improvement program to replace all damaged and/or deteriorated equipment relating to the water injection systems for all PSD permitted turbines and to correct any equipment, hardware, software, or operational deficiencies revealed during the audits.

18. Within sixty (60) days of completion of the third-party system-wide evaluation, VIWAPA shall ensure that water flow monitors shall be located as close as possible to the turbine injection points to minimize false readings caused by leaks downstream, clogged filters, or unforeseen problems.

19. Within sixty (60) days of the approval, VIWAPA shall install, operate and maintain a feed water pretreatment system to remove minerals that lead to scaling and clogging of the water injection nozzles.

20. Within one hundred twenty (120) days of the approval, VIWAPA shall develop and implement a preventative operation and maintenance plan (including standard operation procedures) to ensure the proper and continual operation of the water injection system. Such a plan shall include, but is not limited to schedules for periodic pump maintenance, replacing filters, identifying and repairing leaks (temporary and permanent), and schedules and procedures for calibrations of water and fuel monitors. VIWAPA shall ensure that good air pollution control practices are utilized at all times during the operation of the water injection system.

21. Within one hundred twenty (120) days of the approval, VIWAPA shall implement a spare parts inventory program at each facility. The spare parts inventory program shall contain an inventory of various replacement parts for routine maintenance. VIWAPA shall maintain lists/logs of the average frequency at which hardware

components are required to be replaced and the dates of replacement of such components. VIWAPA shall assess the minimum quantity of each replacement component that may be maintained based upon evaluation, at the very least, of the lead and the delivery time for procurement and the frequency at which each a component is required to be replaced in the equipment. VIWAPA shall design the spare parts inventory to ensure minimum water injection system downtime in the event of a water injection system failure.

22. VIWAPA shall ensure that at least one technical person or engineer be available on site at its St. Thomas and St. Croix facilities at all times who is trained and experienced in operating and maintaining the water injection system.

#### *Visible Emission Readings*

23. VIWAPA shall have a minimum of three (3) EPA Method 9 certified visible emission readers on its staff at its St. Thomas facility and three (3) visible emission readers on its staff at its St. Croix facility. VIWAPA shall ensure that two (2) certified visible emission readers be on-site to conduct two (2) consecutive six-minute Method 9 visible emissions readings in accordance with EPA recognized interpretations of Method 9 for each operating turbine, once during each day of operation. If these observations demonstrate an exceedance of the opacity limits, VIWAPA shall continue to conduct visible emissions observations until the visible emissions readings document that opacity is below the applicable limits.

VIWAPA shall be required to increase the frequency of visible emissions readings to once per eight (8) hour operating shift, during daylight operation, for a period of thirty (30) operating days on a unit where there is a total of thirty (30) minutes or more of visible emissions readings indicating noncompliance with the PSD limit within a twenty four (24) hour period. During this thirty (30) operating day period, if there are a total of eighteen (18) minutes or more of visible emissions readings indicating noncompliance with the PSD limit within a twenty four (24) hour period, the thirty (30) operating day period shall be restarted from that day. Readings taken between each shift must be separated by a minimum of two (2) hours.

Any periods of exceedance shall be considered violations of the opacity limitations in the PSD permit. VIWAPA shall document any periods where it does not conduct the required visible

emissions readings, explaining the reason(s) that it did not perform these readings. Any visible emissions readings, conducted by EPA and/or VIDPNR that indicate noncompliance with the PSD limits for the durations specified above, shall also result in VIWAPA's increasing or extending the frequency of required visible emissions readings.

#### *Improving the Physical Condition of the Turbines and Associated Stacks*

24. VIWAPA shall take all steps necessary to improve the physical condition of the gas turbines and associated stacks in order to eliminate excessive vibration, stack flexing, improper alignment and any other such problem that adversely affects proper operation of the CEMS. Within sixty (60) days of this approval, VIWAPA shall provide EPA with a plan, including a schedule for repairs and improvements, to ensure that VIWAPA will be able to install and properly operate new CEMS upon termination of the five (5) year exemption. VIWAPA shall implement the submitted plan and schedule after review and approval by EPA.

#### *Reporting and Recordkeeping*

25. VIWAPA shall keep on site records of activities conducted pursuant to this exemption shall be kept on site for seven (7) years and shall make these records available to EPA upon request.

26. VIWAPA shall report to EPA any significant or anticipated changes in circumstances as prescribed above at the facility as soon as practicable but no later than 15 days after knowledge of such change. Significant changes in circumstances include, but are not limited to, changes at the facility or in the NAAQS attainment area, changes which could impact upon the maintenance of the NAAQS, changes in financial status, and changes in ownership (including privatization—in whole or in part), which could have an impact upon the facilities' finances or ability to hire and retain technical and engineering personnel.

27. Within sixty (60) days of the completion of stack testing, VIWAPA shall submit stack test reports to EPA covering all tests on all units at its St. Thomas and St. Croix facilities. VIWAPA may, at its option, submit a report for each unit or a single consolidated report, as long as all information for all units is clearly identified and submitted on time. For each test on each unit, the test report(s) shall include:

- Certified true copies of all raw data collected from each part of each test for

each parameter measured or observed during and associated with each test, including, for example, all raw data from the emission tests (both field and laboratory), fuel bound nitrogen measurements, all AMS parameter measurements, load measurements, all quality control and/or quality assurance measurements associated with all of the proceeding, etc.

- Summary sheets, showing, for each test, the values determined for each measured pollutant along with the applicable compliance limit,
- Results of all calculations including example calculations for each step,
- All compliance parameters proposed for each operating condition or set of conditions, along with tabulated and/or graphical evidence confirming that those parameter settings would ensure compliance with the emission limitations.

28. Within sixty (60) days of completion of the third-party system-wide evaluation of the water injection systems, VIWAPA shall submit a report that includes a timetable to correct all problems identified as well as the preventative and operations maintenance plan to EPA for review, revision and approval.

29. Within one hundred twenty (120) days of the approval, VIWAPA shall submit documentation to demonstrate that data logging for the AMS is completely automated and that raw data cannot be altered.

30. VIWAPA shall submit Quarterly reports to EPA covering the activities performed in accordance with the monitoring requirements for each calendar quarter and shall postmark these reports by the thirtieth (30th) day following the end of each calendar quarter. VIWAPA shall submit such a report for the first quarter, even if it does not include a full three month period.

31. VIWAPA shall include in Quarterly reports the following information about activities which occurred during the reporting period, for each unit: The AMS, periodic monitoring, visible emissions observations, fuel-bound nitrogen and sulfur content monitoring, and improvements to the physical condition of the gas turbines and associated stacks in accordance with paragraph 24.

- Alternative Monitoring System:
  - Copies of the AMS Compliance Parameter Log documenting each measured exceedance of the emission standard, indicating, at least the start and stop times for each exceedance, the hourly average water to fuel ratio during the exceedance period, the established water to fuel compliance ratio for the

period, an explanation of the possible causes of the exceedance, with the number of hours attributed to each cause, the total operating hours for the unit during the quarter, and the corrective action taken.

—Copies of the Incident Log, and the Manual Log for each unit, indicating each time that the AMS became inoperable or performed improperly or was out of service for any reason, including the start and stop time of the outage, the reason determined for the outage, and the corrective action taken.

—Summary Reports for all water-to-fuel exceedances and AMS downtimes for the unit during the quarter, including the total number of exceedance hours and downtime hours, the total number of operating hours in the quarter, and the percent of total operating hours for which there were exceedances or downtimes. A listing of the minimum information required in the summary sheet in the recommended format is attached as Attachment 1.

- Periodic monitoring, visible emissions observations and fuel bound nitrogen and sulfur content monitoring:

—Copies of all data for each monitoring type (periodic, etc.)

—Supplemental information related to exceedances and missed samples or data for each monitoring type, including a listing of each exceedance or missed sample, documentation of the date, time, duration, cause, and corrective action for each.

—Summary sheet for each testing and/or monitoring activity. A listing of the minimum information required in the summary sheet in the recommended format is attached as Attachment 2.

- EPA reserves the right, following review of any Quarterly Report, to require changes in subsequent reporting to facilitate facility response and EPA reviews.

32. In order for EPA to ensure the acceptability of the format of the Quarterly Summary Reports and accompanying detailed excess emission reports, VIWAPA shall submit copies of draft reports to EPA review and approval within one hundred twenty (120) days of the approval of the Petition to: Air and Water QA Team, Monitoring and Assessment Branch, US EPA Region 2, 2890 Woodbridge Ave. Edison, New Jersey 08837.

#### *Unit 23*

33. VIWAPA shall install and performance test the CEMS required by the PSD permit for Unit 23 in accordance with its PSD permit conditions, within one hundred eighty (180) days of the effective date of the approval. Failure to do so, within one

hundred eighty (180) days of the effective date of this approval, will subject VIWAPA to penalties for non-compliance with its PSD permit.

34. VIWAPA shall be allowed a period, of up to one hundred eighty (180) days after all of the CEMS are performance tested but no greater than one (1) year of the effective date of the approval, to address any training, operation and maintenance issues as they relate to meeting the PSD permit CEMS performance conditions. During this period of time, VIWAPA shall not be penalized for failing to comply with the PSD performance conditions. After this period, VIWAPA shall be subject to penalties for any violations of its PSD permit CEMS conditions.

35. VIWAPA shall submit all reports relating to the CEMS for Unit 23 in accordance with the requirements of its PSD permit.

#### *Future Installation of New CEMS*

36. Within one hundred twenty (120) days of the approval, VIWAPA shall submit a detailed plan for securing funding to purchase and install new CEMS at the PSD permitted units. Such a plan shall include a feasibility option for installation of time-share CEMS which could result in a significant reduction in the number of CEMS required and significantly reduce future CEMS purchase, installation and maintenance costs.

37. VIWAPA shall implement the submitted plan to ensure funding, purchase, installation and operation of CEMS at all of the PSD permitted units by no later than the termination date of this exemption.

#### *Enforcement*

38. In accordance with the CAA, penalties for violations or multiple violations of operating, emission, monitoring, and recordkeeping requirements may be assessed for periods such as when the AMS system does not automatically log or logs improperly, when the integrity of the data is not ensured, when the water to fuel injection rates are below the established minimum water-to-fuel ratio as monitored by the AMS; when the permitted turbines are operating without water injection; when records are not maintained; and/or when required changes to reporting are not made.

### **VIII. Statutory and Executive Order Review**

#### *A. Executive Order 12866, Regulatory Planning and Review*

This action is not a “significant regulatory action” under the terms of

Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO. It involves a temporary exemption from existing regulatory requirements for two sources, requested by a Petition filed by the Governor of the Virgin Islands on behalf of the regulated sources.

#### *B. Paperwork Reduction Act*

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all “collections of information” by EPA. The Act defines “collection of information” as a requirement for “answers to \* \* \* identical reporting or record keeping requirements imposed on ten or more persons \* \* \*” 44 U.S.C. 3502(3)(A). Because the proposed exemption only applies to one company, the Paperwork Reduction Act does not apply.

#### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today’s rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration’s (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of today’s proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. The exemption applies to only two source and only postpones compliance with PSD permit conditions for a five (5) year period. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

#### *D. Unfunded Mandates Reform Act*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), signed

into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve a waiver under Federal law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### *E. Executive Order 13132, Federalism*

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” This proposed rule does not have federalism implications.

It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132,

because it merely propose approval of a waiver from a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of Section 6 of the Executive Order do not apply to this rule.

#### *F. Executive Order 13175, Coordination With Indian Tribal Governments*

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This proposed rule does not have tribal implications, as specified in Executive Order 13175.

Today’s proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Thus, Executive Order 13175 does not apply to this rule.

#### *G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

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.

#### *H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

#### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking involves technical standards. EPA proposes the use of the following ASTM Test Methods: D2597–99A, D6366–99, D4629–02 or D5762–02 for measuring the nitrogen content of fuel. They are available from ASTM International and will help insure compliance with the conditions of this action. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

#### **List of Subjects in 40 CFR Part 69**

Environmental protection, Air pollution control.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: December 7, 2006.

**Stephen L. Johnson,**  
*Administrator.*

[FR Doc. E6–21198; Filed 12–12–06; 8:45 am]

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