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VIA FEDERAL EXPRESS

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Environmental Protection Agency
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Washington, DC 20460

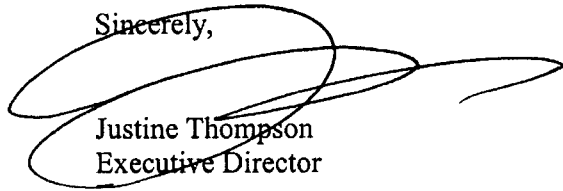
Re: Petitions Pursuant to 42 U.S.C. § 7661d(b)(2) regarding Georgia Power's Bowen Steam – Electric Generating Plant, Title V Permit No. 4911-051-0011-V-02-0, and Branch Steam – Electric Generating Plant, Title V Permit No. 4911-237-0008-V-02-0

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
Branch Steam-Electric Generating Plant,
Issued by the Georgia Department of
Natural Resources, Environmental
Protection Division

Permit Number: 4911-237-0008-V-02-0

Petition to Object to Issuance of Part 70
Operating Permit for Branch 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 and Georgia Public Interest Research Group (“Georgia PIRG”) hereby petition the Administrator (“Administrator”) of the United States Environmental Protection Agency (“EPA”) to object to the issuance of Title V Permit No. 4911-237-0008-V-02-0 for the Branch 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.

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 § 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.").

GROUNDS FOR OBJECTION

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

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. 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). 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.

II. **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 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 Branch facility which is insufficient because it does not contain sufficient information for EPA or the public to determine the applicability of certain requirements to

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

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 Branch facility 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:

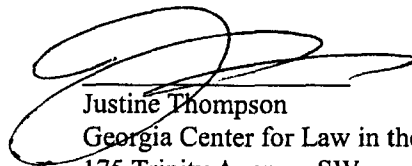
The renewal narrative only makes references to the initial Title V permit narrative; all changes made in subsequent amendments are discussed in the renewal narrative. All narratives, for the initial permit and any amendments, are available in the EPD paper files, as well as online through the EPD website 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 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 Branch facility 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.

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