



Georgia-Pacific

RECEIVED

JAN 28 2009

BUREAU OF AIR REGULATION

Georgia-Pacific Wood Products LLC
Structural Panels

223 Gordon Chapel Road
Hawthorne, FL 32640
(352) 481-4311
(352) 481-4915 fax

January 27, 2009

CERTIFIED MAIL/RETURN RECEIPT
7003 3110 0002 9443 4867

Trina Vielhauer, Chief
Division of Air Resource Management
Bureau of Air Regulation
2600 Blair Stone Road MS 5500
Tallahassee, Florida 32399-2400

**Re: Georgia-Pacific Hawthorne Plywood Facility
Boiler MACT 112(j) Part 1 Application and Request for Part 2 Extension**

Dear Ms. Vielhauer:

As you know, the U.S. Court of Appeals for the D.C. Circuit vacated and remanded the federal Boiler MACT rule (40 CFR Part 63, Subpart DDDDD) in its entirety in a June 8, 2007 decision (made effective in the Court's July 30, 2007 mandate). U.S. EPA is working to re-promulgate the rule, which requires it first to properly categorize and distinguish boilers and process heaters under Clean Air Act section 112 from solid waste incinerators under CAA section 129, and is required by court order to issue a proposed rule by July 2009, and a final rule by July 2010.

The Court's vacatur raised the issue of whether the so-called "MACT hammer" provision in CAA section 112(j) had been triggered. By its own terms, the MACT hammer—which requires sources to submit permit applications for, and permitting agencies to issue, permits containing case-by-case MACT standards "equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner"—is triggered only when EPA "fails to promulgate" a required MACT standard by its established deadline. EPA's 112(j) regulations reiterate that the obligations contained therein only apply where "the Administrator has failed to promulgate an emission standard under this part on or before an applicable section 112(j) deadline," and they require sources to submit applications only where "the owner or operator can reasonably

Georgia-Pacific Hawthorne Plywood Facility
Boiler MACT 112(j) Part 1 Application and Request for Part 2 Extension

January 27, 2009

page 2 of 5

determine that one or more sources at the major source belong in the category or subcategory subject to section 112(j).” See 40 CFR 63.52(a).

We believe that vacatur of the Boiler MACT rule did not trigger the MACT hammer and that, therefore, there is no obligation on sources to submit permit applications under section 112(j) and 40 CFR 63.52(a)(1). First and foremost, EPA did not “fail to promulgate” Boiler MACT by its agreed deadline; rather, EPA duly promulgated the rule before the deadline¹ and only later, upon challenge by various environmental and other petitioners, a court overturned and remanded the rule to EPA. Neither section 112(j) nor EPA’s 112(j) rules were intended to address the situation where a rule is duly promulgated and then later vacated. We believe these provisions cannot be “made to fit” that situation via mere interpretation.

Second, when the D.C Circuit vacated Boiler MACT, it did so on the basis that, because EPA erred in defining “commercial or industrial waste” under the CISWI definitions rule, it potentially mischaracterized some boilers and process heaters that may actually belong in the section 129 “solid waste incinerators” category. Because this threshold error cast doubt on the entire category of “boilers and process heaters” and on the MACT floor determination for that category, the court decided (without addressing the legality of any of the substantive Boiler MACT provisions) that the entire Boiler MACT rule needed to be vacated. In short, the vacatur called into question the entire Boiler MACT category and made its reestablishment dependent on proper categorization under the incinerator rule. Hence, there is at least arguably no currently-valid MACT category for the set of units previously subject to the vacated Boiler MACT rule.

Third, as a practical matter and as EPA has repeatedly conceded, it has no current authority to implement the hammer rules—and in fact those rules have no force or effect—because EPA does not have a valid OMB-issued Information Collection Request control number under the Paperwork Reduction Act (PRA). In other words, EPA has not received the necessary approval from OMB to implement 112(j), meaning sources are under no obligation to act pursuant to those rules and no person can enforce them. When and if OMB approves EPA’s pending ICR request, that will resolve this particular deficiency, though of course it will not resolve the first two issues described above.

Notwithstanding these positions, and assuming for the sake of argument that the hammer has been triggered, Georgia-Pacific understands that section 112(j) itself could be

¹ EPA missed its original November 15, 2000 deadline for promulgating the Boiler MACT rule, but signed the final rule on February 26, 2004, before the May 15, 2004 deadline agreed to in a November 26, 2002 settlement agreement.

interpreted as imposing a direct obligation on sources to submit case-by-case MACT applications despite the ambiguity surrounding the source categories and despite EPA's lack of an approved ICR. Therefore, we are submitting the attached Part 1 application, consistent with 40 CFR 63.52(a)(1) and (e) and 63.53, to fulfill any such legal obligation. We are following EPA's MACT hammer regulations in this regard, including EPA's established two-part application process², and believe submittal of this Part 1 satisfies any requirement to submit a "permit application" "beginning 18 months after [the MACT hammer date]" under section 112(j).³ Assuming the hammer was triggered by the Court's action, we believe that the 18-month period for applications began to run from issuance of the court's mandate on July 30, 2007, as the vacatur was not effective and the rule remained in force until the mandate issued. Therefore, the deadline (if there is one) for this Part 1 application is January 30, 2009, and today's submission is timely.

We realize that FDEP has instructed sources potentially subject to Boiler MACT that they need not or should not submit 112(j) applications unless or until Florida Department of Environmental Protection (FDEP) issues further 112(j) guidance or establishes a schedule for submission of applications. By submitting this Part 1 application, Georgia-Pacific does not intend to contravene the state's guidance or accelerate any schedule that FDEP might otherwise establish for submittal of case-by-case permit applications. We are

² EPA's April 5, 2002 amendments to the 112(j) regulations created the two-part application process. In its response to comments on the rule changes finalized in April 2002, EPA said that *"the hammer provision in section 112(j)(2) itself establishes the requirement to submit permit applications 'beginning 18 months after' the statutory date for promulgation of a standard. Reading this provision in context, we believe that the statute can be reasonable construed as authorizing us to provide a period of time after the hammer date in which the information necessary for a fully informative section 112(j) application can be compiled."* EPA went on to state that it *"received no adverse comment on requiring that the first portion (Part 1) of the section 112(j) application be due on the hammer date. We think that this is the minimum required by the statute. ... Failure to meet the 112(j) requirements, including failure to make a timely Part 1 application, can lead to enforcement action. If a source is unsure about its applicability, it should submit a Part 1 application requesting an applicability determination to the permitting authority, which will then make a determination of MACT applicability."* This history demonstrates that, in EPA's view, submittal of a Part 1 application by the section 112(j) deadline satisfies a source's obligation under section 112(j).

³ To the extent someone could interpret it otherwise, to require submittal of both a Part 1 and Part 2 application by the 112(j) deadline, we refer to information that we have previously submitted with respect to the regulated Boiler MACT units at this facility. As EPA has recently stated, "for many sources the permitting authority already has much of this [i.e., the Part 2-required] information, gathered through previous Title V permit submittals. A source may work with its permitting authority to determine what additional or revised information is necessary for a complete Part 2 application submittal." See Supporting Statement, Information Collection Request for Requirements for Control Technology Determinations from Major Sources In Accordance with Clean Air Act Sections 112(g) and 112(j), at 9, 10, 12 (supporting final ICR, April 2008).

January 27, 2009

page 4 of 5

respectfully submitting this application merely as a protective measure to satisfy any possible legal obligation that some might say that we have under section 112(j).

Part 2 Extension Request

Assuming the MACT hammer has been triggered and that EPA's MACT hammer regulations apply notwithstanding the PRA issues described above, those regulations would ordinarily require submission of a Part 2 application within 60 days of submitting the Part 1, unless that deadline is extended. *See* 40 CFR 63.52(e). Georgia-Pacific hereby respectfully requests an extension to this deadline pursuant to 40 CFR 63.1(a)(2) and 63.9(i). Under the Boiler MACT re-promulgation schedule recently agreed to by EPA and environmental group litigants, EPA must propose a new rule by July 15, 2009 and finalize that rule a year later, by July 15, 2010. If EPA holds to that schedule, as we must assume, then it is likely given the timeline for establishing 112(j) case-by-case limits that promulgation of the new federal standard will overtake any state process for setting the 112(j) standards, and all of the work by sources and (FDEP) in applying for and issuing the case-by-case requirements will have been for nothing. In light of this fact, we respectfully request a six-month extension to any requirement to submit the more resource-intensive Part 2s. This additional time will take us just beyond the July 2009 deadline for EPA to propose the re-promulgated Boiler MACT rule. Assuming EPA meets that deadline, demonstrating that it is on course to meet the repromulgation schedule, GP may seek (FDEP) agreement at that time that an additional extension period is appropriate. This extension request is further supported by the fact that Hawthorne Plywood Plant's boiler burns materials other than fossil fuel, such as wood waste, bark, and chips, and until EPA defines "solid waste" for purposes of a revised CISWI definitions rule, we cannot determine with certainty whether this facility's units will be regulated under the new Boiler MACT rule or under the section 129 solid waste incinerator rule. An extension of the Part 2 application deadline until EPA provides more certainty on this issue is necessary to inform Georgia-Pacific on the required contents of the Part 2 and to inform the agency on how to appropriately process the application. We respectfully request FDEP's decision on this request within four weeks of the date of this letter.

If you have any questions about this letter or the enclosed Part 1 application, please feel free to call Sam Barket at (352) 481-0433.

Sincerely,



Leon Pinner
Plant Manager

Georgia-Pacific Hawthorne Plywood Facility
Boiler MACT 112(j) Part 1 Application and Request for Part 2 Extension

January 27, 2009

page 5 of 5

Attachment: 112j Part1 Application

cc: US EPA Region IV (Return Receipt 7003 3110 0002 9443 4850)
Air Director
Mail Code: 4APT-AEEB
61 Forsyth Street S.W.
Atlanta, GA 30303

Christopher L. Kirts, P.E. (Return Receipt 7003 3110 0002 9443 4843)
Florida DEP
Northeast District Air Program Administrator
7825 Baymeadows Way
Suite B200
Jacksonville, FL 32256-7590

Alan Stinchfield, GP Atlanta

**Part 1 Application for Case-by-Case MACT Determination
Pursuant to Clean Air Act Section 112(j) and 40 CFR §§ 63.50-63.56**

1. Company Name: Georgia-Pacific Wood Products LLC

1a. Name of Major Source: Hawthorne Plywood Facility

1b. Physical Location: 223 Gordon Chapel Road
Hawthorne, FL 32640

2. Description of Major Source:

This facility produces softwood plywood products.

2a. Applicable Section 112 Source Category:

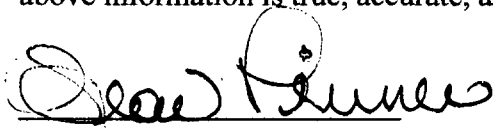
Subpart DDDDD – National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters

3. Types of emission points belonging to the relevant source category present at the major source:

Point source emissions from one wood-fired boiler.

4. Affected sources at the major source for which a section 112(g) MACT determination has been made: Not Applicable

I certify, based on information and belief, formed after a reasonable inquiry that the above information is true, accurate, and complete.


Leon Pinner

1-27-09
Date

Responsible Official for Hawthorne Plywood Facility