

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: July 25, 2003.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*  
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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 63**

[FRN-7539-5]

RIN 2060-AK71

**Amendments to Project XL Site-Specific Rulemaking for Georgia-Pacific Corporation's Facility in Big Island, VA**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is publishing this site-specific rule to implement a project under the Project eXcellence and Leadership (Project XL) program, an EPA initiative which encourages regulated entities to achieve better environmental results at decreased costs at their facilities. As part of the Project XL program, EPA is supporting a project for Georgia-Pacific Corporation's pulp and paper mill located in Big Island, Virginia. Under the project, Georgia-Pacific will attempt the first United States commercial scale demonstration of black liquor gasification, a new technology for the treatment of black liquor wastes that promises significantly lower air emissions and greater energy efficiency compared to conventional treatment methods. The technology, including its environmental and energy benefits, potentially is transferable to the rest of the pulp and paper industry.

As part of its support for the project, EPA issued a site-specific rule on March 26, 2001 (66 FR 16400) that amended a Clean Air Act hazardous air pollutant standard applicable to the Big Island facility. Those amendments, in part, provided Georgia-Pacific's facility up to an additional three years (from March 13, 2004, to March 1, 2007) to comply with the standard in the event the black liquor gasification system fails and the company must revert to installation of conventional means of controlling

emissions from black liquor treatment. Without the amendments, Georgia-Pacific would not have undertaken the project.

At this time, construction is well underway on the new gasification system. However, Georgia-Pacific has experienced certain, largely unavoidable, delays in construction. The delays have been significant enough that the company now projects starting-up the system about one year later than originally anticipated. As a result, Georgia-Pacific has requested that EPA extend the compliance date flexibility up to one year longer than provided in the original Project XL site-specific rule. After reviewing all information concerning Georgia-Pacific's request, we believe it appropriate to amend the original site-specific rule. This action amends the original compliance extension and allows Georgia-Pacific up to March 1, 2008 to comply with the standard, in the event the gasification system fails.

**DATES:** This direct final rule will be effective on November 3, 2003 without further notice, unless EPA receives adverse comments by September 4, 2003. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**Public Comments.** Comments on this direct final rulemaking must be received on or before September 4, 2003. All comments should be submitted in writing or electronically according to the directions below in the **SUPPLEMENTARY INFORMATION** section.

**Public Hearing.** Commenters may request a public hearing no later than August 19, 2003. Commenters requesting a public hearing should specify the basis for their request.

If EPA determines that there is sufficient reason to hold a public hearing, it will be held on September 8, 2003, at 10 a.m. Requests to present oral testimony must be made by August 25, 2003.

**ADDRESSES:** To make comments by mail, send (two) 2 copies of your comments to the Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. A-2002-0072. Comments also may be submitted electronically, or through hand delivery/courier. Follow the detailed instructions as provided below in I.C. of the **SUPPLEMENTARY INFORMATION** section.

Persons interested in requesting a hearing, attending a hearing, or presenting oral testimony at a hearing

should call Mr. David Beck at (919) 541-5421. If a public hearing is held, it will take place at the Big Island Elementary School, 1114 Schooldays Road, Big Island, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Beck, Office of Environmental Policy Innovation (E-143-02), U.S. EPA, Research Triangle Park, NC 27711. Mr. Beck can be reached at 919-541-5421 (or by e-mail at: [beck.david@epa.gov](mailto:beck.david@epa.gov)). Further information on today's action may also be obtained on the World Wide Web at <http://www.epa.gov/projectxl/>.

**SUPPLEMENTARY INFORMATION:****Outline of Today's Document**

The information presented in this preamble is arranged as follows:

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**I. General Information****A. Regulated Entities**

This amendment to the Pulp and Paper MACT II applies to a single source, the Georgia-Pacific Corporation's pulp and paper facility in Big Island, Virginia.

*B. How Can I Get Copies of This Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. A-2002-0072. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost 15 cents per page.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected

from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket. Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

*C. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in I.C.2 and I.D. below. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. A-2002-0072. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to [a-and-r-Docket@epa.gov](mailto:a-and-r-Docket@epa.gov), Attention Docket ID No. A-2002-0072. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in C.2 below. These electronic submissions will be accepted in

WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send two (2) copies of your comments to the Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. A-2002-0072.

3. *By Hand Delivery or Courier.* Deliver your comments to: Environmental Protection Agency, EPA Docket Center, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. A-2002-0072. Such deliveries are only accepted during the Docket's normal hours of operation as identified in A.1.

4. *By Facsimile.* Fax your comments to: (202) 566-1741, Attention Docket ID No. A-2002-0072.

#### *D. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Environmental Protection Agency, EPA Docket Center (EPA/DC), RCRA Docket, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. RCRA-2002-0032. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in Summary section above.

#### *E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

#### **II. Authority**

This rule is being promulgated under the authority of section 112 of the Clean Air Act, as amended in 1990 (42 U.S.C. 7401, *et seq.*).

#### **III. Background**

##### *A. What Is Project XL?*

Project XL is an EPA initiative developed to allow regulated entities to achieve better environmental results at less cost. Project XL—"eXcellence and Leadership"—was announced on March 16, 1995 (see 60 FR 27282, May 23, 1995). Detailed descriptions of the Project XL program have been published previously in numerous public documents which are generally available electronically via the Internet at <http://www.epa.gov/projectxl/>. Briefly, Project XL gives a limited number of regulated entities the opportunity to develop their own pilot projects and alternative strategies to achieve environmental performance that is superior to what would be achieved through compliance with current and reasonably anticipated future environmental regulations. These efforts are crucial to the Agency's ability to test new regulatory strategies that reduce regulatory burden and promote economic growth while achieving better environmental and public health protection. The Agency intends to evaluate the results of this and other XL projects to determine which specific elements of the projects, if any, should be more broadly applied to other

regulated entities, for the benefit of both the economy and the environment.

Project XL is intended to allow EPA to experiment with new or pilot projects that provide alternative approaches to regulatory requirements, both to assess whether they provide benefits at the specific facility affected, and determine whether these projects should be considered for wider application. Such pilot projects allow EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis. EPA may modify rules, on a site- or State-specific basis, that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute.

On May 31, 2000, EPA's Region 3, joined by the Virginia Department of Environmental Quality (DEQ), the U.S. Department of Agriculture Forest Service, and Georgia-Pacific signed the Final Project Agreement (FPA) for the Georgia-Pacific XL project. A copy of the FPA is available to the public at the EPA Air Docket in Washington, DC (Docket No. A-2000-42), at the EPA Region 3 Library in Philadelphia, and on the Internet at <http://www.epa.gov/ProjectXL/georgia/finalfpa.pdf>. The FPA is a non-binding written agreement between the project sponsor and regulatory agencies which describes the project in detail, discusses criteria to be met, identifies performance goals and indicators, and outlines how the agreement will be managed.

##### *B. Description of Big Island Facility*

Georgia-Pacific owns and operates a non-sulfur, non-bleaching pulp and paper mill at Big Island, Virginia. The facility produces two products: corrugating medium, which is used by box manufacturing plants to make the fluted inner layer of corrugated boxes; and linerboard, which is used for the inside and outside layers of the boxes. Corrugating medium is made from secondary (recycled) fiber and hardwood pulp produced using a sodium carbonate/sodium hydroxide based pulping liquor, and linerboard is made from fiber recycled from old corrugated containers, clippings and rejects from corrugated container manufacturing plants, and some mixed office waste paper. Overall, the mill produces an average 870 tons per day of corrugating medium and 730 tons per day of linerboard.

The mill currently handles the spent ("black") liquor from wood pulping operations by reducing liquor water content, using a conventional multiple effect evaporation train, and combusting

the concentrated (about 60 percent solids) liquor in two smelters. Molten smelt is drawn from the smelters and dissolved in water to recover the pulping chemical sodium carbonate. Exhaust gases from the smelters pass through a venturi scrubber and are then discharged to the atmosphere.

#### IV. The Georgia-Pacific XL Project

##### A. What Are the Basic Elements of the Project?

The mill currently is subject to two air emission standards. The first was promulgated under Clean Air Act (CAA) section 112, as part of the "Cluster Rule," on April 15, 1998 (63 FR 18617). That rule set standards reflecting performance of maximum achievable control technology (MACT) for hazardous air pollutants (HAPs) emitted by certain emission sources in pulp and paper mills. EPA promulgated a second air standard for pulp and paper mills on January 12, 2001 (66 FR 3179). The second standard, likewise reflecting MACT, specifically addresses HAP emissions from combustion sources associated with the recovery of pulping chemicals from liquid pulping wastes (e.g., black liquor) (40 CFR part 63, subpart MM—National Emission Standards for Hazardous Air Pollutants From Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semicheical Pulp Mills or "MACT II"). Georgia-Pacific's facility at Big Island is a semi-chemical pulp mill and its two existing smelters (types of combustion units) are subject to the MACT II rule.

The MACT II rule contains emission limitations, but does not require use of a particular technology to meet the limitations. The current emissions from Georgia-Pacific's two existing smelters at Big Island exceed the HAP emission standard in the MACT II rule. For Georgia-Pacific's Big Island facility to meet the standard, the smelters would have to be upgraded substantially. The age and physical condition of the smelters dictate that they either be rebuilt with additional emission control devices or replaced, such as with a conventional recovery boiler commonly used in the industry. Of these two options, Georgia-Pacific would choose to replace the smelters with a conventional recovery boiler.

However, Georgia-Pacific also investigated, and eventually chose, a third alternative for chemical recovery, replacing the smelters with a PulseEnhanced™, steam reforming black liquor gasification system developed by Stone Chem, Inc. This technology uses steam reforming to

convert the organics in black liquor to a hydrogen-rich gas fuel, leaving the residual pulping chemicals (primarily sodium carbonate) for reuse. The gas can then be used as a clean burning energy source for heat in the gasification unit and as an alternative boiler fuel, replacing fossil-fuel based (non-renewable) natural gas. Implementation of such a gasification system is expected to allow the Big Island facility to reduce emissions well below the MACT II HAP emission standards, and to significantly lower emissions of other criteria pollutants, compared to installation of conventional technology. However, the technology has yet to be commercially demonstrated.

The signatories to the FPA, and the other project stakeholders, believe that gasification of black liquor represents a new and better approach for the chemical recovery process and eliminates many of the deficiencies of the conventional recovery furnace and fluid bed combustion technologies. The benefits of gasification to the paper industry generally are expected to include: increased efficiency in energy conversion and chemical recovery, elimination of the smelt-water explosion hazard, reduced operation and maintenance costs, and significantly lower environmental emissions. The emissions expected to be reduced include: particulates, sulfur dioxide (SO<sub>2</sub>), total reduced sulfur (TRS), nitrogen oxides (NO<sub>x</sub>), volatile organic compounds (VOC), carbon monoxide (CO), hazardous air pollutants (HAP), and greenhouse gases, specifically carbon dioxide (CO<sub>2</sub>). These benefits are particularly attractive to pulp mills such as Georgia-Pacific's at Big Island that use a semi-chemical non-sulfur process that requires auxiliary fossil fuel to sustain combustion of the black liquor. Projected benefits to the Big Island facility and surrounding areas include significant reductions in NO<sub>x</sub>, VOC, CO, and particulates.

Although Georgia-Pacific's feasibility analysis indicated the risks of attempting to construct and operate the new technology would be within acceptable limits from a technical standpoint, the company had two other concerns. The first concern was the cost of the project. Estimated costs to complete a black liquor gasification project, the first commercial scale implementation of this technology, were quite high and considerably more than the cost of installing a new conventional recovery boiler. Therefore, Georgia-Pacific sought and has received some co-funding from the U.S. Department of Energy (DOE), which has recognized the technology's potential usefulness.

The second concern involved compliance with the MACT II rule. With this demonstration of a new technology come risks that the technology ultimately will not be successful. If this occurs, Georgia-Pacific's Big Island mill will not have a functioning replacement for the smelters in time to meet the MACT II compliance date, which is March 13, 2004. Therefore, for this XL project EPA committed to undertake a rulemaking to provide temporary relief from the MACT II compliance date for this situation (and also for a defined time period in which Georgia-Pacific will run the new gasification system on black liquor from a Kraft pulp mill, to meet an obligation under their funding agreement with DOE). To fulfill this commitment, EPA promulgated amendments to the MACT II rule on March 26, 2001 (66 FR 16400).

The amendments included a provision to allow the Big Island facility until March 1, 2007, to comply with the applicable performance standard, if Georgia-Pacific's attempt to implement commercial scale black liquor gasification at the Big Island mill fails. The compliance extension, nearly three years later than the otherwise applicable compliance date, was intended to allow Georgia-Pacific time to replace the unsuccessful gasifier with a conventional chemical recovery system.

##### B. What Is the Construction Status Under the Project?

Proceeding according to the FPA and the original site-specific rule, and after signing a co-funding contract with the Department of Energy (DOE), Georgia-Pacific began final design and construction of the black liquor gasification system in early 2001. Since that time, Georgia-Pacific has spent about 13 million dollars, and has made considerable construction progress. As of the end of December 2002, construction was about 50% complete (see Georgia-Pacific's Web site for current project construction information: <http://www.gp.com/containerboard/mills/big/steam.html>). But Georgia-Pacific also has experienced delays. To begin with, in the FPA Georgia-Pacific agreed to begin construction after signing a contract with DOE. That signing was expected to take place in mid-2000, but did not occur until February 15, 2001. Additionally, Georgia-Pacific encountered several unexpected, significant design issues. For example, control of sulfur emissions from the system was originally based on scrubbing hydrogen sulfide from the product gas using green liquor. This strategy proved infeasible. After

evaluating several alternative hydrogen sulfide scrubbing processes, Georgia-Pacific determined that the best alternative was to control the sulfur compounds after combustion of the product gas, with a sulfur dioxide scrubber. This change required major revisions to process design and equipment layout. In another instance, company reviews turned up several design issues with the pulsed jet heaters; moreover, the designer of the gasification process imposed a new requirement for water cooling certain parts of the pulse heaters. The reliability of the pulsed jet heaters is critical to successful operation of the gasification process, and these issues had to be addressed. Georgia-Pacific also identified several design issues with the reformer vessel and green liquor filtering system. In all, the Georgia-Pacific project team identified over 20 significant changes that had to be made in the design phase to enhance the commercial viability of the system.

The design reviews of the entire system have been completed, all identified issues have been resolved, and, as mentioned, construction is well underway. No further significant design changes are anticipated, and the remaining construction phase should be relatively straightforward. Nonetheless, the delayed start under the DOE contract and the numerous design changes have led to a projected one year delay in the construction and commissioning schedule. Previously, the company expected to be able to start-up the gasification system and determine whether it was a success or failure by March 1, 2004. Now that date is projected as March 1, 2005.

#### **V. What Regulatory Change Are We Making To Accommodate the Construction Delay?**

As stated in the FPA and the initial site-specific rule, if the full scale implementation of the gasification system is determined to be unsuccessful, Georgia-Pacific will need three years from that determination to remove the gasification system and install and start-up a conventional recovery boiler to meet the MACT II standard (*See* 66 FR at 16404). Due to the delays noted above, the determination as to whether the gasification system is successful may now occur as late as March 1, 2005, and the subsequent start-up of the replacement boiler thus may occur as late as March 1, 2008. The current site-specific MACT II rule compliance date for the Big Island mill, in the event of gasification system failure, is March 1, 2007, at the latest. This is a year earlier

than the latest projected startup of a replacement boiler (*See* 66 FR at 16408). To accommodate the delayed construction schedule, we are amending the MACT II rule to allow the Big Island facility up to March 1, 2008, to comply, in the event the new gasification system is declared a failure. Also amended, to reflect this change in the compliance date, are two notification dates in the "Reporting requirements" section (40 CFR 63.867) of the MACT II rule. We note that any additional compliance extensions are subject to the rulemaking process and the rationale for any extensions will be thoroughly analyzed.

This revised compliance extension relies on the same rationale as the original extension. That is, in the event that the gasification system is declared a failure, the Agency would regard the Georgia-Pacific mill in Big Island, Virginia, as a different type of mill, essentially a member of its own subcategory—a mill that had attempted to recover black liquor through gasification. As a separate subcategory, the Big Island mill would be accorded the statutory 3 year compliance period to install conventional recovery technology to meet the MACT II emission standard. The 3 year compliance period would begin on the day that Georgia-Pacific declares the gasification system a failure. The latest date Georgia-Pacific could declare the system a failure is March 1, 2005, and, thus, the latest date for compliance under the failure scenario is March 1, 2008.

The construction delay has created a second problem with respect to compliance. Georgia-Pacific no longer expects to be able to start up the gasification system before March 13, 2004, as the company originally anticipated before the delays. This date is the ordinary compliance date for the MACT II rule and the one that applies to Big Island's existing smelters until such time, if ever, that Georgia-Pacific declares the gasification system a failure. It is now almost certain that any successful gasification system startup will occur after March 13, 2004. This leaves a period of potentially about a year (from March 13, 2004 to March 1, 2005, at the latest) in which Georgia-Pacific will be working toward gasification system startup, but will occasionally need to operate the smelters. Full capacity startup of the complex gasification system is expected to take several months. As the company is working toward startup, the gasification system may operate intermittently and/or at a reduced capacity as Georgia-Pacific makes equipment or process adjustments and

conducts operational trials. Under these conditions, the existing smelters must operate to treat the black liquor generated by the facility but not being treated in the gasifier. Under current regulations, if by March 13, 2004, the gasification system is not started-up, any such operation of the smelters would violate the MACT II rule emission standard.

To avoid potential noncompliance from smelter operation prior to startup (full time, stable operation) of the gasification system, Georgia-Pacific applied to the Virginia Department of Environmental Quality (the applicable CAA Title V permit-issuing authority) for an extension of the MACT II March 13, 2004 compliance date to March 1, 2005, for the Big Island mill. Under section 112(i)(3)(B) of the Clean Air Act, a source may be granted an extension of an applicable compliance date by up to one year, if the extension "is necessary for the installation of controls." The gasification system constitutes the "control" that will achieve the MACT II emission standard, and the extra time is needed for its installation. On December 16, 2002, and after consideration of the information supplied to them, the Virginia DEQ granted Georgia-Pacific's request for the compliance date extension to March 1, 2005.

We are publishing this rule amendment as a direct final promulgation, effective 90 days after publication, because the action is expected to be non-controversial and not generate negative comment. If we receive negative comment on this action, we will publish a timely withdrawal of these rule amendments. In such a case, we will consider a companion notice found elsewhere in today's **Federal Register** as the proposed rule amendments. We will then consider the comments received and subsequently publish a final agency action.

#### **VI. Statutory and Executive Order Reviews**

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

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether this regulatory action is "significant" and therefore subject to formal review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of this regulatory action. The Order defines "significant regulatory" action as one that is likely to result in a rule that may: (1) Have an annual effect on the

economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because this rule affects only one facility, it is not a rule of general applicability. It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

#### B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, since it applies to only one facility. It is exempt from OMB review under the Paperwork Reduction Act because it is a site specific rule, directed to fewer than ten persons. 44 U.S.C. 3502(3), (10); 5 CFR 1320.3(c), 1320.4 and 1320.5.

#### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and public comment rulemaking requirements 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 not-for-profit enterprises, and small governmental jurisdictions. The project sponsor, Georgia-Pacific Corporation, is the regulated entity for this pilot project and is not a small business. This rule does not apply to small businesses, small not-for-profit enterprises, nor small governmental jurisdictions. Further, it is a site-specific rule with limited applicability to only one pulp and paper mill in the nation. After considering the economic impacts of today's final rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

#### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments in the aggregate or to the private sector of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposal with significant Federal mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. As used here, "small government" has the same meaning as that contained under 5 U.S.C. 601(5), that is, governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.

As discussed above, this rule will have limited application. It applies only to the Georgia-Pacific facility in Big Island, Virginia. This direct final rule amendment does not impose any costs on Georgia-Pacific, but rather provides an avenue for the company to commercialize a new technology that will comply with the existing rule. EPA has determined that this rule amendment does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local,

or Tribal governments, in the aggregate, or the private sector in any one year. Thus, this rule is not subject to the requirements of section 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

#### E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), 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." The phrase, "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 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, nor on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule amendment will affect one local governmental entity and a State, only shifts a conditional compliance date in the existing rule, and, therefore, has a negligible effect on the State and local governmental entities concerned. Thus, Executive Order 13132 does not apply to this rule.

#### F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop a process that is accountable to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." "Policies that have Tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on

the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045, "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 in Executive Order 12886; 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 potentially effective and feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency believes the environmental health or safety risks addressed by this action do not present a disproportionate risk to children. This rule will allow for the commercialization of a promising new technology that is expected to emit lower levels of hazardous air pollutants compared to the conventional technology currently employed. Therefore, no additional risk to public health, including children's health, is expected to result from this action.

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

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It will not result in increased energy prices, increased cost of energy distribution, or an increased dependence on foreign supplies of energy.

*I. National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law

104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless such practice is inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (for example, material specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standard 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 rulemaking however, does not involve any technical standards; therefore EPA did not consider the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898, "Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations" (February 11, 1994) is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high adverse human health or environmental impacts as a result of EPA's policies, programs, and activities. Today's action applies to one facility in Big Island, Virginia, and will have no disproportionate impacts on minority or low income communities. Overall, the project being undertaken at Big Island will, if successful, produce environmental performance superior to that expected through compliance with existing regulations.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular

applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

**List of Subjects in 40 CFR Part 63**

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: July 28, 2003.

**Marianne L. Horinko,**  
*Acting Administrator.*

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

**PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANT SOURCE CATEGORIES**

■ 1. The authority citation for part 63 continues to read as follows:

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

**Subpart MM—[Amended]**

■ 2. Amend § 63.863 by revising paragraph (c)(1) to read as follows:

**§ 63.863 Compliance dates.**

\* \* \* \* \*  
(c) \* \* \*

(1) If Georgia-Pacific Corporation constructs a new black liquor gasification system at Big Island, VA, determines that its attempt to start up the new system has been a failure and, therefore, must construct another type of chemical recovery unit to replace the two existing semichemical combustion units at Big Island, then the two existing semichemical combustion units must comply with the requirements of this subpart by the earliest of the following dates: three years after Georgia-Pacific declares the gasification system a failure, upon startup of the new replacement unit(s), or March 1, 2008.

\* \* \* \* \*

■ 3. Amend § 63.867 by revising paragraph (a)(2) to read as follows:

**§ 63.867 Reporting requirements.**

(a) \* \* \*

(2) Notifications specific to Georgia-Pacific Corporation's affected sources in Big Island, Virginia.

(i) For a compliance extension under § 63.863(c)(1), submit a notice that provides the date of Georgia-Pacific's determination that the black liquor gasification system is not successful and the reasons why the technology is not

successful. The notice must be submitted within 15 days of Georgia-Pacific's determination, but not later than March 16, 2005.

(ii) For operation under § 63.863(c)(2), submit a notice providing: a statement that Georgia-Pacific Corporation intends to run the Kraft black liquor trials, the anticipated period in which the trials will take place, and a statement explaining why the trials could not be conducted prior to March 1, 2005. The notice must be submitted at least 30 days prior to the start of the Kraft liquor trials.

\* \* \* \* \*

[FR Doc. 03-19919 Filed 8-4-03; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### 49 CFR Parts 191, 192, and 195

[Docket Number RSPA-99-6132; Amdt. Nos. 191-15, 192-92, 195-72]

RIN 2137-AD42

#### Pipeline Safety: Producer-Operated Outer Continental Shelf Natural Gas and Hazardous Liquid Pipelines That Cross Directly Into State Waters

**AGENCY:** U.S. Department of Transportation (DOT), Research and Special Programs Administration (RSPA).

**ACTION:** Final rule.

**SUMMARY:** This final rule addresses the safety regulation responsibility for producer-operated natural gas and hazardous liquid pipelines that cross into State waters without first connecting to a transporting operator's facility on the Outer Continental Shelf (OCS). This rule specifies the procedures by which producer operators can petition for approval to operate under safety regulations governing pipeline design, construction, operation, and maintenance issued by either the Research and Special Programs Administration (RSPA) or the Department of the Interior (DOI), Minerals Management Service (MMS).

**DATES:** This rule is effective September 4, 2003.

**FOR FURTHER INFORMATION:** You may contact L.E. Herrick by telephone at (202) 366-5523, by fax at (202) 366 4566, by mail at U.S. Department of Transportation, RSPA, DPS-10, Room 7128, 400 Seventh Street, SW., Washington, DC 20590, or via e-mail to

*le.herrick@rspa.dot.gov* regarding the subject matter of this notice.

For copies of this notice or other material that is referenced herein you may contact the Dockets Facility by telephone at (202) 366-5046 or at the addresses listed above. The public may also review material in the docket by accessing the Docket Management System's home page at *http://dms.dot.gov*.

#### SUPPLEMENTARY INFORMATION:

##### 1. Background

###### *Notice of Proposed Rulemaking*

On April 5, 2002, RSPA's Office of Pipeline Safety (OPS) published a notice of proposed rulemaking (67 FR 16355) that addressed safety regulation responsibility for producer-operated natural gas and hazardous liquid pipelines that cross into State waters without first connecting to a transporting operator's facility on the Outer Continental Shelf (OCS). This final rule implements that proposal.

In May 1996, MMS and RSPA met with a joint industry workgroup, which was led by the American Petroleum Institute (API). The workgroup suggested that the agencies rely upon individual operators of natural gas and hazardous liquid production and transportation pipeline facilities to identify the boundaries of their respective facilities. MMS and RSPA agreed with the industry proposal and entered into an interagency Memorandum of Understanding (MOU) on December 10, 1996. The MOU was published in a joint MMS/RSPA **Federal Register** Notice (February 14, 1997; 62 FR 7037). The MOU placed, to the greatest practical extent, OCS production pipelines under MMS safety regulation and OCS transportation pipelines under RSPA safety regulation.

The MOU established a regulatory boundary on the OCS at the point operating responsibility for the pipeline transfers from a producing operator to a transporting operator. The MOU did not address regulatory responsibility for producer-operated pipelines that cross the Federal/State boundary without a transfer on the OCS or producer-operated pipelines that flow from wells located in State waters to production platforms located on the OCS.

The purpose of this final rule is to address the regulatory question for producer-operated pipeline facilities that cross the Federal/State boundary without first connecting to a transporting operator's facility on the OCS and to establish a procedure whereby OCS operators may petition to have their pipelines regulated by either

RSPA or MMS. This rule amends 49 CFR 191.1(b)(1), 192.1(b)(1), and 195.1(b)(5).

Regardless of the direction of flow, producer pipelines that cross the Federal/State boundary are always subject to RSPA regulation on the portions of the lines located in State waters. However, it does not make operational sense to have a pipeline segment crossing the Federal/State boundary subject to MMS regulations on the OCS side of the boundary and RSPA regulations on the State side of the boundary. A regulatory boundary point is better defined in terms of a specific valve that isolates one segment of a pipeline from another. By contrast, the Federal/State geographic boundary does not allow the isolation of facilities on each side of the boundary.

Therefore, for producer-operated pipeline facilities that cross into State waters without first connecting to a transporting operator's facility on the OCS, the pipeline segments located upstream (generally seaward) of the last valve on the last production facility are exempted from compliance with 49 CFR Parts 190-199. Safety equipment protecting RSPA regulated pipeline segments are not excluded.

Under this arrangement, producer-operated pipeline facilities upstream (generally seaward) of the last valve on the last production facility on the OCS are regulated under MMS regulations. RSPA/OPS will continue to inspect all upstream safety equipment (including valves, overpressure protective devices, cathodic protection equipment, and pigging devices) that protect the integrity of the RSPA/OPS-regulated pipeline segments. This arrangement is consistent with the general intent of the MOU.

However, an important principle of the industry agreement leading to the MOU is to allow the pipeline operators to decide the regulatory boundaries on or near their facilities. Therefore, producer pipeline operators may petition RSPA/OPS under 49 CFR 190.9 for approval to operate under RSPA/OPS regulations governing pipeline design, construction, operation, and maintenance. In considering such petitions, RSPA/OPS will consult with MMS and affected parties.

This rule affects about 215 producer-operated pipelines that are regulated according to a now-superseded 1976 MOU between DOI and DOT. By exempting the producer-operated pipelines from RSPA/OPS regulation, this rule will reduce overlapping regulation in accordance with the MOU of December 10, 1996. The rulemaking