

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