



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2024-0385; FRL-10808-01-R3]

Air Plan Approval; Virginia; Amendment to the State Operating Permit for GP Big Island, LLC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the Commonwealth of Virginia's (Commonwealth or Virginia) Department of Environmental Quality (VADEQ). This revision pertains to an amendment to an operating permit limiting visibility-impairing air emissions from the GP Big Island, LLC pulp and paper mill facility in Bedford County, Virginia. The EPA is proposing to include this amended operating permit in Virginia's SIP. This proposed action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2024-0385 at www.regulations.gov, or via email to gordon.mike@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not

consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **For Further Information Contact** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Philip McGuire, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2251. Mr. McGuire can also be reached via electronic mail at m McGuire.philip@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On December 14, 2022, VADEQ submitted to the EPA a revision to the Commonwealth's SIP to align the SIP with the state operating permit for Best Available Retrofit Technology (BART permit) and the Title V permit for GP Big Island pulp and paper mill (GP Big Island Mill), located in Bedford County, Virginia.¹ Currently, the Virginia SIP contains an October 5, 2012 amendment to the BART permit.² The Commonwealth further amended the BART permit on December 12, 2022 and submitted that newly amended BART permit in its December 14, 2022 SIP revision to the EPA for inclusion in the SIP. Specifically, the December 14, 2022 SIP revision, as reflected in the BART permit amended on December 12, 2022, lowers the permitted emission limits for particulate matter (PM₁₀), sulfur dioxide (SO₂), and nitrogen oxides (NO_x) at the Number 5 Power Boiler and removes conditions related to the use of coal.

¹ GP Big Island, LLC was formerly named Georgia-Pacific Big Island and supplemental docket documents may use the names interchangeably.

² On June 12, 2008, VADEQ issued a state operating permit for GP Big Island, LLC for the purpose of complying with the Best Available Retrofit Technology (BART) requirements for control of visibility-impairing pollutants under 40 CFR 51.308(e) of the EPA's Regional Haze Program. The state subsequently amended the BART permit on October 5, 2012 which the EPA approved into the SIP effective June 17, 2014. 79 FR 21855 (April 18, 2014). The current BART permit, which includes the December 12, 2022 amendment submitted for inclusion in Virginia's SIP, is available in the docket for this action as *VADEQ_State_Operating_Permit_2022_12_12*.

The amendments to the BART permit are a result of the fuel conversion of the facility's Number 5 Power Boiler from coal to natural gas, wood, wood residuals, and old corrugated container reject.³

II. Summary of SIP Revision and EPA Analysis

The December 14, 2022 proposed SIP revision changes two main aspects of the SIP as reflected in the December 12, 2022 amended BART permit.⁴ The first aspect of the proposed SIP revision submitted to the EPA on December 14, 2022 requests the removal of conditions pertaining to controlling sulfur dioxide emissions when coal is used in the Number 5 Power Boiler. Specifically, the December 12, 2022 amended BART permit no longer contains requirements that were in the October 5, 2012 amended BART permit related to limiting sulfur-content and limiting the firing of coal to a maximum percentage of the annual capacity factor when firing coal at the Number 5 Power Boiler.

Currently, the Number 5 Power Boiler no longer fires coal and the coal feed system for this source has been permanently removed. This shutdown was included in a mutual shutdown agreement between GP Big Island Mill and VADEQ, which was finalized on April 24, 2017.⁵ VADEQ incorporated the removal of the source in the Title V permit for GP Big Island Mill through an April 13, 2021 permit revision. The Number 5 Power Boiler is now permitted to fire natural gas, wood, wood residuals, and old corrugated container reject. GP Big Island Mill requested an amendment to the coal-burning provision of its BART permit through a revision application received by VADEQ on July 26, 2021. VADEQ approved this amendment to the BART permit on December 12, 2022. Now that coal no longer serves as the fuel source for the

³ This condition specifying natural gas, wood, wood residuals, and old corrugated container reject as the allowable fuels for the Number 5 Power Boiler is only included in the April 13, 2021 Title V permit, which VADEQ did not propose to be included in the SIP. The Title V permit is included in the docket as *Big_Island_TV_Permit_2021_04_13* and is for informational purposes only.

⁴ The proposed inclusion of the BART permit amended December 12, 2022 in the SIP also adds some general conditions related to permit suspension/revocation, recording of and notification for malfunctions, and a condition allowing VADEQ to require the permittee to act to prevent a violation of the ambient air quality standard.

⁵ The GP Big Island Mill-VADEQ mutual shutdown agreement for the GP Big Island Mill coal handling system is available in the docket for this action as *VADEQ_Mutual_Shutdown_Agreement_for_Coal_Handling_PWR09.pdf*.

Number 5 Power Boiler, this action proposes to align the SIP with the December 12, 2022 amended BART permit's removal of conditions regarding SO₂ control during coal use.

The second aspect of the proposed SIP revision requests approval for the lowering of the permitted emissions limits currently in the SIP for PM₁₀, SO₂, and NO_x. The proposed reduced annual limits include lowering PM₁₀ emissions limits from 103.9 tons per year (TPY) to 88.9 TPY, lowering SO₂ emissions limits from 374 TPY to 104.7 TPY, and lowering NO_x emissions limits from 610.1 TPY to 529.9 TPY. The proposed reduced hourly limits include lowering PM₁₀ emissions limits from 23.7 pounds per hour (lbs/hr) to 20.3 lbs/hr, lowering SO₂ emissions limits from 485.1 lbs/hr to 23.9 lbs/hr, and lowering NO_x emissions limits from 139.3 lbs/hr to 121.0 lbs/hr. The current, SIP-approved emission limits for the Number 5 Power Boiler were first established by the BART permit issued by VADEQ on June 12, 2008, for the purpose of complying with the BART requirements for control of visibility-impairing pollutants under 40 CFR 51.308(e) of the EPA's Regional Haze Program. The October 5, 2012 BART permit maintained these limits in the SIP. A Title V permit issued on April 13, 2021, lowered these original emission limits to the limits proposed in this SIP revision, and on July 26, 2021 GP Big Island Mill requested VADEQ amend the BART permit to include these new, lower emission limits to align with the April 13, 2021 Title V permit. VADEQ approved these lower emission limits and issued a new BART permit on December 12, 2022 to replace the pre-existing October 5, 2012 BART permit. This action proposes to align the SIP emission limits with the limits identified in the VADEQ-issued December 12, 2022 amended BART permit by incorporating that BART permit into the SIP. No emissions increases are anticipated as a result of this revision. In fact, this proposed revision to the SIP, if finalized, will lower annual and hourly emissions limits for the GP Big Island Mill compared to what is currently in the SIP.

III. Proposed Action

The EPA is proposing to approve the Virginia SIP revision for GP Big Island Mill, which was submitted on December 14, 2022 by including the December 12, 2022 amended BART

permit in the Virginia SIP. Simultaneously – at the request of VADEQ – the EPA is proposing to remove the October 5, 2012 amended BART permit from the Virginia SIP. This previous SIP revision was approved into the Virginia SIP effective June 17, 2014, and the December 14, 2022 proposed SIP revision updates this prior SIP revision. The EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. General Information Pertaining to SIP Submittals from the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) “privilege” for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed.

Virginia’s legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia’s Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information “required by law,” including documents and information “required by Federal law to maintain program delegation, authorization or

approval,” since Virginia must “enforce federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts...” The opinion concludes that “[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.”

Virginia’s Immunity law, Va. Code Sec. 10.1-1199, provides that “[t]o the extent consistent with requirements imposed by Federal law,” any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General’s January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since “no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.”

Therefore, the EPA has determined that Virginia’s Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because the EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, the EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Incorporation by Reference

In this document, the EPA is proposing to include in an EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is

proposing to incorporate by reference the state operating permit, i.e., the BART permit, that VADEQ amended December 12, 2022, as described in section II of this document. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region III Office (please contact the person identified in the **For Further Information Contact** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it

approves a state program;

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, the SIP revision proposed to be approved will not apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Nitrogen dioxide, Particulate matter, Sulfur oxides.

Amy Van Blarcom-Lackey,
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