



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2024-0385; FRL-10808-02-R3]

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

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted on December 14, 2022, by the Commonwealth of Virginia's (Commonwealth or Virginia) Department of Environmental Quality (VADEQ). The 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 located in Bedford County, Virginia. The EPA is approving the inclusion of the revised state operating permit to the Virginia SIP. This action is being taken under the Clean Air Act (CAA).

**DATES:** This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** The EPA has established a docket for this action under Docket ID Number **EPA-R03-OAR-2024-0385**. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through [www.regulations.gov](http://www.regulations.gov), or please contact the person identified in the **For Further Information Contact** section for additional availability information.

**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 *mcguire.philip@epa.gov*.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On December 11, 2025 (90 FR 57409), the EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Virginia. In the NPRM, the EPA proposed approval of a revision to the Virginia SIP which aligns the SIP with the December 12, 2022, state operating permit for Best Available Retrofit Technology (BART permit) and the Title V permit for the GP Big Island pulp and paper mill (GP Big Island) located in Bedford County, Virginia. The revision lowers the permitted emission limits for particulate matter (PM<sub>10</sub>), sulfur dioxide (SO<sub>2</sub>), and nitrogen oxides (NO<sub>x</sub>) at the Number 5 Power Boiler and removes conditions related to the use of coal. The formal SIP revision was submitted by Virginia on December 14, 2022. The public comment period for the proposed rulemaking ended on January 12, 2026, and the EPA received no comments during the public comment period.

### **II. Summary of SIP Revision and EPA Analysis**

The December 11, 2025, NPRM proposed changing two main aspects of the Virginia SIP, and this final action approves those proposed changes. The first aspect of the proposed SIP revision submitted to the EPA on December 14, 2022, requested 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 coal 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. The second aspect of the proposed SIP revision lowered the permitted emission limits for the Number 5 Power Boiler for PM<sub>10</sub>, SO<sub>2</sub>,

and NO<sub>x</sub>. The proposed reduced annual limits included lowering PM<sub>10</sub> emissions limits from 103.9 tons per year (TPY) to 88.9 TPY, lowering SO<sub>2</sub> emissions limits from 374 TPY to 104.7 TPY, and lowering NO<sub>x</sub> emissions limits from 610.1 TPY to 529.9 TPY. The proposed reduced hourly limits included lowering PM<sub>10</sub> emissions limits from 23.7 pounds per hour (lbs/hr) to 20.3 lbs/hr, lowering SO<sub>2</sub> emissions limits from 485.1 lbs/hr to 23.9 lbs/hr, and lowering NO<sub>x</sub> emissions limits from 139.3 lbs/hr to 121.0 lbs/hr. Additional rationale for the EPA's proposed action are explained in the NPRM, and will not be restated here. No public comments were received on the NPRM.

### **III. Final Action**

The EPA is approving Virginia's December 12, 2022, amended BART permit for the GP Big Island, LLC pulp and paper mill facility located in Bedford County as a revision to the Virginia SIP. The SIP revision lowers the permitted emission limits for PM<sub>10</sub>, SO<sub>2</sub>, and NO<sub>x</sub> at the Number 5 Power Boiler and removes conditions related to the use of coal. Simultaneously – at the request of VADEQ – the EPA is removing the October 5, 2012, amended BART permit from the Virginia SIP.<sup>1</sup> The previous SIP revision was approved into the Virginia SIP effective June 17, 2014, and this final action updates the June 17, 2014, SIP revision.

### **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

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<sup>1</sup> The October 5, 2012, amended BART permit and the original June 12, 2008, BART permit are available in the docket for this action as VADEQ\_State\_Operating\_Permit\_2008\_and\_2012\_revision.

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.

## **V. Incorporation by Reference**

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the December 12, 2022, amended Virginia state operating permit for GP Big Island, LLC described in section I “Background” and in section II “Summary of SIP Revision and EPA Analysis,” in this preamble. 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). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rule of the EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>2</sup>

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

Under the Clean Air Act, the Administrator is required to approve a SIP submission that

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<sup>2</sup> 62 FR 27968 (May 22, 1997).

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, 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 Order 12866 (58 FR 51735, October 4, 1993);
- Is not an Executive Order 14192 (90 FR 9065, February 6, 2025) regulatory action because this action is not significant 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);
- 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; and

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where 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).

This rule is exempt from the Congressional Review Act because it is a rule of particular applicability.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

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

Amy Van Blarcom Lackey,  
Regional Administrator,  
Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

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

**Subpart VV—Virginia**

2. In § 52.2420, the table in paragraph (d) is amended by removing the entry “GP Big Island, LLC” and adding the entry “GP Big Island, LLC” at the end of the table to read as follows:

**§ 52.2420 Identification of plan.**

\* \* \* \* \*

(d) \* \* \*

**EPA—APPROVED SOURCE SPECIFIC REQUIREMENTS**

Source name	Permit/order or registration number	State effective date	EPA approval date	40 CFR part 52 citation
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GP Big Island, LLC	Registration No. 30389	12/12/22	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], 91 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS]	52.2420(d); Revised BART permit replacing permit dated 6/12/08 and permit revision dated 10/5/12.

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