



Palatka Pulp and Paper Operations
Consumer Products
P.O. Box 919
Palatka, FL 32178-0919

January 12, 2009

BY CERTIFIED MAIL; RETURN RECEIPT REQUESTED

Mr. Jeffery F. Koerner, Air Permitting N Section
Bureau of Air Regulation
Florida Dept. of Environmental Protection
2600 Blair Stone Road
Tallahassee, FL 32399-2400

RECEIVED

JAN 15 2009

BUREAU OF AIR REGULATION

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

Dear Mr. Koerner:

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 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 mis-characterized 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.

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.

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 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 the Florida Department of Environmental Protection (FDEP) has instructed sources potentially subject to Boiler MACT that they need not or should not submit 112(j) applications unless or until 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 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

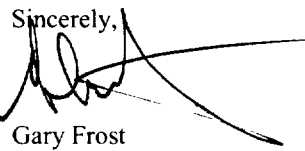
Assuming the MACT hammer has been triggered and that EPA's MACT hammer regulations apply notwithstanding the PRA issues described above, those regulations would ordinarily require submission of a Part 2 application within 60 days of submitting the Part 1, unless that deadline is extended. *See* 40 CFR 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

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 reasonably 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).

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 re-promulgation 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 Palatka's boiler(s) burn(s) materials other than fossil fuel, such as carbonaceous fuel (bark or wood fuel), 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 Mike Curtis at (386) 329-0918.

Sincerely,

Gary Frost
Vice President

cc: Beverly Banister, Director, EPA Region IV- Air, Pesticides & Toxics Management Division
Alan Stinchfield, GP-Atlanta
Christopher L. Kirts, P.E., FDEP NE District

**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 Consumer Operations LLC

1a. Name of Major Source:
Palatka Pulp/Paper Facility

1b. Physical Location: 215 County Road 216
Palatka, FL 32178

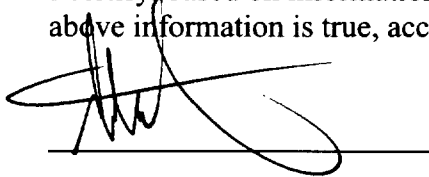
2. Description of Major Source:
This facility produces bleached and unbleached wood pulp, tissue products and unbleached paper products.

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 and oil-fired boiler and two natural gas-fired boilers.

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.

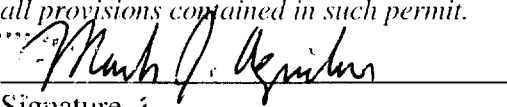


Gary Frost, Vice-President

1/12/09
Date

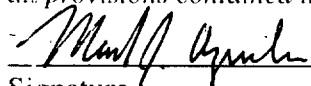
Responsible Official for Palatka Pulp/Paper Facility

Professional Engineer Certification

1. Professional Engineer Name: Mark J. Aguilar, P.E. Registration Number: 52248
2. Professional Engineer Mailing Address... Organization/Firm: Georgia-Pacific LLC Street Address: 133 Peachtree Street NE City: Atlanta State: GA Zip Code: 30303
3. Professional Engineer Telephone Numbers... Telephone: (404) 652-4293 ext. Fax: (404) 232-4310
4. Professional Engineer E-mail Address: mjaguila@gapac.com
5. Professional Engineer Statement: <i>I, the undersigned, hereby certify, except as particularly noted herein*, that:</i> <i>(1) To the best of my knowledge, there is reasonable assurance that the air pollutant emissions unit(s) and the air pollution control equipment described in this application for air permit, when properly operated and maintained, will comply with all applicable standards for control of air pollutant emissions found in the Florida Statutes and rules of the Department of Environmental Protection; and</i> <i>(2) To the best of my knowledge, any emission estimates reported or relied on in this application are true, accurate, and complete and are either based upon reasonable techniques available for calculating emissions or, for emission estimates of hazardous air pollutants not regulated for an emissions unit addressed in this application, based solely upon the materials, information and calculations submitted with this application.</i> <i>(3) If the purpose of this application is to obtain a Title V air operation permit (check here <input type="checkbox"/> , if so), I further certify that each emissions unit described in this application for air permit, when properly operated and maintained, will comply with the applicable requirements identified in this application to which the unit is subject, except those emissions units for which a compliance plan and schedule is submitted with this application.</i> <i>(4) If the purpose of this application is to obtain an air construction permit (check here <input checked="" type="checkbox"/> , if so) or concurrently process and obtain an air construction permit and a Title V air operation permit revision or renewal for one or more proposed new or modified emissions units (check here <input type="checkbox"/> , if so), I further certify that the engineering features of each such emissions unit described in this application have been designed or examined by me or individuals under my direct supervision and found to be in conformity with sound engineering principles applicable to the control of emissions of the air pollutants characterized in this application.</i> <i>(5) If the purpose of this application is to obtain an initial air operation permit or operation permit revision or renewal for one or more newly constructed or modified emissions units (check here <input type="checkbox"/> , if so), I further certify that, with the exception of any changes detailed as part of this application, each such emissions unit has been constructed or modified in substantial accordance with the information given in the corresponding application for air construction permit and with all provisions contained in such permit.</i>  Signature _____ Date <u>1/5/2009</u> (seal)

* Attach any exception to certification statement

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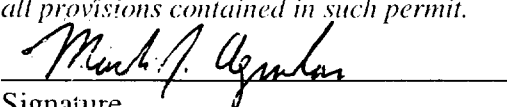
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