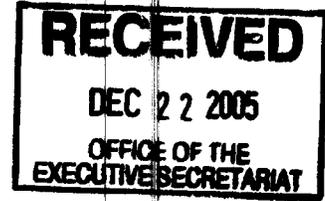


AX-05-001-8935



GEORGIA CENTER
FOR LAW IN THE PUBLIC INTEREST



clean air clean water clean georgia

December 20, 2005

VIA FEDERAL EXPRESS

Stephen L. Johnson
Environmental Protection Agency
Room 3000
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Washington, DC 20460

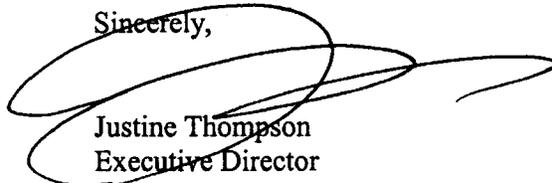
Re: Petitions Pursuant to 42 U.S.C. § 7661d(b)(2) regarding Georgia Power's Bowen Steam – Electric Generating Plant, Title V Permit No. 4911-051-0011-V-02-0, and Branch Steam – Electric Generating Plant, Title V Permit No. 4911-237-0008-V-02-0

Dear Administrator Johnson,

Please find enclosed the a petition from Sierra Club, Georgia Public Interest Research Group ("Georgia PIRG"), and the Coosa River Basin Initiative objecting to the Title V permit (No. 4911-051-0011-V-02-0) issued by the Air Protection Branch of the Environmental Protection Division of the Georgia Department of Natural Resources ("EPD") for the Bowen Steam – Electric Generating Plant. Also enclosed is a petition from Sierra Club and Georgia PIRG objecting to the Title V permit (No. 4911-051-0011-V-02-0) issued by EPD for the Branch Steam – Electric Generating Plant.

The permitting authority, the permittee, and EPA Region 4 have been copied on these petitions. If you have any questions about these petitions, please do not hesitate to contact me.

Sincerely,



Justine Thompson
Executive Director

BEFORE THE ADMINISTRATOR

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of the Proposed Title V
Operating Permit Issued to

Bowen Steam-Electric Generating Plant,

Issued by the Georgia Department of
Natural Resources, Environmental
Protection Division

Permit Number: 4911-015-0011-V-02-0

Petition to Object to Issuance of Part 70
Operating Permit for Bowen Steam –
Electric Generating Plant

INTRODUCTION

Pursuant to § 505(b)(2) of the Clean Air Act (“CAA” or “Act”), 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d), Petitioners Sierra Club, Georgia Public Interest Research Group (“Georgia PIRG”), and the Coosa River Basin Initiative (“CRBI”), hereby petition the Administrator (“Administrator”) of the United States Environmental Protection Agency (“EPA”) to object to the issuance of Title V Permit No. 4911-051-0011-V-02-0 for the Bowen Steam – Electric Generating Plant, owned or operated by Southern Company/Georgia Power.

Petitioner Sierra Club is a conservation organization with approximately 600,000 members, including members in the State of Georgia, dedicated to protecting natural resources, including clean air and water. On behalf of its members, Sierra Club works to protect and enhance the quality of air throughout the country. Georgia PIRG is an advocate for the public interest, also with members in the State of Georgia. Georgia PIRG’s mission is to protect the environment, encourage a fair, sustainable economy, and foster responsive, democratic government. CRBI’s goal is to provide a cleaner, healthier Coosa River Basin by promoting responsible stewardship of the watershed. CRBI’s membership consists of concerned citizens,

small businesses, local industry, and other organizations from the Coosa River Basin and beyond. CRBI's members range in age from eight to eighty, and are preachers, teachers, students, doctors, farmers, politicians, retirees, business people, sportsmen, fishermen, and others.

Petitioners provided comments to the Air Protection Branch of the Environmental Protection Division of the Georgia Department of Natural Resources ("Georgia EPD") on the draft permit, and Georgia EPD responded to those comments.

This petition is filed within sixty days following the end of U.S. EPA's 45-day review period as required by Clean Air Act 8 505(b)(2). The Administrator must grant or deny this petition within sixty days after it is filed.

If the U.S. EPA Administrator determines that this permit does not comply with the requirements of the Clean Air Act ("CAA") or 40 C.F.R. Part 70, he must object to issuance of the permit. *See* 40 C.F.R. § 70.8(c)(1) ("The [U.S. EPA] Administrator will object to the issuance of any permit determined by the Administrator not to be in compliance with applicable requirements or requirements of this part.").

GROUND FOR OBJECTION

I. **The Administrator Must Object to the Proposed Permit Because it Fails to Incorporate PSD Program Requirements and Lacks a Compliance Schedule Designed to Bring the Facility into Compliance with those Requirements.**

Under 40 C.F.R. § 70.1(b) and Clean Air Act § 504(a), each facility that is subject to Title V permitting requirements must obtain a permit that "assures compliance by the source with all applicable requirements." Rule 391-3-1-.03(10)(d)(1)(i) of Georgia's Title V rule incorporates by reference 40 C.F.R. § 70.6(a). This section provides in part that:

Each permit issued under this part shall include the following elements:

- (1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

Applicable requirements include the requirement to comply with SIP requirements and the requirement to obtain a preconstruction permit that complies with preconstruction review requirements under the Clean Air Act, U.S. EPA regulations, and the state implementation plan ("SIP"). *See* 40 C.F.R. § 70.2. Rule 391-3-1-.03(10)(c)(2) of Georgia's Title V rule also incorporates by reference 40 C.F.R. § 70.5(c). 40 C.F.R. § 70.5(c)(8)(iii)(C) requires that, if a facility is in violation of an applicable requirement at the time of permit issuance, the facility's permit must include a compliance schedule. The schedule must contain "an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance." *See* 40 C.F.R. § 70.5(c)(8)(iii)(C). Thus, if a power plant is in violation of PSD or SIP requirements, the plant's operating permit must include an enforceable compliance schedule designed to bring the plant into compliance with those requirements. The plant is then bound to comply with that schedule or risk becoming the target of an enforcement action for violating the terms of its permit. (This violation would be in addition to the original violation resulting from the plant's failure to obtain a PSD permit). Such an enforcement action could be brought by the permitting authority (usually the state or local environmental agency), U.S. EPA, or the public.

The Georgia SIP contains PSD permitting requirements. Rule 391-3-1-.02(7) of the Georgia SIP incorporates by reference several provisions of 40 C.F.R. § 52.21, including subsections (i) through (r). In particular, 40 C.F.R. 52.21(j)(3) provides that "major

modifications” are subject to emission limitations known as Best Available Control Technology (“BACT”). Also, before making a major modification, an owner or operator must conduct monitoring and through modeling show that the emissions increases from the plant will not adversely impact any NAAQS, increments, or air quality related values. Emission limitations established by the state on a plant as a result of the PSD process insure that the NAAQS, increments, and air quality related values will be adequately protected.

The United States Court of Appeals for the Second Circuit recently held that if a state has issued a notice of violation finding that an owner or operator has made a major modification without complying with PSD requirements, then a Title V permit must contain a compliance schedule designed to bring the facility into compliance with those requirements. *New York Public Interest Research Group, Inc., v. Johnson*, 427 F.3d 172 (2d Cir. 2005) (hereinafter “NYPIRG”). In so doing, the court relied upon the Title V permit objection issued by EPA for a permit issued by the state of Kentucky. *August 7, 2000, Notification to Kentucky Department of Environmental Protection of EPA Objection to Title V Permit issued to Gallatin Steel Company pursuant to 40 C.F.R. § 70.8(c)*, available at <http://www.epa.gov/region4/air/permits/gallatin--obj.htm> (last visited October 14, 2005). NYPIRG, 427 F.3d at 182. In the *Gallatin Steel* matter, EPA objected to the Title V permit issued by the State of Kentucky because it did not contain a compliance schedule even though EPA had issued a civil judicial complaint and a notice of violation. Thus, in circumstances in which EPA has found, through a notice of violation, that a source is in violation of the Clean Air Act, a Title V permit for that source must include a compliance schedule.

In this case, in 2000, EPA issued a notice of violation, EPA-CAA-2000-04-0006, to Georgia Power finding that the subject of this permit, the Bowen Steam – Electric Generating Plant, is in violation of the Clean Air Act. Specifically, EPA stated that the owners or operators of the plant had violated Georgia's new source review requirements several times since 1979. EPA specifically found that Georgia Power had violated these requirements in 1992 by redesigning and replacing its economizer at Unit 2. In spite of these modifications, Georgia Power has never obtained a PSD permit and never applied Best Available Control Technology ("BACT") for sulfur dioxide, nitrogen oxides, or particulate matter. Furthermore, as happened in *NYPIRG* and *Gallatin Steel* matters, EPA followed up that NOV with the filing of a civil judicial complaint.

The Title V permit at issue here, however, does not contain emission limitations that refer to Georgia's PSD rule, nor could they be described as Best Available Control Technology. In particular, Steam Generator Unit 2 is not subject to emission limitations known as Best Available Control Technology. Furthermore, since Georgia Power never submitted a PSD permit application for Plant Bowen, there is no assurance that the emission limitations established by the Title V permit adequately protect the NAAQS, increments, or air quality related values. Furthermore, the permit fails to include a compliance schedule to bring Plant Bowen into compliance with Georgia's PSD requirements. Accordingly, this Title V permit is deficient under Rule 391-3-1-.03(10)(d)(1)(i) and 40 C.F.R. § 70.6(a) because it does not incorporate all applicable requirements, and it is also deficient Rule 391-3-1-.03(10)(c)(2) and 40 C.F.R. § 70.5(c)(8)(iii)(C) because it fails to include a compliance schedule. Petitioners pointed out these deficiencies in their public comments, but EPD did not amend the permit.

II. **The Administrator Must Object to the Proposed Permit Because it Lacks a Compliance Schedule Designed to Bring the Facility into Compliance with Opacity Requirements.**

As mentioned above, Rule 391-3-1-.03(10)(c)(2) of Georgia's Title V rule incorporates by reference 40 C.F.R. § 70.5(c). 40 C.F.R. § 70.5(c)(8)(iii)(C) requires that, if a facility is in violation of an applicable requirement at the time of permit issuance, the facility's permit must include a compliance schedule. Review of excess emissions reports and compliance certifications for this plant shows that the plant's opacity compliance is intermittent, not continuous. In their comments on this permit, Petitioners pointed out this plant's non-compliant status, yet Georgia EPD refused to incorporate a compliance schedule into this permit to bring the facility into compliance with opacity standards. Under these circumstances, EPA must object.

III. **The Administrator Must Object to the Proposed Permit Because it Lacks an Adequate Statement of Basis.**

Each Title V permit must be accompanied by a "statement that sets forth the legal and factual basis for the draft permit conditions" ("Statement of Basis"). 40 C.F.R. § 70.7(a)(5). A recent Order by the Administrator affirms the critical role of the Statement of Basis, in providing a record to explain permitting decisions:

"A statement of basis ought to contain a brief description of the origin or basis for each permit condition or exemption. ... It should highlight elements that EPA and the public would find important to review. ... Thus, it should include a discussion of the decision-making that went into the development of the title V permit and provide the permitting authority, the public and EPA a record of the applicability and technical issues surrounding the issuance of the permit."

*In the Matter of Los Medanos Energy Center, Order Denying in Part And Granting in Part
Petition for Objection To Permit, 2001 Petition, at 10-11 (U.S. EPA Adm'r, May 24, 2004) ("Los*

Medanos) (citing, e.g., *In re Port Hudson Operation Georgia Pacific*, Petition No. 6-03-01, at 37-40 (U.S. EPA Adm'r, May 9, 2003) ("*Georgia Pacific*"); *In re Doe Run Company Buick Mill and Mine*, Petition No. VII-1999-001, at 24-25 (U.S. EPA Adm'r, July 31, 2002) ("*Doe Run*").

According to EPA, five key elements of an adequate Statement of Basis are:

- (1) a description of the facility;
- (2) a discussion of any operational flexibility that will be utilized at the facility;
- (3) the basis for applying the permit shield;
- (4) any federal regulatory applicability determinations; and
- (5) the rationale for the monitoring methods selected.

See *Los Medanos*, at 10, n. 16 (citing 67 Fed. Reg. 732 (Jan. 7, 2002)) (EPA NOD issued to Texas) and letter from Stephen Rothblatt, Air Programs Branch, U.S. EPA to Robert Hodanbosi, Chief, Ohio Environmental Protection Agency, December 20, 2001 (EPA Region V guidance letter to Ohio),¹ which further recommends discussion of applicability and exemptions, and "certain other factual information as necessary." See also *In re Fort James Camas Mill*, Petition No. X-1999-1, at 8 (U.S. EPA Adm'r, Dec. 22, 2000) ("*Fort James*") (the rationale for the selected monitoring methods must be clear and documented in the permit record"); and U.S. EPA Region 10 guidance by Elizabeth Waddell, Region 10 Permit Review, May 27, 1998, at 4 (a Statement of Basis should include detailed facility descriptions, including emission units, control devices, and manufacturing processes; explanations for all actions including documentation of compliance with one time NSPS requirements and emission caps; and the basis for periodic

¹ Available at <http://www.epa.gov/rgytgrnj/programs/artd/air/title5/t5memos/sbguide.pdf> (last accessed December 20, 2005).

monitoring, including appropriate calculations, especially when less stringent than would be expected).

A permit is deficient when its accompanying statement of basis is insufficient because without a sufficient statement of basis, it is virtually impossible for the public to evaluate the legal and factual basis for certain permit conditions and to prepare effective comments during the public comment period. In this case, Georgia has issued a Statement of Basis or "Narrative" for the draft permit for the Bowen facility which is insufficient because:

- It does not contain a sufficient explanation of the reason for deeming the ash processing facility that is located on contiguous property as a separate facility for title V purposes.
- It does not contain sufficient information for EPA or the public to determine the applicability of certain requirements to specific sources. For example, in numerous places in the Narrative, the reviewer is referred to the Narrative for the initial title V permit for the reasoning behind permitting, monitoring, and testing requirements. The Narrative for the renewal permit for the Bowen plant should contain information discussing the basis for permitting, monitoring and testing requirements rather than referring the reviewer to information which is difficult or impossible to ascertain.

Without such information, neither the public nor EPA can discern what the applicable permitting, monitoring or testing requirements should be, and to which sources such requirements should apply.

Petitioners made these points to EPD in their public comments. In response, EPD stated that:

The renewal narrative only makes references to the initial Title V permit narrative; all changes made in subsequent amendments are discussed in the renewal narrative. All narratives, for the initial permit and any amendments, are available in the EPD paper

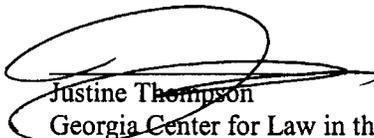
files, as well as online through the EPD website with readily-available links to all previous permit narratives.

One point of the Title V permit program was to create, for each Title V source, permits that collected in one place all applicable requirements with statements explaining how the permit's terms relate to those applicable requirements. Requiring citizens to go through multiple documents in order to determine the source of permit terms defeats this purpose. Because the Narrative for the Bowen plant does not sufficiently set forth the legal and factual basis for the permit conditions as required by section 70.7(a)(5), the Narrative and the permit itself are deficient and until revised to include the information detailed above, the permit should not be finalized in its current form.

CONCLUSION

For the reasons set forth above, this Petition should be granted.

Respectfully submitted,



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cc: Jimmy Palmer, Regional Administrator, EPA Region IV
Dr. Carol Couch, Director, Environmental Protection Division, Georgia DNR
C. H. (Chuck) Huling, Manager, Air Programs, Georgia Power Company/ Environmental Affairs