A RESOLUTION

Adopting the Rules to the Rules for Air Quality Control, Chapter 391-3-1

WHEREAS, the Board adopted, under the authority of The Georgia Air Quality Act, O.C.G.A. 12-9-1, et seq., the Rules for Air Quality Control, Chapter 391-3-1, which became effective on September 26, 1973, and were last amended effective on October 6, 2010; and

WHEREAS, the United States Environmental Protection Agency (U.S. EPA) requires that the various Rules for Air Quality Control, Chapter 391-3-1, be modified, as to their coverage and requirements, in order for Georgia to retain federal approval under the Clean Air Act (CAA); and

WHEREAS, the proposal for the amendments to the Rules for Air Quality Control, Chapter 391-3-1, has been prepared by staff of the Environmental Protection Division and presented to this Board; and

WHEREAS, amendments to the Rules for Air Quality Control, Chapter 391-3-1, will revise various portions of Rule .02 "Provisions," and Rule .03 "Permits"; and

WHEREAS, a public notice for the Air Quality rule amendments was published in ***The Atlanta Journal/Constitution*** on Sunday, September 19, 2010, and three other major newspaper mediums throughout the State of Georgia, along with EPD's Environet website; and a public hearing was held on October 19, 2010, to which public participation was invited; and

WHEREAS, a public notice was re-issued and posted on EPD's Environet website and mailed to individuals on EPD's Environet mailing list on November 3, 2010, in order to correct an date error within the proposed revisions and to extent the public comment period through November 16, 2010; and

WHEREAS, the impact of the adoption of these proposed rule amendments on small businesses in the State has been considered and found to be either minimal or if greater than minimal, unavoidable due to federal requirements and appropriately minimized; and

WHEREAS, the cost of adoption of the proposed rule amendments upon the regulated community has been considered and found not to impose excessive regulatory costs on any regulated person or entity which costs could be reduced by a less expensive alternative that fully accomplishes the stated objectives of the Georgia Air Quality Act.

NOW, THERFORE, BE IT RESOLVED THAT the Board of Natural Resources hereby adopts the amendments to the Rules for Air Quality Control, Chapter 391-3-1, as attached hereto and incorporated herein by reference.

Adopted this 8th day of December 2010.

Respectfully submitted by: ATTEST:

Jenny Lynn Bradley, Chairman
Board of Natural Resources

Warren C. Budd, Jr., Secretary
Board of Natural Resources

Georgia Department of Natural Resources

2 Martin Luther King, Jr., Drive, S.E., Suite 1152 East, Atlanta, Georgia 30334-4100
Chris Clark, Commissioner
Environmental Protection Division
F. Allen Barnes, Director
Phone: 404/656-4713 FAX: 404/651-5778

November 29, 2010

M E M O R A N D U M

TO: Board of Natural Resources

FROM: F. Allen Barnes, Director
Environmental Protection Division

SUBJECT: Action on Proposed Amendments to Rules for Air Quality Control Chapter 391-3-1, Pertaining to PSD & Title V Revisions

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I request the Board's consideration and approval of the following rule revisions:

Rules for Air Quality Control, Chapter 391-3-1

Rule 391-3-1-.02(7), "Prevention of Significant Deterioration of Air Quality," is being amended to incorporate the Prevention of Significant Deterioration provisions for fine particulate matter, to incorporate the provisions of the federal Greenhouse Gas Tailoring Rule, to include other minor revisions to make the state rule consistent with the federal rule, and to include effective dates of the federal provisions incorporated by reference.

Rule 391-3-1-.03(10), "Title V Operating Permits," is being amended to incorporate the provisions of the federal Greenhouse Gas Tailoring Rule and to include effective dates of the federal provisions incorporated by reference.

Please find enclosed for your review and consideration: **Page No.**

Thank you for your attention to these proposed rule changes.

FAB:JJ:klc

Attachments

SYNOPSIS OF THE PROPOSED AMENDMENTS TO THE RULES OF THE DEPARTMENT OF NATURAL RESOURCES ENVIRONMENTAL PROTECTION DIVISION RELATING TO AIR QUALITY, CHAPTER 391-3-1

Rule 391-3-1-.02(7), "Prevention of Significant Deterioration of Air Quality," is being amended.

Purpose: This rule is being revised to incorporate Prevention of Significant Deterioration (PSD) provisions for fine particulate matter, as promulgated by U.S. EPA on May 16, 2008; the Greenhouse Gas Tailoring Rule, as promulgated by U.S. EPA on June 3, 2010; and various minor changes necessary to reflect revisions made by U.S., EPA and federal court decisions over the past several years. This rule is also being revised to include the effective date of the provisions of 40 CFR Part 52.21 where they are incorporated by reference.

Main Features: Amendment dates have been added to all provisions that incorporate portions of the federal rule into the Georgia rule by reference. Changes that incorporate the PSD provisions for fine particulate matter are included in subparagraph 391-3-1-.02(7)(a)2., "Definitions" and subparagraph 391-3-1-.02(7)(b)6., "Exemptions." Changes that incorporate the Greenhouse Gas Tailoring Rule are included in subparagraph 391-3-1-.02(7)(a)2., "Definitions." Due to the legal and political uncertainty regarding the Greenhouse Gas Tailoring Rule provisions, language has been included in the rule to make clear that regulation of greenhouse gases under the PSD permitting program in Georgia shall cease if it ceases at the federal level.

Rule 391-3-1-.03(10), "Title V Operating Permits," is being amended.

Purpose: This rule is being revised to incorporate the Greenhouse Gas Tailoring Rule, as promulgated by U.S. EPA on June 3, 2010. This rule is also being revised to include effective dates of the provisions of 40 CFR Part 70 where they are incorporated by reference.

Main Features: Promulgation or amendment dates have been added to all provisions that incorporate the federal rule into the Georgia rule by reference. The revision to 391-3-1-.03(10)(a)4. incorporates the requirements of the Greenhouse Gas Tailoring Rule, which are located in 40 CFR Part 70.2. Due to the legal and political uncertainty regarding the Greenhouse Gas Tailoring Rule provisions, language has been included in the rule to make clear that regulation of greenhouse gases under the Title V permitting program in Georgia shall cease if it ceases at the federal level.

STATEMENT OF RATIONALE
Rules for Air Quality Control

Rule 391-3-1-.02(7) Prevention of Significant Deterioration of Air Quality

The purpose of this revision is to reference the most recent version of 40 CFR Part 52.21 which includes revisions to Part 52.21(b) to incorporate the federal Greenhouse Gas Tailoring Rule and revisions to Part 52.21(b) and (i) to incorporate the federal Prevention of Significant Deterioration (PSD) provisions for fine particulate matter.

This revision is administrative in nature and is in no way any more restrictive than the federal requirements. Certain segments of the regulated industry will incur permitting requirements for greenhouse gases and fine particulate matter. The main element of this rule revision is the incorporation of the federal Greenhouse Gas Tailoring Rule emission thresholds for greenhouse gases. This rule revision is necessary due to actions taken by the federal government that triggered the requirements to regulate greenhouse gas emissions from stationary sources.

On December 15, 2009, U.S. EPA published in the Federal Register (74 FR 66496) their final action on two distinct findings regarding greenhouse gases under Section 202(a) of the Clean Air Act. In the "Endangerment Finding," U.S. EPA found that elevated concentrations of six greenhouse gases constitute air pollution endangering public health and welfare. In the "Cause or Contribute Finding," U.S. EPA found that four of these greenhouse gases that are emitted by new light-duty motor vehicles cause or contribute to this air pollution. According to U.S. EPA, these findings required them to adopt greenhouse gas emissions regulations for new light-duty motor vehicles.

On May 7, 2010, U.S. EPA published in the Federal Register (75 FR 25324) their final rule regulating greenhouse gas emissions from new light-duty motor vehicles. In a separate action, U.S. EPA stated that this standard takes effect on January 2, 2011. According to U.S. EPA, the national regulation of greenhouse gas emissions from light-duty vehicles makes greenhouse gases regulated air pollutants under the PSD and Title V permit programs. Therefore, greenhouse gases will become subject to regulation at stationary sources as of January 2, 2011.

Because U.S. EPA interpreted the Clean Air Act such that the Endangerment Finding required them to adopt greenhouse gas regulations on light-duty vehicles and because they interpreted the Clean Air Act such that the stationary source permitting requirements are automatically triggered as a matter of law once the light-duty vehicle rule takes effect, U.S. EPA did not calculate the cost to regulated industry or to the state permitting authorities as a result of those requirements being triggered when U.S. EPA finalized the light-duty vehicle rule. As discussed further below, U.S. EPA did calculate the amount of regulatory costs avoided as a result of the Greenhouse Gas Tailoring Rule. Therefore, this information can be used to approximate the total impact to the regulated industry and state permitting authorities as a result of the Endangerment Finding and the light-duty vehicle rule as well as the additional costs that remain upon the regulated industry and state permitting authorities after the Greenhouse Gas Tailoring Rule thresholds are implemented.

The Clean Air Act states that the applicability threshold for PSD permits is 100 or 250 (depending upon the source type) tons per year and that the applicability threshold for Title V permits is 100 tons per year. These thresholds work for traditional air pollutants such as sulfur dioxide or particulate matter. However, greenhouse gas emissions such as carbon dioxide are emitted in much higher quantities than sulfur dioxide or particulate matter. Therefore, according to U.S. EPA, about six million additional sources nationally would be subject to the Title V permitting program (currently there are about 15,000 sources under this program nationally) and about 20,000 additional sources nationally would be subject to the PSD permitting program (currently there are about 280 such projects annually in the nation) at a cost of about $55 billion to the regulated industry and $22 billion to state permitting authorities.

In order to avoid regulatory gridlock created by the submission of more applications than the regulatory agency could possibly handle, as well as the imposition of costly permitting requirements on very small sources, U.S. EPA adopted the Greenhouse Gas Tailoring Rule. This final rule was published in the Federal Register on June 3, 2010 (75 FR 31514). This rule raises the permitting thresholds for greenhouse gases by adopting a definition for the previously undefined term “subject to regulation” which states that greenhouse gas emissions are not “subject to regulation” below the thresholds in the rule.

The thresholds are phased in over time in two steps. In addition, U.S. EPA has committed to continue to evaluate the appropriateness of these thresholds and may go through rulemaking in the future, effective no earlier than 2013, to lower the thresholds closer to the statutory levels.

During Step 1, which would go from January 2, 2011, until July 1, 2011, sources subject to PSD “anyway” will be required to install Best Available Control Technology for greenhouse gases if the project increases emissions by 75,000 tons per year or more.

During Step 2, which would begin on July 1, 2011 and continue until U.S. EPA finalizes additional rulemaking revising these thresholds, new sources with greenhouse gases of 100,000 tons per year or more and existing sources that increase emissions by 75,000 tons per year or more would be subject to PSD. New Title V sources must submit applications within 1 year of becoming a major source. Therefore, the application deadline would be July 1, 2012, for 100,000 ton-per-year existing sources that are not currently Title V sources and one year after commencement of operation for new major Title V sources.

With the Tailoring rule thresholds in place, the combined impact of the PSD and Title V permitting requirements to state permitting authorities drops down to $36 million nationally. This amount reflects a 42% increase in cost (direct costs only) over the current program. In addition to the direct administrative burdens calculated by U.S. EPA, permitting authorities will incur other burdens, including significant support and outreach activities by permitting and public affairs staff for the many newly regulated sources as well as increased compliance activity by state environmental agencies. The remaining impact to regulated industry was more difficult to calculate because U.S. EPA did not calculate it directly. However, U.S. EPA’s estimated administrative costs to industry are approximately 2.5 times greater than the administrative costs to the state permitting authorities. Therefore, the additional cost to industry, with the Tailoring rule thresholds in place, are approximately $90 million nationally (this does not include the cost of additional air pollution controls or additional compliance costs). As described above,

the costs without the Tailoring rule on regulated industry and state permitting authorities are $55 billion and $22 billion, respectively.

U.S. EPA has stated that they will conduct additional rulemakings to evaluate the feasibility of lowering these thresholds further. However, EPA has stated that the earliest that these lower thresholds would be implemented is July 1, 2013, and in the absence of completed rulemaking the thresholds in Step 2 will remain in effect.

The U.S. EPA has put Georgia EPD, and other state permitting authorities, in a very difficult situation. The light-duty vehicle rule automatically triggered the regulation of greenhouse gases at stationary sources. Therefore, at this point, there are three basic paths that this situation could take.

1. If a state takes action to prohibit the regulation of greenhouse gases within the state, U.S. EPA will take over the permitting program for greenhouse gases from the state (and has already proposed to do so for about a dozen states). In the meantime, regulatory gridlock and uncertainty will likely occur. Once U.S. EPA begins to implement the permitting program, it will likely take much longer for U.S. EPA to process the permits than when the states were doing it.
2. If a state that has the authority to regulate greenhouse gases does not implement the Tailoring Rule thresholds, U.S. EPA will likely disapprove the portion of the State Implementation Plan (SIP) that allows greenhouse gases to be regulated below the Tailoring Rule thresholds. In the meantime, regulatory gridlock and uncertainty will likely occur. Once U.S. EPA takes final action on the SIP, there will still be uncertainty as to the regulated emission thresholds for greenhouse gases under state law.
3. If a state adopts the Tailoring Rule thresholds into its own rules and submits a SIP revision to U.S. EPA requesting approval as part of its federally-approved plan, then the negative results described above in possible path #1 and possible path #2 will not occur. The state, and regulated industry, will still experience significant costs to implement the requirements. However, the costs to regulated industry and the amount of regulatory uncertainty are less under this path than the other paths. Therefore, Georgia EPD has proposed pursuing this path to incorporate the Tailoring Rule thresholds into our rules and to submit a SIP revision to U.S. EPA requesting approval as part of our federally-approved plan.

In conclusion, the costs imposed by regulating greenhouse gases under this proposed rule change are no more than that of the federal rule. And, the provisions of the Greenhouse Gas Tailoring Rule will provide cost savings and increased regulatory certainty to the regulated industry compared to the expected costs and lack of regulatory certainty that would result from not adopting the federal Greenhouse Gas Tailoring Rule. No direct costs will be imposed on local governments or the general public.

Due to the legal and political uncertainty regarding the Greenhouse Gas Tailoring Rule provisions, language has been included in the rule to make clear that regulation of greenhouse gases under the PSD permitting program in Georgia shall cease if it ceases at the federal level.

Rule 391-3-1-.03(10) Title V Operating Permits

The purpose of this revision is to reference the most recent versions of the various sections of 40 CFR Part 70 which includes revisions to Part 70.2 to incorporate the federal Greenhouse Gas Tailoring Rule.

The background and cost information on this rule is included above in the section on the Prevention of Significant Deterioration of Air Quality proposed rule change.

In conclusion, the costs imposed by regulating greenhouse gases under this proposed rule change are no more than that of the federal rule. And, the provisions of the Greenhouse Gas Tailoring Rule will provide cost savings and increased regulatory certainty to the regulated industry compared to the expected costs and lack of regulatory certainty that would result from not adopting the federal Greenhouse Gas Tailoring Rule. No direct costs will be imposed on local governments or the general public.

Due to the legal and political uncertainty regarding the Greenhouse Gas Tailoring Rule provisions, language has been included in the rule to make clear that regulation of greenhouse gases under the Title V permitting program in Georgia shall cease if it ceases at the federal level.

DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION DIVISION

NOTICE OF PUBLIC HEARING AND PROPOSED AMENDMENTS TO GEORGIA'S RULES FOR AIR QUALITY CONTROL CHAPTER 391-3-1

TO ALL INTERESTED PERSONS AND PARTIES:

Notice is hereby given that, pursuant to the authority set forth below, the Environmental Protection Division (hereinafter, "EPD") of the Georgia Department of Natural Resources proposes Amendments to Georgia's Rules for Air Quality Control, Chapter 391-3-1 (hereinafter, "the proposed Air Rule Amendments"). The Director of EPD certifies that (1) amendment of Rule 391-3-1-.02 is required to comply with Section 110(a)(2)(J) of the Clean Air Act, and (2) amendment of Rule 391-3-1-.03 is required to comply with Title V of the Clean Air Act. The proposed Air rule amendments are described below:

Rule 391-3-1-.02(7), "Prevention of Significant Deterioration of Air Quality," is being amended to incorporate the Prevention of Significant Deterioration provisions for fine particulate matter, to incorporate the provisions of the federal Greenhouse Gas Tailoring Rule, to include other minor revisions to make the state rule consistent with the federal rule, and to include effective dates of the federal provisions incorporated by reference.

Rule 391-3-1-.03(10), "Title V Operating Permits," is being amended to incorporate the provisions of the federal Greenhouse Gas Tailoring Rule and to include effective dates of the federal provisions incorporated by reference.

This notice, together with an exact copy of the proposed Air rule amendments, a synopsis, and a statement of rationale of the rule revisions, is being provided to all persons who have requested in writing that they be placed on a notification list. These documents may be viewed at http://gaepd.org/environet/1 or during normal business hours of 8:00 a.m. to 4:30 p.m. at the Georgia Environmental Protection Division, Air Protection Branch, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354. Copies may also be requested by contacting the Air Protection Branch at 404/363-7000 or the Environmental Protection Division Director's Office at 1-888-373-5947.

To provide the public an opportunity to comment upon and provide input into the proposed Air rule amendments, a public hearing will be held at 5:00 p.m. on October 19, 2010, in the EPD Training Center located at 4244 International Parkway, Suite 116, Atlanta, Georgia 30354. At the hearing, anyone may present data, make a statement, comment, or offer a viewpoint or argument either orally or in writing. Lengthy statements or statements of a considerable technical or economic nature, as well as previously-recorded messages, must be submitted in writing for the official record. Oral statements should be concise.

Written comments are welcomed. To insure their inclusion in EPD's package for the Board of

Natural Resources, written comments should be received by close of business on October 26, 2010. Written comments may be emailed to EPDComments@dnr.state.ga.us or sent via regular mail addressed to: Branch Chief, Air Protection Branch, 4244 International Parkway, Suite 120, Atlanta, Georgia, 30354.

The proposed Air rule amendments will be considered for adoption by the Board of Natural Resources at its meeting at 9:00 a.m. on December 8, 2010, in the DNR Board Room located at 2 Martin Luther King, Jr. Drive, Suite 1252, East Tower, Atlanta, Georgia 30334. The meeting is open to the public.

The proposed Air rule amendments are proposed for adoption pursuant to authority contained in Georgia Air Quality Act (O.C.G.A. Section 12-9-1 et. seq.). For further information, contact the Air Protection Branch at 404/363-7000.

NOTE**:** THIS IS A RE-ISSUANCE OF A NOTICE PUBLISHED ON SEPTEMBER 17, 2010. THE NOTICE IS BEING RE-ISSUED TO CORRECT AN ERROR. SUBPARGRAPH 391-3-1-.03(10)(d)3 ON PAGE 18 OF THE PROPOSED RULE AMENDMENTS incorrectly specified a date of July 27, 2003 for the federal provision incorporated by reference. The correct date of the federal provision is June 27, 2003**. NO OTHER CHANGES HAVE BEEN MADE TO THE PROPOSED AMENDMENTS.** If you submitted comments on the proposed amendments, y**ou do NOT need to re-submit them; they will be considered. The public comment period is extended through November 16.**

DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION DIVISION

NOTICE OF PROPOSED AMENDMENTS TO GEORGIA'S RULES FOR AIR QUALITY CONTROL CHAPTER 391-3-1

TO ALL INTERESTED PERSONS AND PARTIES:

Notice is hereby given that, pursuant to the authority set forth below, the Environmental Protection Division (hereinafter, "EPD") of the Georgia Department of Natural Resources proposes Amendments to Georgia's Rules for Air Quality Control, Chapter 391-3-1 (hereinafter, "the proposed Air Rule Amendments"). The Director of EPD certifies that (1) amendment of Rule 391-3-1-.02 is required to comply with Section 110(a)(2)(J) of the Clean Air Act, and (2) amendment of Rule 391-3-1-.03 is required to comply with Title V of the Clean Air Act. The proposed Air rule amendments are described below:

Rule 391-3-1-.02(7), "Prevention of Significant Deterioration of Air Quality," is being amended to incorporate the Prevention of Significant Deterioration provisions for fine particulate matter, to incorporate the provisions of the federal Greenhouse Gas Tailoring Rule, to include other minor revisions to make the state rule consistent with the federal rule, and to include effective dates of the federal provisions incorporated by reference.

Rule 391-3-1-.03(10), "Title V Operating Permits," is being amended to incorporate the provisions of the federal Greenhouse Gas Tailoring Rule and to include effective dates of the federal provisions incorporated by reference.

This notice, together with an exact copy of the proposed Air rule amendments, a synopsis, and a statement of rationale of the rule revisions, is being provided to all persons who have requested in writing that they be placed on a notification list. These documents may be viewed at http://gaepd.org/environet/1 or during normal business hours of 8:00 a.m. to 4:30 p.m. at the Georgia Environmental Protection Division, Air Protection Branch, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354. Copies may also be requested by contacting the Air Protection Branch at 404/363-7000 or the Environmental Protection Division Director's Office at 1-888-373-5947.

A public hearing was held at 5:00 p.m. on October 19, 2010, in the EPD Training Center located at 4244 International Parkway, Suite 116, Atlanta, Georgia 30354.

Written comments are welcomed. To insure their inclusion in EPD's package for the Board of Natural Resources, written comments should be received by close of business on November 16, 2010. Written comments may be emailed to EPDComments@dnr.state.ga.us or sent via regular mail addressed to: Branch Chief, Air Protection Branch, 4244 International Parkway, Suite 120, Atlanta, Georgia, 30354.

The proposed Air rule amendments will be considered for adoption by the Board of Natural Resources at its meeting at 9:00 a.m. on December 8, 2010, in the DNR Board Room located at 2 Martin Luther King, Jr. Drive, Suite 1252, East Tower, Atlanta, Georgia 30334. The meeting is open to the public.

The proposed Air rule amendments are proposed for adoption pursuant to authority contained in Georgia Air Quality Act (O.C.G.A. Section 12-9-1 et. seq.). For further information, contact the Air Protection Branch at 404/363-7000.

Georgia Department of Natural Resources
Environmental Protection Division • Air Protection Branch
4244 International Parkway • Suite 120 • Atlanta • Georgia 30354
404/363-7000 • Fax: 404/363-7100
Chris Clark, Commissioner
F. Allen Barnes, Director

November 19, 2010

M E M O R A N D U M

To: F. Allen Barnes, Director
Environmental Protection Division

From: James A. Capp, Chief
Air Protection Branch

Subject: Responses to Comments Received During the Public Comment Period Regarding Proposed Revision to Air Quality Rules, Chapter 391-3-1

On September 19, 2010, EPD issued a public notice requesting comments on the proposed revision to the Georgia Rules for Air Quality, Chapter 391-3-1. The proposed revisions were re-noticed on November 3, 2010, to correct a date error in the proposed revision and to extend the comment period. The proposed changes included the following rules:

- Rule 391-3-1-.02(7) - Prevention of Significant Deterioration of Air Quality
- Rule 391-3-1-.03(10) - Title V Operating Permits

Written comments were received during the public comment period. A public hearing was at 5:00 p.m. on October 19, 2010, in the EPD Training Center located at 4244 International Parkway, Suite 116, Atlanta, Georgia 30354. Comments received as of November 16, 2010, are summarized in the attached document. EPD's responses immediately follow each comment.

No changes in the proposed rules are recommended as a result of comments received.

Attachment

JC:JPJ:klc

Responses to Comments Received During the Public Comment Period September 19, 2010, through November 16 Proposed Revisions to Air Quality Rules, Chapter 391-3-1

On September 19, 2010 and November 3, 2010, EPD issued a public notice requesting comments on proposed revisions to the Georgia Rules for Air Quality, Part 391-3-1-.02(7) - Prevention of Significant Deterioration of Air Quality and Part 391-3-1-.03(10) - Title V Operating Permits. Written comments were received during the public comment period. A public hearing was held at 5:00 p.m. on October 19, 2010, in the EPD Training Center located at 4244 International Parkway, Suite 116, Atlanta, Georgia 30354. Comments received as of November 16, 2010, are summarized in this memo.

This document provides responses to comments regarding the proposed amendments to the air quality rules. General information and responses to questions or requests for information not directly related to the proposed revisions were provided using other mechanisms including, but not limited to, workshops held on November 9th, 10th, and 19th.

A set of consolidated comments were received from the **Georgia Industry Environmental Coalition** (GIEC), the **Georgia Chemistry Counci**l (GCC); the **Georgia Industry Association** (GIA), the **Georgia Mining Association** (GMA), and the **Georgia Paper and Forest Products Association** (GPFPA). These comments will be referred to as the GIEC comments. A summary of each of their comments is followed by EPD's response.

Comment

Due to the significance of this rulemaking, we request that the public comment period for the GHG Rules be extended through EPD's November GHG Workshops.

Response

The public comment period was extended to November 16th. Comments received after that date will be reviewed and considered by the Division, but will not be addressed in EPD's written summary to the DNR Board.

Comment

GIEC commented that the Proposed GHG Rules should focus on the adoption of the elevated PSD and Title V permitting thresholds in the Tailoring Rule and avoid the proposed adoption of the new definition of "subject to regulation," which codifies highly controversial administrative interpretations by U.S. EPA. GIEC also addressed legal implications of Georgia's adoption of the Tailoring Rule. GIEC recommended the following approach to the Proposed GHG Rules:

a) Revise the Proposed GHG Rules so as to avoid adopting the entirety of the new definition, subject to regulation, and only adopting the elevated PSD and Title V permitting thresholds and severability provisions; and

b) Include in the regulatory record an express reservation of rights and statement of non-waiver with respect to the Proposed GHG Rules and Georgia's Motion To Intervene, and if granted, positions taken in the Light-Duty Vehicle Rule case, as well as in any other future challenges, proceedings, permitting actions, or other matters in which Georgia is involved.

Response

The requirements for SIP-approved PSD programs, such as Georgia's, are governed by the requirements of 40 CFR 51.166. The changes to the PSD programs adopted in EPA's Tailoring Rule are contained in the definitions sections of 40 CFR 51.166 and 40 CFR 52.21. (40 CFR 52.21 contains the PSD provisions enforced by U.S. EPA and states which have been delegated the federal PSD program. Much of the language in 40 CFR 51.166 and 52.21, including the language revised by the Tailoring Rule, is similar if not identical.) 40 CFR 51.166(b) states "All State plans shall use the following definitions for the purposes of this section. Deviations from the following wording will be approved only if the State specifically demonstrates that the submitted definition is more stringent, or at least as stringent, in all respects as the corresponding definitions below…" To ensure that the provisions adopted into Georgia's rules are at least as stringent as the federal rules, EPD has recommended that the definition of "subject to regulation" as found in 40 CFR 52.21 be incorporated by reference into Georgia's PSD rules.

The promulgated definition of "subject to regulation" does not simply adopt elevated PSD and Title V permitting thresholds for greenhouse gases (GHGs). In fact, the Tailoring rule does not modify the emissions thresholds within the definition of "Major Stationary Source" (i.e., 100 or 250 tons per year, depending upon the source category) at all. The promulgated definition establishes criteria by which GHGs emitted by stationary sources become "subject to regulation" and thus must meet the PSD requirements of 40 CFR 52.21 (j) through (r). This criteria is unique to GHGs. Also, in addition to codifying EPA's interpretative memoranda about applicability of Clean Air Act permitting to greenhouse gases, the promulgated regulations specify 1) that GHGs are to be quantified in terms of CO_2 equivalent and specify the method for determining such, and 2) phases in GHG permitting requirements in two phases, beginning January 2, 2011, and July 1, 2011.

Therefore, in order to ensure that Georgia's PSD provisions satisfy the requirements of 40 CFR 51.166, including assurance that Georgia's definition of "subject to regulation" is at least as stringent as the federal definition, EPD has incorporated the full definition of "subject to regulation" from 40 CFR 52.21(b)(49) by reference.

Georgia EPD has included the severability provision to address any situation in which part of the federal definition of "subject to regulation" is affected by legal or political action at the federal level.

In regard to the request for Georgia EPD to include in the regulatory record an express reservation of rights and a statement of non-waiver, Georgia EPD agrees with the comment. Georgia EPD is adopting the U.S. EPA Tailoring Rule provisions through the administrative rulemaking process in order to minimize the costs to the Georgia EPD and affected industry and to minimize the regulatory uncertainty for affected industry as a result of GHGs becoming regulated pollutants through actions taken by the federal government. This adoption by Georgia EPD through the administrative process has no bearing on decisions that the state may take to challenge any current or future efforts on the part of U.S. EPA to regulate GHGs under the Clean Air Act.

Comment

GIEC, GCC, GIA, GMA, and GFPPA support EPD's inclusion of the severability provision in the proposed GHG rules, to the extent that the proposed GHG rules are adopted in Georgia. (Note: This comment is included in a footnote on page two of the GIEC comments.)

Response

No response necessary.

Comment

Based upon its decision not to respond to a September solicitation from U.S. EPA, EPD should publicly clarify its position about its authority under existing State laws to apply the PSD permitting program to greenhouse gas-emitting sources, and explain the basis for its apparent conclusion that the elevated permitting thresholds in the federal Tailoring Rule need to be adopted through new rulemaking to be effective in Georgia.

Response

On September 2, 2010, U.S. EPA issued a proposal entitled "Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan" in the Federal Register. Within this Federal Register notice, Georgia is included in Table IV-2, "States with SIPs That Appear To Apply PSD to GHG Sources (presumptive adequacy list)". Georgia is correctly included in this table. EPD has determined that it has existing authority to permit GHGs under its PSD program.

Further, U.S. EPA has finalized a CAA regulation that actually controls or limits CO_2 emissions. Therefore, as of January 2, 2011, CO_2 falls within the "otherwise subject to regulation under the Clean Air Act" definition of a "regulated NSR pollutant."

Within the June 3, 2010 Federal Register Notice in which the Greenhouse Gas Tailoring Rule was promulgated, EPA requested that, if a state must undertake a regulatory or legislative process to incorporate the meaning of the term "subject to regulation," the state should submit a letter providing an estimate to the time needed to adopt the final rules. When EPD incorporates a rule by reference it is only incorporating the version of the federal rule that was effective at that time. To clarify EPD is now stipulating the date of the effective regulation being incorporated. Therefore, when a subsequent revision to that rule is promulgated at the federal level EPD must revise its rules to reflect the latest version. Based on this, EPD determined that the provisions of the Tailoring Rule needed to be adopted into Georgia's rules through rulemaking. EPD then submitted such a letter to U.S. EPA on August 2, 2010, indicating that EPD intends to adopt EPA's definition of "subject to regulation" through rulemaking by January 1, 2011.

Comment

EPD should make full disclosure of the circumstances surrounding any request of and plans by U.S. EPA for expedited review and approval of the Proposed GHG Rules into the Georgia SIP, including, but not limited to, opportunities for public notice and comment regarding any partial approval or no-action by U.S. EPA.

Response

On September 30, 2010, Georgia EPD submitted the proposed revisions to Georgia's PSD and Title V rules for incorporation into Georgia's SIP and Title V program, respectively. This submittal included a request for parallel processing in accordance with 40 CFR 51 Appendix V. A copy of this document is currently available on EPD's Greenhouse Gas Permitting website at www.georgiaair.org/airpermit/html/sspp/greenhousegas_permit.htm.

On October 26, 2010, U.S. EPA submitted a letter to EPD regarding the proposed revisions to EPD's PSD rules. In that letter, EPA acknowledged that Georgia EPD requested parallel processing of the State Implementation Plan (SIP) revision to expedite approval of the changes into Georgia's SIP. A copy of this letter is currently available on EPD's Greenhouse Gas Permitting website at www.georgiaair.org/airpermit/html/sspp/greenhousegas_permit.htm. U.S. EPA will initiate any public notice and opportunity for comment regarding their action on Georgia's SIP. Federal regulations require that any proposed action on a SIP include an opportunity for public comment. Federal regulations also require that any proposed and final approvals be published in the Federal Register. Any final approval of the revisions to Georgia's SIP will occur only after the proposed regulations are approved by the DNR Board and EPD submits the final regulations to U.S. EPA.

Georgia's Title V rules are part of an approved Title V Program and not part of our SIP. EPA's comments on the revision to Georgia's Title V program are available on EPD's Greenhouse Gas Permitting website at www.georgiaair.org/airpermit/html/sspp/greenhousegas_permit.htm. U.S. EPA has yet to inform EPD whether parallel processing will be used for approval of the revision to Georgia's Title V program per EPD's request.

Copies of U.S. EPA's comments on the proposed changes to EPD's PSD and Title V rules can be found at www.georgiaair.org/airpermit/html/sspp/greenhousegas_permit.htm. EPD will address EPA's comments with the submission of the final rules to EPA for incorporation into Georgia's SIP and Title V program. Any proposed or final decision to approve or disapprove any portion of the revisions Georgia's PSD or Title V will be published in the Federal Register.

As stated above, any proposed or final decision to approve or disapprove any portion of the revisions to Georgia's PSD or Title V will be published in the Federal Register. Federal regulations require that any proposed action on Georgia's PSD or Title V program by U.S. EPA include an opportunity for comment. Any public notice and opportunity for comment regarding EPA's proposed action on the PSD provisions of Georgia's SIP and Georgia's Title V program will be separate from the public notice and opportunity for comment issued by Georgia EPD on the proposed revisions to Georgia's PSD and Title V rules. Comments regarding proposed action on Georgia's SIP or Title V program are to be submitted to U.S. EPA, while comments on the proposed rule changes were submitted to Georgia EPD.

Comment

EPD should try to quantify the cost impact of the Proposed GHG Rules to the agency, to the regulated sources, and to the broader Georgia economy and allow public comments on the results.

Response

In the statement of rationale of the proposed amendments to the proposed revisions to Georgia's PSD and Title V regulations, EPD included estimates of national costs to permitting authorities and to regulated sources both with and without the Tailoring Rule. These national figures were obtained or derived from the preamble to the federal GHG Tailoring Rule and the Regulatory Impact Analysis for the final PSD and Title V Tailoring Rule (www.epa.gov/ttn/ecas/regdata/RIAs/riatailoring.pdf). EPA's cost estimates are based on a number of estimates and assumptions that are described in these two documents. Each of these documents also contains an explanation of the uncertainties of these estimates. Georgia EPD does not have any additional information that would enable it to determine the costs for Georgia. A better estimate of the number of facilities subject to Title V permitting will be available after the initial reports for 40 CFR Part 98, the Mandatory Greenhouse Gas Reporting Rule due March 31, 2011, are submitted to U.S. EPA. However, this will only allow for an estimate since the MGHGR rule requires reporting of actual emissions, while Title V permitting requirements are based on potential emissions.

Comment

Consideration should be given to keeping the public notice and comment period open until after the November 9, 10, and 19 GHG Workshops.

Response

The GHG Workshops are not part of the regulatory process required by the Georgia Administrative Procedures Act (O.C.G.A. § 50-13-3). However, the comment deadline has been extended to November 16th. This document addresses comments received by EPD as of that date.

Comments were received from **Oglethorpe Power Corporation**. A summary of each of their comments is followed by EPD's response.

Comment

Oglethorpe Power requested that EPD make available all decision documents, including, but not limited to all communication between EPD and EPA pertaining to EPD's SIP for GHGs.

Response

During a conversation with the commenter, EPD received clarification that this request includes only formal documents created by EPD or received from EPA. The Division's September 30, 2010 letter to U.S. EPA submitting the proposed rule changes to EPA with a request for parallel processing as well as U.S. EPA's comments on the proposed rule changes can be found at www.georgiaair.org/airpermit/html/sspp/greenhousegas_permit.htm. These are the only formal documents that have been issued regarding this matter at this time.

Comment

Oglethorpe Power requests that EPD confirm whether a change to the SIP is required in light of the proposed changes in its rule and whether public notice of such changes (as required under

Federal and State law), as well as any decisions made by EPD regarding the scope of its SIP pertaining to GHGs, will be provided and the anticipated schedule of such actions.

Response

A revision to incorporate the proposed changes to Georgia's PSD program into Georgia's SIP will be required. Since the revision to Georgia's SIP will consist only of changes to Georgia Rules for Air Quality Control, the public notice and comment on the proposed rule changes satisfies the public notice requirements of Section 110(l) of the Clean Air Act. Federal regulations require that U.S. EPA publish proposed and final actions on any SIP in the Federal Register. Federal regulations also require that any proposed action by U.S. EPA include an opportunity for public comment.

Comment

Oglethorpe Power commented that EPD should ensure that there are no inconsistencies between the provision in its air quality regulations and the parallel provisions in its SIP.

Response

Georgia EPD has ensured that there are no inconsistencies between its air quality regulations and Georgia's SIP by submitting the proposed rule changes to EPA for incorporation into Georgia's SIP. A final SIP submittal will be submitted to EPA if the proposed rule changes are adopted by the Board of Natural Resources. EPD has requested parallel processing of this SIP revision so that the revisions to Georgia's SIP are finalized by U.S. EPA prior to the effective date of the requirement for GHG permitting (January 2, 2011).

Comment

Oglethorpe Power commented that it supports the "sunset" provision included in the proposed revisions to Georgia's PSD and Title V rules and that EPA's approval of Georgia's SIP should include the exact same sunset provisions as are included in this proposal.

Response

No response necessary.

A comment letter was submitted by the Sierra Club and GreenLaw on behalf of the Sierra Club, Georgia Interfaith Power & Light, Greenlaw, Ogeechee Riverkeeper, Environment Georgia, Fall-line Alliance for a Clean Environment, Wiregrass Energy Network, Georgians for Smart Energy Coalition, Friends of the Chattahoochee, Southern Alliance for Clean Energy, and Greenpeace. These comments will be referred to as the Sierra Club comments. A summary of each of their comments is followed by EPD's response.

Comment

The Sierra Club commented that it generally supports the proposed rules.

Response

No response necessary.

Comment

The Sierra Club commented that the proposed rules should not include a “litigation” clause due to the permitting uncertainty that such litigation could create for businesses.

Response

EPD created the severance clause to ensure that Georgia’s PSD and Title V rules will be consistent with federal requirements at all times. The state rulemaking process can be time consuming and may not be capable of responding to judicial, executive (including EPA) or congressional action in time to allow the permitting process to remain consistent with federal requirements.

Georgia Department of Natural Resources

Environmental Protection Division • Air Protection Branch
4244 International Parkway • Suite 120 • Atlanta • Georgia 30354
404/363-7000 • Fax: 404/363-7100
Chris Clark, Commissioner
F. Allen Barnes, Director

November 22, 2010

MEMORANDUM

TO: F. Allen Barnes, Director
Environmental Protection Division

FROM: James A. Capp, Chief
Air Protection Branch

SUBJECT: Economic Impact of Proposed Amendments to the Rules for Air Quality Control Chapter 391-3-1

The Administrative Procedures Act requires that in the formation and adoption of any rules which will have an economic impact on businesses in the State, the agency reduce the economic impact of the Rule on small businesses which are independently owned and operated and are not dominant in their field and employ 100 employees or less. The statute specifically requires that one or more of the following actions be implemented when it is legal and feasible in meeting the stated objectives of the statutes which are the basis of the proposed rule in reducing the economic impact. These four actions are:

a. Establish different compliance or reporting requirements or timetables for small businesses;

b. Clarify, consolidate or simplify the compliance and reporting requirements under the rules for small businesses;

c. Establish performance rather than design standards for small businesses; or

d. Exempt small businesses from any or all requirements of the rules.

Rule 391-3-1-.02(7), "Prevention of Significant Deterioration of Air Quality" is being revised to incorporate Prevention of Significant Deterioration (PSD) provisions for fine particulate matter, the Greenhouse Gas Tailoring Rule, minor changes made by the U.S. EPA due to federal court decisions and the effective date of the provisions of 40 CFR Part 52.21.

Rule 391-3-1-.03(10), "Title V Operating Permits" is being amended to incorporate the Greenhouse Gas Tailoring Rule, as promulgated by U.S. EPA on June 3, 2010, and to include the effective date of the provisions of 40 CFR Part 70.

In consideration of the four actions required in the State statute for the proposed changes to the Air Quality Rules, we offer the following comments on the proposed rule amendments:

Different compliance or reporting requirements for small businesses:

This issue is not germane for the proposed rule changes.

Consolidate and/or simplify compliance or reporting requirements for small businesses:

This issue is not germane for the proposed rule changes.

Performance rather than design standards for small businesses:

This issue is not germane for the proposed rule changes.

Exemptions for small businesses:

This issue is not germane for the proposed rule changes.

In addition, the Administrative Procedures Act requires that "...in the formulation and adoption of any rule, an agency shall choose an alternative that does not impose excessive regulatory costs on any regulated person or entity which costs could be reduced by a less expensive alternative that fully accomplishes the stated objectives of the statutes which are the basis of the proposed rule."

In general, the proposed rules are required to comply with federal requirements and, therefore, do not impose excessive regulatory costs on any regulated person or entity, where costs could be reduced by a less expensive alternative that fully accomplishes the stated objectives of the Georgia Air Quality Act.

JC:klc

PROPOSED AMENDMENTS TO THE RULES OF THE DEPARTMENT OF NATURAL RESOURCES ENVIRONMENTAL PROTECTION DIVISION RULES FOR AIR QUALITY CONTROL, CHAPTER 391-3-1

The Rules of the Department of Natural Resources, Chapter 391-3-1, Air Quality Control are hereby amended, added to, repealed in part, revised, as hereinafter explicitly set forth in the attached amendments, additions, partial repeals, and revisions for specific rules, or such subdivisions thereof as may be indicated.

[Note: Underlined text is proposed to be added. Lined-through text is proposed for deletion.]

Rule 391-3-1-.02(7) "Prevention of Significant Deterioration of Air Quality," is being amended to read as follows:

(7) Prevention of Significant Deterioration of Air Quality.

(a) General Requirements.

1. The provisions of paragraph (7) shall apply to any source and the owner or operator of any source subject to any requirement under 40 Code of Federal Regulations (hereinafter, CFR), Part 52.21 ~~as amended~~. The subparagraphs of Paragraph (7) that incorporate by reference paragraphs of 40 CFR, Part 52.21 are as amended through June 3, 2010, unless otherwise specified.

2. Definitions: For the purpose of this paragraph, 40 CFR, Part 52.21 (b) as amended, is hereby incorporated by reference with the following exceptions:

(i) In lieu of the definition of "baseline actual emissions" as specified in paragraph (b)(48) of 40 CFR, Part 52.21, the following shall apply:

"Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with subparagraphs (7)(a)2.(i)(I) through (IV) of this rule.

(I) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The Director shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

I. The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions. However, fugitive emissions and/or emissions associated with startups, shutdowns, and malfunctions shall or may be excluded in accordance with the following subparagraphs A and B.

A. If fugitive emissions or emissions from startups, shutdowns, and/or malfunctions during the consecutive 24-month period selected by the owner or operator are not quantifiable and are therefore not included in the calculation of baseline actual emissions, then fugitive emissions or emissions from startups, shutdowns, and/or malfunctions, respectively, shall not be included in the calculation of projected actual emissions [as defined in subparagraph (7)(a)2.(ii) of this rule].

B. The owner or operator may elect to omit malfunctions from the calculation of baseline actual emissions. If the owner or operator elects to do so, then malfunctions shall also be omitted from the calculation of projected actual emissions [as defined in subparagraph (7)(a)2.(ii) of this rule].

II. The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

III. For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period may be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

IV. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, or for which there is inadequate information for adjusting this amount downward to exclude any non-compliant emissions as required by subparagraph (7)(a)2.(i)(I)II. of this rule.

V. If any physical change(s) or change(s) in the method of operation subsequent to the consecutive 24-month period selected by the owner or operator resulted in a permanent change in the basic design parameter [as defined in subparagraph (7)(a)2.(viii) of this rule], not including the voluntary addition of air pollution control equipment or increase in removal or collection efficiency of existing air pollution control equipment, and thus resulted in a corresponding reduction in actual emissions of a regulated NSR pollutant, the baseline actual emissions shall be adjusted downward by a proportional reduction in emissions in tons per year or lbs/unit of production.

VI. The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a Maximum Available Control Technology (MACT) standard that the Administrator of U.S. EPA has proposed or promulgated under 40 CFR, Part 63, the baseline actual emissions need only be adjusted if the Division has taken credit for such emission reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR, Part 51.165(a)(3)(ii)(G).

(II) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Division for a permit required under this paragraph or by the reviewing authority for a permit

required by a plan, whichever is earlier.

I. The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions. However, fugitive emissions and/or emissions associated with startups, shutdowns, and malfunctions shall or may be excluded in accordance with the following subparagraphs A and B.

A. If fugitive emissions or emissions from startups, shutdowns, and/or malfunctions during the consecutive 24-month period selected by the owner or operator are not quantifiable and are therefore not included in the calculation of baseline actual emissions, then fugitive emissions or emissions from startups, shutdowns, and/or malfunctions, respectively, shall not be included in the calculation of projected actual emissions (as defined in subparagraph (7)(a)2.(ii) of this rule).

B. The owner or operator may elect to omit malfunctions from the calculation of baseline actual emissions. If the owner or operator elects to do so, then malfunctions shall also be omitted from the calculation of projected actual emissions [as defined in subparagraph (7)(a)2.(ii) of this rule].

II. The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

III. The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a Maximum Achievable Control Technology (MACT) standard that the Administrator of U.S. EPA has proposed or promulgated under 40 CFR, Part 63, the baseline actual emissions need only be adjusted if the Division has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR, Part 51.165(a)(3)(ii)(G).

IV. For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period may be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

V. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, or for which there is inadequate information for adjusting this amount downward to exclude any non-compliant emissions as required by subparagraph (7)(a)2.(i)(II)II or III. of this rule.

VI. If any physical change(s) or change(s) in the method of operation subsequent to the consecutive 24-month period selected by the owner or operator resulted in a permanent change in the basic design parameter [as defined in subparagraph (7)(a)2.(viii) of this Rule], not including the voluntary addition of air pollution control equipment or increase in removal or collection efficiency of existing air pollution control equipment, and thus resulted in a corresponding reduction in actual emissions of a regulated NSR pollutant, the baseline actual emissions shall be adjusted downward by a proportional reduction in emissions in tons per year or lbs/unit of production.

(III) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit [as long as the unit remains a “new emissions unit” as defined in 40 CFR, Part 52.21(b)(7)(i)].

(IV) For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in subparagraph (7)(a)2.(i)(I) of this rule, for other existing emissions units in accordance with the procedures contained in subparagraph (7)(a)2.(i)(II) of this rule, and for a new emissions unit in accordance with the procedures contained in subparagraph (7)(a)2.(i)(III) of this rule. For existing emission units, the baseline actual emissions shall be based on any consecutive 24-month period selected by the operator within the appropriate PAL baseline period. For existing electric steam generating units, the PAL baseline period is the 5-year period (or different period allowed by the Director that is more representative or normal source operation) immediately preceding submission of a complete PAL application to the Division. For other existing emission units, the PAL baseline period is the 10-year period immediately preceding submission of a complete PAL permit application to the Division.

(ii) In lieu of the definition of “projected actual emissions” as specified in paragraph (b)(41) of 40 CFR, Part 52.21, the following shall apply:

(I) “Projected actual emissions” means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(II) In determining the projected actual emissions under subparagraph (7)(a)2.(ii)(I) (before beginning actual construction), the owner or operator of the major stationary source:

I. Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the State or Federal regulatory authorities, and compliance plans under the approved State Implementation Plan; and

II. Shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions. However, fugitive emissions and/or emissions associated with startups, shutdowns, and malfunctions shall or may be excluded in accordance with the following subparagraphs A, B, and C.

A. If projected fugitive emissions or emissions from startups, shutdowns, and/or malfunctions are not quantifiable and are therefore not included in the calculation of projected actual emissions, then fugitive emissions or emissions from startups, shutdowns, and/or malfunctions, respectively, shall not be included in the calculation of baseline actual emissions [as defined in subparagraph (7)(a)2.(i) of this rule].

B. The owner or operator may elect to omit malfunctions from the calculation of projected actual emissions. If the owner or operator elects to do so, then malfunctions shall also be omitted from the calculation of baseline actual emissions [as defined in subparagraph (7)(a)2.(i) of this rule].

C. If the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant and the increase in projected emissions associated with startups, shutdowns, and malfunctions is not proportional to the increase in the emission unit's design capacity or its potential to emit that regulated NSR pollutant, the owner or operator must include with the information required under subparagraph (7)(b)15.(i)(I) of this rule documentation that supports the projected emissions associated with startups, shutdowns, and malfunctions subsequent to completion of the project; and

III. May exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under subparagraph (7)(a)2.(i) of this rule and that is also unrelated to the particular project, including any increased utilization due to product demand growth (the increase in emissions that may be excluded under this subparagraph shall hereinafter be referred to as "demand growth emissions");

A. If the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant, the owner or operator shall either:

(A) not exclude demand growth emissions, or

(B) must include in the information required under subparagraph (7)(b)15.(i)(I) of this paragraph, documentation that demand growth emissions are emissions that the emissions unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions, are not related to the particular project, and are due to product demand growth; must have documentation supporting the portion of the emissions increase that is due to demand growth; and, following the change, must be able to track the emissions increase due to demand growth; or

IV. In lieu of using the method set out in subparagraphs (7)(a)2.(ii)(II)I. through III. of this rule, may elect to use the emissions unit's potential to emit, in tons per year, as defined under paragraph (b)(4) of 40 CFR, Part 52.21.

(iii) The definition of "major stationary source" contained in 40 CFR, Part 52.21(b)(1) is hereby incorporated by reference except as follows:

(I) Subparagraph (i)(b) shall read as follows: Notwithstanding the stationary source size specified in paragraph (b)1.(i)(a) of this section, any stationary source which emits, or has the potential to emit, 250 tons-per-year or more of a regulated NSR pollutant; or

~~(iv) The definition of "major modification" contained in 40 CFR, Part 52.21(b)(2), shall be modified as follows:~~

~~(I) paragraph (iii)(h), relating to the addition, replacement, or use of a PCP, is not adopted.~~

(iv) The definition and use of the term "subject to regulation" in 40 CFR, Part 52.21, as amended June 3, 2010, is hereby incorporated by reference; provided, however, that in the event all or any portion of 40 CFR, Part 52.21 containing that term is:

(I) declared or adjudged to be invalid or unconstitutional or stayed by the United States Court of Appeals for the Eleventh Circuit or for the District of Columbia Circuit; or

(II) withdrawn, repealed, revoked or otherwise rendered of no force and effect by the United States Environmental Protection Agency, Congress, or Presidential Executive Order.

Such action shall render the regulation as incorporated herein, or that portion thereof that may be affected by such action, as invalid, void, stayed, or otherwise without force and effect for purposes of this rule upon the date such action becomes final and effective; provided, further, that such declaration, adjudication, stay, or other action described herein shall not affect the remaining portions, if any, of the regulation as incorporated herein, which shall remain of full force and effect as if such portion so declared or adjudged invalid or unconstitutional or stayed or otherwise invalidated or effected were not originally a part of this rule. The Board declares that it would have incorporated the remaining parts of the federal regulation if it had known that such portion thereof would be declared or adjudged invalid or unconstitutional or stayed or otherwise rendered of no force and effect;

(v) The definition of "potential to emit" contained in 40 CFR, Part 52.21(b)(4), shall be modified as follows:

(I) The phrase "is federally enforceable" shall read "is federally enforceable or enforceable as a practical matter."

(vi) The definition of "allowable emissions" contained in 40 CFR, Part 52.21(b)(16), shall be modified as follows:

(I) The phrase "unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both" shall read, "unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both."

(II) paragraph (iii) shall read as follows: The emissions rate specified as an enforceable permit condition, including those with a future compliance date.

(vii) The following shall be added to the definition of "major source baseline date" contained in 40 CFR, Part 52.21(b)(14):

(I) Baseline dates established prior to April 19, 2006, will remain in effect.

(viii) In lieu of paragraph (b)(33)(iii) of the definition of "replacement unit" as specified in paragraph (b)(33) of 40 CFR, Part 52.21, the following shall apply:

The replacement does not alter the basic design parameters of the process unit. Basic design parameters are defined as follows:

(I) Except as provided in subparagraph (7)(a)2.(viii)(III) of this rule, for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on British Thermal Units content shall be used for determining the basic design parameter(s) for a coal-fired electric utility steam generating unit.

(II) Except as provided in subparagraph (7)(a)2.(viii)(III) of this rule, the basic design parameter(s) for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material when selecting a basic design parameter.

(III) If the owner or operator believes the basic design parameter(s) in subparagraphs (7)(a)2.(viii)(I) and (II) of this rule is (are) not appropriate for a specific industry or type of process unit, the owner or operator may propose to the Division an alternative basic design parameter(s) for the source's process unit(s). If the Director approves of the use of an alternative basic design parameter(s), he or she shall issue a permit that is legally enforceable that records such basic design parameter(s) and requires the owner or operator to comply with such parameter(s).

(IV) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter(s) specified in subparagraphs (7)(a)2.(viii)(I) and (II) of this rule.

(V) If design information is not available for a process unit, then the owner or operator shall determine the process unit's basic design parameter(s) using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.

(VI) Efficiency of a process unit is not a basic design parameter.

(ix) [reserved]~~The definition of "pollution control project," as specified in paragraph (b)(32) of 40 CFR, Part 52.21, is not adopted.~~

(x) [reserved]~~The definition of "clean unit," as specified in paragraph (b)(42) of 40 CFR Part 52.21, is not adopted.~~

(xi) In the definition of "net emissions increase" as specified in paragraph (b)(3) of 40 CFR Part 52.21, paragraphs (iii)(b) and (vi)(d), related to increases and decreases at a clean unit, are not adopted.

3. Applicability procedures: 40 CFR, Part 52.21(a)(2), as amended, is hereby incorporated and adopted by reference. ~~with the following exception:~~

~~(i) The emission test for projects that involve clean units, as specified in 40 CFR, Part 52.21(a)(2)(iv)(e), is not adopted.~~

~~(ii) In lieu of the "hybrid test for projects that involve multiple types of emissions units" as specified in paragraph (a)(2)(iv)(f) of 40 CFR, Part 52.21, the following shall apply:~~

~~(I) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs (a)(2)(iv)(c) and (d) of 40 CFR, Part 52.21(a)(iv) as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in paragraph (b)(23) of this 40 CFR, Part 52.21).~~

~~(iii) The PCP provision, as specified in 40 CFR, Part 52.21(a)(vi), is not adopted.~~

4. Except as noted below, the word "Administrator" as used in regulations adopted by reference in this paragraph shall mean the "Director" as defined in 391-3-1-.01(q). For the following provisions adopted by reference in this paragraph, the word "Administrator" shall mean the Administrator of the U.S. Environmental Protection Agency or, where allowable, his or her designee.

(i) 40 CFR, Part 52.21(b)(17), Definition of "Federally Enforceable"

(ii) 40 CFR, Part 52.21(b)(37)(i), First Paragraph within the Definition of "Repowering"

(iii) 40 CFR, Part 52.21(b)(43), Definition of "Prevention of Significant Deterioration (PSD)"

~~(iv) 40 CFR, Part 52.21(b), Redesignation~~

~~(v)~~(iv) 40 CFR, Part 52.21(b)(51), Definition of "Reviewing Authority"

~~(vi)~~(v) 40 CFR, Part 52.21(g), Redesignation

~~(vii)~~(vi) 40 CFR, Part 52.21(l), Air Quality Models

~~(viii)~~(vii) 40 CFR, Part 52.21(p)(2), Federal Land Manager

~~(ix)~~(viii) 40 CFR, Part 52.21(o)(3), Visibility Monitoring

(b) Prevention of Significant Deterioration Standards.

1. Ambient air increments: 40 CFR, Part 52.21(c), as amended, is hereby incorporated and adopted by reference.

2. Ambient air ceilings: 40 CFR, Part 52.21(d), as amended, is hereby incorporated and adopted by reference.

3. Restrictions on area classifications: 40 CFR, Part 52.21(e), as amended, is hereby incorporated and adopted by reference.

4. Redesignation: 40 CFR, Part 52.21(g), as amended, is hereby incorporated and adopted by

reference.

5. Stack heights: 40 CFR, Part 52.21(h), as amended, is hereby incorporated and adopted by reference.

6. Exemptions:~~Review of major stationary sources and major modifications - source applicability and general exemptions:~~ 40 CFR Part 52.21(i), as amended, is hereby incorporated and adopted by reference with the following exception:

(i) 40 CFR 52.21(i)1.(xi) is not adopted.~~Subparagraph (i)(5)(ii) shall read as follows, "The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in subparagraph (i)(5)(i) of this section, or the pollutant is not listed in subparagraph (i)(5)(i) of this section."~~

7. Control technology review: 40 CFR, Part 52.21(j), as amended, is hereby incorporated and adopted by reference.

8. Source impact analysis: 40 CFR, Part 52.21(k), as amended, is hereby incorporated and adopted by reference.

9. Air quality models: 40 CFR, Part 52.21(l), as amended, is hereby incorporated and adopted by reference.

10. Air quality analysis: 40 CFR, Part 52.21(m), as amended, is hereby incorporated and adopted by reference.

11. Source information: 40 CFR, Part 52.21(n), as amended, is hereby incorporated and adopted by reference with the following exception:

(i) The first sentence of paragraph (n)(1) shall read as follows, "With respect to a source or modification to which paragraphs (j), (l), (o) and (p) of this section apply, such information shall include:"

12. Additional impact analyses: 40 CFR, Part 52.21(o), as amended, is hereby incorporated and adopted by reference.

13. Sources impacting federal class I areas - additional requirements: 40 CFR, Part 52.21(p), as amended, is hereby incorporated and adopted by reference with the following exception:

(i) The beginning of paragraph (p)(8) should read "In the case of a permit issued pursuant to paragraph (p) (6) or (7) of this section…"

14. Public participation: 40 CFR, Part 52.21(q), as amended, is hereby incorporated and adopted by reference.

15. Source obligation: 40 CFR, Part 52.21(r), as amended, is hereby incorporated and adopted by reference with the following exceptions:

(i) In lieu of the provisions of paragraph (r)(6), the following shall apply:

The provisions of this subparagraph 15(i) apply to projects at an existing emissions unit at a major stationary source (other than projects at a source with a PAL) that are required to obtain a permit under the Construction (SIP) Permit requirements of paragraph 391-3-1-.03(1) of these rules and the owner or operator elects to use the method specified in ~~paragraphs (b)(41)(ii)(a) through (c) of 40 CFR 52.21~~ Subparagraph (7)(a)2.(ii)(II)I. through III. of this rule for calculating projected actual emissions.

(I) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

I. A description of the project;

II. Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

III. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under ~~paragraph (b)(41)(ii)(c) of 40 CFR 52.21~~ Subparagraph (7)(a)2.(ii)(II)III. of this rule and an explanation for why such amount was excluded, and any netting calculations, if applicable.

IV. The records required in subparagraph (7)(b)15.(i)(I) of this rule shall be retained for a period of 10 years following resumption of regular operations after the change, or for a period of 15 years following resumption of regular operations after the change if the project increases the design capacity of or potential to emit of a regulated NSR pollutant at such emissions unit.

(II) The owner or operator shall provide a copy of the information set out in subparagraph (7)(b)15.(i)(I) of this rule with the application for construction required under paragraph 391-3-1-.03(1) of these rules.

(III) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in subparagraph (7)(b)15.(i)(I)II. of this rule, and calculate and maintain a record of the annual emissions, in tons-per-year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of ten years following resumption of regular operations after the change if the project increases the design capacity of or potential to emit that regulated NSR pollutant at such emissions unit. These records shall be retained for a period of five years past the end of each calendar year. If an owner or operator is required to or elects to exclude emissions associated with startups, shutdowns, and/or malfunctions from estimations of projected actual emissions for PSD applicability purposes as allowed by subparagraph (7)(a)2.(ii)(II)II. of this rule, the owner or operator may exclude such emissions from the calculation of annual emissions.

(IV) If the owner or operator excluded demand growth emissions from the projected actual emissions for a project and that project is subject to the requirements of subparagraph (7)(a)2.(ii)(II)III.A.(B) of this rule, the owner or operator shall calculate the actual increase in emissions due to demand growth, in tons per year on a calendar year basis, for a period 10 years following resumption of regular operations after the change. These records shall be

retained for a period of five years past the end of each calendar year.

(V) The owner or operator shall submit a report to the Division within 60 days after the end of each year during which records must be generated under subparagraphs (7)(b)15.(i)(III) and (IV) of this rule setting out the unit's annual emissions and, if applicable, the unit's actual increase in emissions due to demand growth during the calendar year that preceded submission of the report.

16. Innovative control technology: 40 CFR, Part 52.21(v), as amended, is hereby incorporated and adopted by reference.

17. Permit rescission: 40 CFR, Part 52.21(w), as amended, is hereby incorporated and adopted by reference with the following exceptions:

(i) Paragraph (1) of 40 CFR, Part 52.21(w) shall read as follows: Any permit issued under this section or a prior version of this section shall remain in effect, unless and until it expires under paragraph (r) of this section or is rescinded.

(ii) Paragraph (3) of 40 CFR, Part 52.21(w) shall read as follows: The Director may grant an application for rescission if the application shows that this section, as it existed at the time the permit was issued, would not apply to the source or modification.

18. [reserved]

19. [reserved]

20. [reserved]

21. Actuals PALs: 40 CFR, Part 52.21(aa), as amended, is hereby incorporated by reference with the following exceptions:

(i) [reserved]

(ii) In lieu of the public participation requirements for PALs of 40 CFR, Part 52.21(aa)(5), PALs for existing major stationary sources shall be established, renewed, or increased through the procedures for Title V Permit issuance, renewal, and reopenings, and revisions specified in subparagraph 391-3-1-.03(10)(e) of these rules.

(iii) In addition to the provisions for setting the 10-year actual PAL level specified in 40 CFR, Part 52.21(aa)(6)(i), the PAL level shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period used to determine the baseline actual emissions for the PAL pollutant.

(iv) In lieu of the provisions of 40 CFR, Part 52.21(aa)(6)(ii), the following shall apply:
For newly constructed units (which do not include modifications to existing units) on which actual construction began after the consecutive 24-month period selected for setting the 10-year actuals PAL level, in lieu of adding the baseline emissions as specified in paragraph (aa)(6)(i) of

40 CFR, Part 52.21, the emissions must be added to the PAL level as follows:

(I) For an emissions unit on which actual operation commenced less than 36 months prior to submission of a complete PAL permit application, the emissions must be added to the PAL level in an amount equal to the potential to emit of the unit.

(II) For an emissions unit on which actual operation commenced greater than or equal to 36 months and less than 48 months prior to submission of a complete PAL permit application, the emissions must be added in an amount equal to the rate, in tons per year, at which the unit actually emitted the PAL pollutant during any consecutive 12-month period, selected by the owner or operator, that preceded submission of the PAL permit application.

(III) For an emissions unit on which actual operation commenced greater than or equal to 48 months prior to submission of a complete PAL permit application, the emissions must be added in an amount equal to the average rate, in tons per year, at which the unit actually emitted the PAL pollutant during any consecutive 24-month period, selected by the owner or operator, that preceded submission of the PAL permit application.

(v) In addition to the contents of the PAL permit specified in 40 CFR, Part 52.21(aa)(7), the PAL permit must contain a requirement that emissions calculations for compliance purposes must include non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable and that were in excess of that allowed by any state or Federal air quality regulation or permit condition.

(vi) In lieu of the provisions of 40 CFR, Part 52.21(aa)(8)(ii)(c), the following shall apply:
All reopenings shall be carried out in accordance with the procedures for Title V Permit issuance, renewal, and reopenings, and revisions specified in subparagraph 391-3-1-.03(10)(e) of these rules.

(vii) In lieu of the provisions for PAL adjustment in 40 CFR, Part 52.21(aa)(10)(iv), the following shall apply:
PAL adjustment. The Director shall set the PAL level for a renewed PAL permit in accordance with subparagraphs (7)(b)21.(vii)(I) and (II) of this rule. However, in no case may any PAL level fail to comply with subparagraph (7)(b)21.(vii)(III) of this rule.

(I) If the emissions level calculated in accordance with paragraph (aa)(6) of 40 CFR, Part 52.21 and subparagraphs (7)(b)21.(iii) and (iv) of this rule is equal to or greater than 80 percent of the PAL level, the Director may renew the PAL at the same level. If the emissions level calculated in accordance with (aa)(6) of 40 CFR, Part 52.21 and subparagraphs (7)(b)21.(iii) and (iv) of this rule is less than 80 percent of the PAL level, the Director may renew the PAL at a level determined using the procedures set forth in 40 CFR, Part 52.21(aa)(6) and subparagraphs (7)(b)21.(iii) and (iv) of this rule.

(II) The Director may set the PAL at a level that he or she determines to be more representative of the source's baseline actual emissions, or that he or she determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Director in his or her written rationale.

(III) Notwithstanding subparagraphs (7)(b)21.(vii)(I) and (II) of this rule:

I. If the potential to emit of the major stationary source is less than the PAL, the Director shall adjust the PAL to a level no greater than the potential to emit of the source; and

II. The Director shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of paragraph (aa)(11) of 40 CFR, Part 52.21 (increasing a PAL).

(viii) The following is added to the list of acceptable general monitoring approaches listed in 40 CFR, Part 52.21(aa)(12)(ii).

(I) Mass balance calculations for sulfur dioxide emissions from fuel combustion.

(ix) The mass balance calculation requirements of 40 CFR, Part 52.21(aa)(12)(iii) shall apply for mass balance calculations for sulfur dioxide emissions from fuel combustion.

(x) The data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions shall not be submitted with the semiannual report as specified in paragraph (aa)(14)(i)(c) of 40 CFR, Part 52.21, but shall be retained in permanent form suitable for inspection and submission to the Division. The records shall be retained for at least five years following the end of each calendar year.

(xi) Paragraph 40 CFR 52.21 (aa)(12)(i)(b) shall read as follows: The PAL monitoring system must employ one of the general monitoring approaches meeting the minimum requirements set forth in paragraph (aa)(12)(ii) of this section and must be approved by the Director.

Rule 391-3-1-.03(10), "Title V Operating Permits," is amended to read as follows:

(10) Title V Operating Permits.

(a) General Requirements.

1. The provisions of this section (10) shall apply to any source and the owner and operator of any such source subject to any requirements under 40 Code of Federal Regulations (hereinafter, 40 CFR), Part 70 ~~as amended~~.

2. All sources subject to this section (10) shall have a Part 70 Permit to operate that assures compliance by the source with all applicable requirements. Such Part 70 Permits will be issued consistent with the timing established in subsection (10)(c).

3. The requirements of this section (10), including provisions regarding schedules for submission and approval or disapproval of permit applications, shall apply to the permitting of affected sources under the federal acid rain program except as provided herein or modified in federal regulations promulgated under Title IV of the federal Clean Air Act.

4. Definitions: For the purpose of this Section (10), 40 CFR Part 70.2 as amended <u>on June 3, 2010,</u> is hereby incorporated and adopted by reference, with the following exception(s):

(i) "Potential to emit" shall have the meaning ascribed in subsection (ddd) of rule 391-3-1-.01.

(ii) In addition to the major sources defined in 40 CFR 70.2, the following shall also be considered a major source: for the counties of Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale, sources with the potential to emit 25 tpy or more of volatile organic compounds or oxides of nitrogen.

(iii) The definition and use of the term "subject to regulation" in 40 CFR, Part 70.2, as amended June 3, 2010, is hereby incorporated by reference; provided, however, that in the event all or any portion of 40 CFR, Part 70.2 containing that term is:

(I) declared or adjudged to be invalid or unconstitutional or stayed by the United States Court of Appeals for the Eleventh Circuit or for the District of Columbia Circuit; or

(II) withdrawn, repealed, revoked, or otherwise rendered of no force and effect by the United States Environmental Protection Agency, Congress, or Presidential Executive Order.

Such action shall render the regulation as incorporated herein, or that portion thereof that may be affected by such action as invalid, void, stayed, or otherwise without force and effect for purposes of this rule upon the date such action becomes final and effective; provided, further, that such declaration, adjudication, stay, or other action described herein, shall not affect the remaining portions, if any, of the regulation as incorporated herein, which shall remain of full force and effect as if such portion so declared or adjudged invalid or unconstitutional or stayed or otherwise invalidated or effected were not originally a part of this rule. The Board declares that it would have incorporated the remaining parts of the federal regulation if it had known that such portion hereof would be declared or adjudged invalid or unconstitutional or stayed or otherwise rendered of no force and effect.

(b) Applicability.

1. The following sources shall be subject to this section (10):

(i) Any major source as defined in 40 CFR Part 70.2, which is incorporated by reference in Subparagraph (a)4;

(ii) Any source, including an area source, subject to a standard, limitation, or other requirement under Section 111 of the federal Act;

(iii) Any source, including an area source, subject to a standard or other requirement under Section 112 of the federal Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under Section 112 (r) of the federal Act;

(iv) Any affected source as defined in 40 CFR Part 70.2, which is incorporated by reference in Subparagraph (a)4; and

(v) Any source in a source category designated by the EPA Administrator pursuant to 40 CFR Part 70.3.

2. The following sources shall not be subject to this section (10):

(i) Any source listed in subparagraph 10(b)1.(ii) that is not a major source;

(ii) Any source required to obtain a permit solely because they are subject to 40 CFR Part 61, Subpart M, National Emission Standard for Hazardous Air Pollutants for Asbestos, 61.145, Standard for Demolition and Renovation, or solely because they are subject to 40 CFR Part 60, Subpart AAA Standards of Performance for New Residential Wood Heaters; and

(iii) Any source listed in subparagraph (10)(b)1.(iii) that is an area source except those subject to an Emission Standard for Hazardous Air Pollutants under 40 CFR Part 63 that does not exempt the owner or operator from the obligation to obtain a Part 70 permit.

3. Emission units and Part 70 permits.

(i) For major sources, Part 70 permits shall include all applicable requirements for all relevant emission units in the major source.

(ii) For any non-major source subject to the requirements of this section (10), Part 70 permits shall include all applicable requirements applicable to emission units that cause the source to be subject to this section (10).

4. Fugitive emissions from a source subject to the requirements of this section (10) shall be included in the permit application and the Part 70 permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

5. Any Part 70 source may make Section 502(b)(10) changes as defined in 40 CFR 70.2, which is incorporated by reference in Subparagraph (a)4, without requiring a Part 70 permit revision, if the changes are not modifications under any provisions of Title I of the federal Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions). For each such change, the source shall provide the Director and the EPA Administrator with written notification as required below in advance of the proposed changes and shall obtain any permits required under Rules 391-3-1-.03(1) and (2). The source and the Director shall attach each such notice to their copy of the relevant permit.

(i) For each such change, the source's written notification and application for a construction permit shall be submitted well in advance of any critical date (construction date, permit issuance date, etc.) involved in the change, but no less than seven days in advance of such change and shall include a brief description of the change within the permitted facility, the date on which the change is proposed to occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

(ii) The permit shield described in paragraph (d)6. shall not apply to any change made pursuant to this paragraph.

6. Off-permit Changes: Any Part 70 source may make changes that are not addressed or prohibited by the permit, other than those described in paragraph 7., without a Part 70 permit

revision, provided the following requirements are met:

(i) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.

(ii) Sources must provide contemporaneous written notice to the Director and EPA Administrator of each such change, except for changes that qualify as insignificant ~~under the provisions adopted pursuant to 40 CFR 70.5(c)~~as specified in Subparagraph (g). Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change.

(iii) The change shall not qualify for the shield under paragraph (10)(d)6.

(iv) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

(v) The source shall obtain any permits required under Rules 391-3-1-.03(1) and (2).

7. No Part 70 source may make, without a permit revision, any changes that are not addressed or prohibited by the Part 70 permit, if such changes are subject to any requirements under Title IV of the federal Act or are modifications under any provision of Title I of the federal Act.

8. Any source listed in paragraph (10)(b)1. exempt from the requirement to obtain a permit under this section (10) may opt to apply for a permit under a Part 70 program.

(c) Permit Applications.

1. For each Part 70 source, the owner or operator shall submit a complete application:

(i) Within 12 months after the U. S. EPA grants approval of this section (10) or on or before such earlier date as the Director may establish, for a source applying for the first time;

(ii) Within 12 months after commencing operation, for a source required to meet the requirements under section 112(g) of the federal Clean Air Act or to have a permit under the preconstruction review program requirements of Rule 391-3-1-.03(8)(b) or Rule 391-3-1-.03(8)(c). Where an existing Part 70 permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation;

(iii) At least six months, but not more than 18 months prior to the date of permit expiration, for a source subject to permit renewal; or

(iv) By January 1, 1996, for initial Phase II sulfur dioxide acid rain permits and by January 1,1998, for initial Phase II nitrogen oxide acid rain permits.

2. Standard Permit Application and Required Information. The application shall be made in a format specified by the Director. It shall be signed by a responsible official, as defined in 40 CFR 70.2, which is incorporated by reference in Subparagraph (a)4, certifying its truthfulness, accuracy and completeness. For the purpose of this section (10), 40 CFR 70.5(c) as amended

October 6, 2009, and 40 CFR 70.5(d) as promulgated July 21, 1992, ~~as amended~~ are hereby incorporated and adopted by reference. The application may require additional pertinent information which is not specified in 40 CFR 70.5(c), as incorporated by reference in this subparagraph, as the Director may require. To be deemed complete, an application must provide all information required pursuant to this paragraph and paragraph (g), except that applications for permit revision need supply such information only if it is related to the proposed change.

3. Unless the Director determines that an application, including renewal applications, is not complete within 60 days of receipt of the application, such application shall be deemed to be complete, except as otherwise provided in 40 CFR 70.7(a)(4) as promulgated July 21, 1992, which is hereby incorporated by reference.

4. If, while processing an application that has been determined or deemed to be complete, the Director determines that additional information is necessary to evaluate or take final action on that application the Director may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a Part 70 permit shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the Director.

5. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(d) Permit Content.

1. Standard Permit Requirements.

(i) For the purposes of this section (10), 40 CFR Part 70.6(a) as amended October 6, 2009, and 40 CFR 70.7(f) as ~~amended~~promulgated July 21, 1992, are hereby incorporated and adopted by reference.

(ii) The permit may include terms and conditions allowing for the trading of emissions changes in the permitted facility solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure that the emissions trades are quantifiable and enforceable. The Director shall not be required to include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The following conditions apply to the emissions trades:

(I) The permittee shall provide written notification to the Director and EPA no less than seven days in advance of any change made pursuant to this subparagraph. The written notification shall state when the change will occur and shall describe the changes in emissions that will

result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(II) The permit shield described in paragraph (d)6. may extend to the permit terms and conditions that allow for the emissions increases and decreases described in this subparagraph.

(iii) The permit may include additional elements not specified in 40 CFR Part 70.6(a), which is incorporated by reference in Subparagraph (d)1.(i), as required by the Director.

2. The Director shall specifically designate as not being federally enforceable under the federal Clean Air Act any terms and conditions included in the permit that are not required under the federal Clean Air Act or under any of its applicable requirements. If the Director does not so designate a term or condition, it shall be deemed federally enforceable.

3. Compliance Requirements. For the purposes of this section (10), 40 CFR 70.6(c) as amended June 27, 2003, is hereby incorporated and adopted by reference.

4. General Permits: For the purpose of this section (10), 40 CFR 70.6(d) as promulgated July 21, 1992, is hereby incorporated and adopted by reference.

5. The Director may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one chance of location during the term of the permit. No affected source shall be permitted as a temporary source. Permits for temporary sources shall include:

(i) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(ii) Requirements that the owner or operator notify the Director at least 30 days in advance of each change in location; and

(iii) Conditions that assure compliance with all of the provisions of this section.

6. Permit Shield.

(i) Except as provided in this section (10), the Director may expressly include in a Part 70 permit a provision stating that a source which is in compliance with the conditions of the permit shall be deemed to be in compliance with any applicable requirements as of the date of the permit issuance, provided that:

(I) Such applicable requirements are included and are specifically identified in the permit; or

(II) The Director, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(ii) A Part 70 permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(iii) Nothing in this paragraph or in any Part 70 permit shall alter or affect the following:

(I) The provisions of section 303 of the federal Clean Air Act (emergency orders),including the authority of the Administrator under that section or the provisions of O.C.G.A. Section 12-9-14.;

(II) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance; or

(III) The applicable requirements of the acid rain program, consistent with section 408(a) of the federal Clean Air Act; or

(IV) The ability of EPA to obtain information from a source pursuant to section 114 of the federal Clean Air Act or of the Director to obtain information from a source pursuant to section 391-3-1-.02(6).

7. Emergency Provision: For the purpose of paragraph (d)7., 40 CFR Part 70.6(g) as ~~amended~~ promulgated July 21, 1992, is hereby incorporated and adopted by reference.

(e) Permit Issuance, Renewal, Reopenings and Revisions.

1. Action on application.

(i) A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(I) The Director has received a complete application, except that a complete application need not be received before issuance of a general permit under subsection (d);

(II) Except for modifications qualifying for minor permit modification procedures under subparagraphs (e)5.(i) or (e)5.(ii), the Director has complied with the requirements for public participation under paragraph (e)8.;

(III) The Director has complied with the requirements for notifying and responding to affected States under subsection (f);

(IV) The conditions of the permit provide for compliance with all applicable requirements; and

(V) The EPA Administrator has received a copy of the proposed permit and any notices required under subsection (f) and has not objected to issuance of the permit under subsection (f) within the time period specified therein.

(ii) Except as provided under the initial transition plan or under regulations promulgated under Title IV of the federal Clean Air Act, the Director shall take final action on each permit application (including request for permit modification or renewal) within 18 months after receiving a complete application.

(iii) The Director shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The Director shall send this statement to EPA and to any other person who requests it.

(iv) The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under Section 391-3-1-.03(8).

2. Requirement for a permit.

Except as provided in paragraph (b)5., Part (e)5.(i)(V) and Part (e)5.(ii)(V), no Part 70 source may operate after the time that it is required to submit a timely and complete application, except in compliance with a permit issued under this section (10). If a Part 70 source submits a timely and complete application for permit issuance (including for renewal), the source's failure to have a Part 70 permit is not a violation until the Director takes final action on the permit application. This protection shall cease to apply if, subsequent to the completeness determination, the applicant fails to submit by the deadline specified in writing by the Director any additional information identified as being needed to process the application.

3. Permit renewal and expiration.

(i) Permits being renewed are subject to the same procedural requirements, including those for public participation, affected State and EPA review, that apply to initial permit issuance.

(ii) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted.

(iii) If a timely and complete application for permit renewal is submitted, but the Director has failed to issue or deny the renewal permit before the end of the term of the previous permit, then the permit shall not expire until the renewal permit has been issued or denied and any permit shield that may be granted pursuant to paragraph (d)6. shall extend beyond the original permit term until renewal.

4. Administrative permit amendments.

(i) Definitions: For the purpose of this paragraph, 40 CFR, Part 70.7(d)(1), as ~~amended~~promulgated July 21, 1992, is incorporated and adopted by reference.

(ii) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the federal Clean Air Act.

(iii) An administrative permit amendment may be made by the Director consistent with the following:

(I) The Director shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected States provided that it designates any such permit revisions as having been made pursuant to this paragraph.

(II) The Director shall submit a copy of the revised permit to the EPA Administrator.

(III) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(iv) The Director may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield for administrative permit amendments made pursuant to 40 CFR Part 70.7(d)(1)(v), which is incorporated by reference in Subparagraph (e)4.(i) of this rule, which meet the requirements for significant permit modifications.

5. Permit modification.

A permit modification is any revision to a Part 70 permit that cannot be accomplished under paragraph 4. A permit modification for purposes of the acid rain program shall be governed by regulations promulgated under Title IV of the federal Clean Air Act.

(i) Minor permit modification procedures.

(I) Minor permit modification procedures may be used only for those permit modifications that:

I. Do not violate any applicable requirement;

II. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

III. Do not require or change a case-by-case determination of an emission limitation or other standard, or a source specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

IV. Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject, including a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of 391-3-1-.03(8), and an alternative emissions limit approved pursuant to regulations promulgated under section 112(j)(5) of the federal Clean Air Act;

V. Are not modifications under any provision of 391-3-1-.03(8); and

VI. Are not required by this section (10) to be processed as a significant modification.

(II) An application requesting the use of minor permit modification procedures shall meet the requirements of subsection 8 and shall include the following:

I. A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

II. The source's suggested draft permit;

III. Certification by a responsible official, consistent with subsection (c), that the proposed modification meets the criteria for use of minor modification procedures and a request that such procedures be used; and

IV. Completed forms for the Director to use to notify the EPA Administrator and affected States

as required under subsection (f).

(III) Within five working days of receipt of a complete minor permit modification application, the Director shall meet his obligation under paragraph (f)(1) and subparagraph (f)(2)(i) to notify the EPA Administrator and affected States of the requested permit modification. The Director shall promptly send any notice required under subparagraph (f)(2)(ii) to the EPA Administrator.

(IV) The Director may not issue a final permit modification until after EPA's 45-day review period or until EPA has notified the Director that EPA will not object to issuance of the permit modification, whichever is first, although the Director can approve the permit modification prior to that time. Within 90 days of the Director's receipt of an application under minor permit modification procedures or 15 days after the end of the EPA Administrator's 45-day review period under paragraph (f)(3), whichever is later, the Director shall:

I. Issue the permit modification as proposed;

II. Deny the permit modification application;

III. Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

IV. Revise the draft permit modification and transmit to the EPA Administrator the new proposed permit modification as required by subsection (f).

(V) The source may make changes proposed in its minor permit modification application as follows:

I. For proposed changes that require a permit in accordance with 391-3-1-.03(1), the source may make the change proposed in its minor permit modification application immediately after obtaining a permit for the modification pursuant to the requirements of 391-3-1-.03(1). After the source makes such change and until the Director takes any of the actions specified in Part (IV), the source must comply with the applicable requirements governing the change, the proposed permit terms and conditions, and requirements of the construction permit issued under 391-3-1-.03(1). During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions and the requirements of the construction permit issued under 391-3-1-.03(1) during this time period, the existing permit terms and conditions it seeks to modify and the requirements of the construction permit issued under 391-3-1-.03(1) may be enforced against it.

II. For proposed changes that do not require a permit in accordance with 391-3-1-.03(1), the source may make the change proposed in its minor permit modification application upon receipt of a letter from the Division acknowledging receipt of said application. If the Director denies the permit modification application in accordance with Part (IV)II, the existing terms and conditions that the applicant seeks to modify may be enforced by the Division.

(VI) The permit shield may not extend to minor permit modifications.

(ii) Group processing of minor permit modifications. The Director may modify the procedure outlined in subparagraph (e)5.(i) to process groups of a source's applications for certain

modifications eligible for minor permit modification processing.

(I) Group processing of modifications may be used only for those permit modifications:

I. That meet the criteria for minor permit modification procedures under subparagraph (e)5.(i); and

II. That collectively are below 10 percent of the emissions allowed by the permit for the emissions unit for which the change is requested, 20 percent of the applicable definition of major source in paragraph (a)4., or 5 tons per year, whichever is least.

(II) An application requesting the use of group processing procedures shall meet the requirements of paragraph (c)2. and shall include the following:

I. A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

II. The source's suggested draft permit.

III. Certification by a responsible official that the proposed modification meets the criteria for use of group processing procedures under a request that such procedures be used.

IV. A list of the source's other pending applications awaiting group processing, and determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under Subpart (e)5.(ii)(I)II.

V. Certification that the source has notified EPA of the proposed modification. Such notification need only contain a brief description of the proposed modification.

VI. Completed forms for the Director to use to notify the EPA Administrator and affected States as required under subsection (f).

(III) On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set in Subpart (e)5.(ii)(I)II., whichever is earlier, the Director promptly shall comply with paragraphs (f)(1) and (f)(2). The Director shall send any notice required under subparagraph (f)(2)(ii) to the EPA Administrator.

(IV) The provisions of Part (e)5.(i)(IV) shall apply to modifications eligible for group processing, except that the Director shall take one of the actions specified in Subparts (e)5.(i)(IV)I through IV. within 180 days of receipt of the application or 15 days after the end of the EPA Administrator's 45-day review period under paragraph (f)(3), whichever is later.

(V) The provisions of Part 5.(i)(V) shall apply to modifications eligible for group processing.

(VI) The provisions of Part 5.(i)(VI) shall also apply to modifications eligible for group processing.

(iii) Significant modification procedures.

(I) Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications or as administrative amendments. At a minimum, every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant. Nothing herein shall be construed to preclude the permittee from making changes consistent with this section (10) that would render existing permit compliance terms and conditions irrelevant.

(II) Significant permit modifications shall meet all requirements of this section (10), including those for applications, public participation, review by affected States, and review by EPA, as they apply to permit issuance and permit renewal.

6. Reopening for cause.

(i) A permit shall be reopened and revised under any of the following circumstances:

(I) Additional applicable requirements become applicable to a major Part 70 source with a remaining permit term of three or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended under subparagraph (e)3.(iii).

(II) Additional requirements (including excess emissions requirements) become applicable to an affected source under the acid rain program. Upon approval by the Administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

(III) The Director determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(IV) The Director determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(ii) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists.

(i) Reopenings shall not be initiated before a notice of such intent is provided to the source by the Director at least 30 days in advance of the date that the permit is to be reopened, except that the Director may provide a shorter time period in the case of an emergency.

7. Reopenings for cause by EPA.

(i) If the EPA Administrator finds that cause exists to terminate, modify or revoke and reissue a permit pursuant to Paragraph 6. and notifies the Director of such finding in writing, the Director shall, within 90 days after receipt of such notification, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. If the EPA

Administrator finds that a new or revised permit application is necessary or that the Director must require the permittee to submit additional information and extends this 90 day period, the Director shall forward the subject determination within 180 days of receipt of EPA's notification.

(ii) Within 90 days from receipt of an EPA objection, the Director shall resolve such objection and terminate, modify, or revoke and reissue the permit in accordance with EPA's objection.

8. Public participation.

40 CFR Part 70.7(h), as ~~amended~~promulgated July 21, 1992, is hereby incorporated and adopted by reference.

(f) Permit review by EPA and affected States.

1. The Director shall provide the EPA Administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final Part 70 permit. The Director may require the applicant to provide a copy of the permit application (including the compliance plan) directly to the EPA Administrator. Upon approval by the EPA Administrator, the Director may submit to the EPA Administrator a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan.

2. Review by affected States.

(i) The Director shall give notice of each draft permit to any affected State on or before the time that the Director provides this notice to the public under paragraph (e)8., except to the extent that subparagraphs (e)5.(i) or (e)5.(ii) require the timing of the notice to be different.

(ii) The Director, as part of the submittal of the proposed permit to the EPA Administrator [or as soon as possible after the submittal for minor permit procedures allowed under subparagraphs (e)5.(i) or (e)5.(ii)], shall notify the EPA Administrator and any affected State in writing of any refusal by the Director to accept all recommendations for the proposed permit that the affected State submitted during the public or affected State comment period. The notice shall include the Director's reasons for not accepting any such recommendation. The Director is not required to accept recommendations that are not based on applicable requirements or the requirements of this section (10).

3. EPA objection.

(i) No permit for which an application must be transmitted to the EPA Administrator under paragraph (f)1. shall be issued if the EPA Administrator objects to its issuance in writing within a timely manner pursuant to 40 CFR 70.8(c), as promulgated July 21, 1992, and 40 CFR 70.8(d), as promulgated July 21, 1992, which are hereby incorporated by reference.

(g) Insignificant Activities List.

Unless otherwise required by the Director, the following air pollutant sources/activities must be listed, but need not be described in detail, in the Part 70 permit application. Exclusion of these emissions from detailed reporting does not exclude them from inclusion in any applicability

determination. Additionally, this insignificant listing may not be used to avoid any applicable requirement (i.e. NESHAP, NSPS, etc.) as defined in 40 CFR Part 70.2, which is incorporated by reference in Subparagraph (a)4.

1. Mobile Sources.

(i) Cleaning and sweeping of streets and paved surfaces.

2. Combustion Equipment.

(i) Fire fighting and similar safety equipment used to train fire fighters or other emergency personnel.

(ii) Small incinerators that are not subject to any standard, limitation or other requirement under Section 111 or 112 [excluding 112(r)] of the Federal Act and are not considered a "designated facility" as specified in 40 CFR 60.32e of the Federal emissions guidelines for Hospital/Medical/ Infectious Waste Incinerators, that are operating as follows:

(I) Less than 8 million BTUs per hour heat input, firing types 0, 1, 2 and/or 3 waste; or

(II) Less than 8 million BTUs per hour heat input with no more than 10% pathological (Type-4) waste by weight combined with types 0, 1, 2 and/or 3 waste; or

(III) Less than 4 million BTUs per hour heat input firing Type 4 waste.

(IV) For the purpose of this subsection, the following definitions apply:

I. "Type 0 waste" means trash. This refers to a mixture of combustible waste such as paper, cardboard, wood and floor sweepings; which contains up to 10% petrochemical waste, 5% non-combustibles and 10% moisture, by weight; which is generated from commercial activities; and having a higher heat value (HHV) of approximately 8,500 BTU/lb.

II. "Type 1 waste" means rubbish. This refers to a mixture of combustible waste such as paper, cardboard, wood foliage and floor sweepings; which contains up to 10% petrochemical waste, 5% non-combustibles and 10% moisture, by weight; which is generated from domestic and commercial activities; and having a HHV of approximately 6,500 BTU/lb.

III. "Type 2 waste" means refuse. This refers to an evenly distributed mixture of rubbish and garbage as usually received in municipal waste; which contains up to 50% moisture content, by weight and 7% non-combustible solids; and having a HHV of approximately 4,300 BTU/lb.

IV. "Type 3 waste" means garbage. This refers to animal and vegetable wastes from restaurants, cafeterias, hotels, markets, and like installations; which contains up to 70% moisture, by weight, and 5% non-combustible solids; and having a HHV of approximately 2,500 BTU/lb.

V. "Type 4 waste" means human and animal remains. This refers to carcasses, organs, and solid organic wastes from hospitals, laboratories, abattoirs, animal pounds; and having a HHV of approximately 1,000 BTU/lb.

(iii) Open burning in compliance with Georgia Rule 391-3-1-.02(5).

(iv) Stationary Engines Burning:

(I) Natural gas, gasoline, diesel fuel, or dual fuels which are used exclusively as emergency generators; or

(II) Natural gas, LPG, and/or diesel fuel and used for peaking power (including emergency generators used for peaking power) where the peaking power use does not exceed 200 hours-per-year, except in the counties of Banks, Barrow, Bartow, Butts, Carroll, Chattooga, Cherokee, Clarke, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Floyd, Forsyth, Fulton, Gordon, Gwinnett, Hall, Haralson, Heard, Henry, Jackson, Jasper, Jones, Lamar, Lumpkin, Madison, Meriwether, Monroe, Morgan, Newton, Oconee, Paulding, Pickens, Pike, Polk, Putnam, Rockdale, Spalding, Troup, Upson, and Walton where such engines with a rated capacity equal to and greater than 100 kilowatts are not insignificant activities; or

(III) Natural gas, LPG, and/or diesel fuel used for other purposes, provided that the output of each engine does not exceed 400 horsepower and that no individual engine operates for more than one thousand hours-per-year; or

(IV) Gasoline used for other purposes, provided that the output of each engine does not exceed 100 horsepower and that no individual engine operates for more than 500 hours-per-year except in the counties of Banks, Barrow, Bartow, Butts, Carroll, Chattooga, Cherokee, Clarke, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Floyd, Forsyth, Fulton, Gordon, Gwinnett, Hall, Haralson, Heard, Henry, Jackson, Jasper, Jones, Lamar, Lumpkin, Madison, Meriwether, Monroe, Morgan, Newton, Oconee, Paulding, Pickens, Pike, Polk, Putnam, Rockdale, Spalding, Troup, Upson, and Walton where such engines with a rated capacity equal to and greater than 100 kilowatts used for peaking power are not insignificant activities.

(V) For the purpose of this subsection, the following definitions shall apply:

I. An “emergency generator” means a generator whose function is to provide back-up power when electric power from the local utility is interrupted and which operates for less than 500 hours-per-year, except in the counties of Banks, Barrow, Bartow, Butts, Carroll, Chattooga, Cherokee, Clarke, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Floyd, Forsyth, Fulton, Gordon, Gwinnett, Hall, Haralson, Heard, Henry, Jackson, Jasper, Jones, Lamar, Lumpkin, Madison, Meriwether, Monroe, Morgan, Newton, Oconee, Paulding, Pickens, Pike, Polk, Putnam, Rockdale, Spalding, Troup, Upson, and Walton where such generator operates less than 200 hours-per-year.

II. “Used for peaking power” means used to reduce the electrical power requirements on the local utility grid. This could be for supplying power during the local utility’s peak demand periods or for peak shaving by the facility.

3. Trade Operations.

(i) Brazing, soldering and welding equipment, and cutting torches related manufacturing and construction activities whose emissions of hazardous air pollutants (HAPs) fall below 1,000

pounds per year.

4. Maintenance, Cleaning, and Housekeeping.

(i) Blast-cleaning equipment using a suspension of abrasive in water and any exhaust system (or collector) serving them exclusively.

(ii) Portable blast-cleaning equipment.

(iii) Non-Perchloroethylene Dry-cleaning equipment with a capacity of 100 pounds per hour or less of clothes.

(iv) Cold cleaners having an air/vapor interface of not more than 10 square feet and that do not use a halogenated solvent.

(v) Non-routine clean out of tanks and equipment for the purposes of worker entry or in preparation for maintenance or decommissioning.

(vi) Devices used exclusively for cleaning metal parts or surfaces by burning off residual amounts of paint, varnish, or other foreign material, provided that such devices are equipped with afterburners.

(vii) Cleaning Operations: Alkaline/phosphate cleaners and associated cleaners and burners.

5. Laboratories and Testing.

(i) Laboratory fume hoods and vents associated with bench-scale laboratory equipment used for physical or chemical analysis.

(ii) Research and development facilities, quality control testing facilities and/or small pilot projects, where combined daily emissions from all operations are not individually major and are not support facilities making significant contributions to the product of a collocated major manufacturing facility.

6. Pollution Control.

(i) Sanitary wastewater collection and treatment systems, except incineration equipment or equipment subject to any standard, limitation or other requirement under Section 111 or 112 [excluding 112(r)] of the Federal Act.

(ii) On site soil or groundwater decontamination units that are not subject to any standard, limitation or other requirement under Section 111 or 112 [excluding 112(r)] of the Federal Act.

(iii) Bioremediation operations units that are not subject to any standard, limitation or other requirement under Section 111 or 112 [excluding 112(r)] of the Federal Act.

(iv) Landfills that are not subject to any standard, limitation or other requirement under Section 111 or 112 [excluding 112(r)] of the Federal Act.

7. Industrial Operations.

(i) Concrete block and brick plants, concrete products plants, and ready mix concrete plants producing less than 125,000 tons per year.

(ii) Any of the following processes or process equipment which are electrically heated or which fire natural gas, LPG or distillate fuel oil at a maximum total heat input rate of not more than five million BTUs per hour:

(I) Furnaces for heat treating glass or metals, the use of which do not involve molten materials or oil-coated parts.

(II) Porcelain enameling furnaces or porcelain enameling drying ovens.

(III) Kilns for firing ceramic ware.

(IV) Crucible furnaces, pot furnaces, or induction melting and holding furnaces with a capacity of 1,000 pounds or less each, in which sweating or distilling is not conducted and in which fluxing is not conducted utilizing free chlorine, chloride or fluoride derivatives, or ammonium compounds.

(V) Bakery ovens and confection cookers.

(VI) Feed mill or grain mill ovens.

(VII) Surface coating drying ovens.

(iii) Carving, cutting, routing, turning, drilling, machining, sawing, surface grinding, sanding, planing, buffing, shot blasting, shot peening, or polishing; ceramics, glass, leather, metals, plastics, rubber, concrete, paper stock or wood, also including roll grinding and ground wood pulping stone sharpening, provided that:

(I) The activity is performed indoors; and

(II) No significant fugitive particulate emissions enter the environment; and

(III) No visible emissions enter the outdoor atmosphere.

(iv) Photographic process equipment by which an image is reproduced upon material sensitized to radiant energy (e.g., blueprint activity, photographic developing and microfiche).

(v) Grain, food, or mineral extrusion processes.

(vi) Equipment used exclusively for sintering of glass or metals, but not including equipment used for sintering metal-bearing ores, metal scale, clay, fly ash, or metal compounds.

(vii) Equipment for the mining and screening of uncrushed native sand and gravel.

(viii) Ozonization process or process equipment.

(ix) Electrostatic powder coating booths with an appropriately designed and operated particulate control system.

(x) Activities involving the application of hot melt adhesives where VOC emissions are less than 5 tons per year and HAP emissions are less than 1,000 pounds per year.

(xi) Equipment used exclusively for mixing and blending water-based adhesives and coatings at ambient temperatures.

(xii) Equipment used for compression, molding and injection of plastics where VOC emissions are less than 5 tons per year and HAP emissions are less than 1,000 pounds per year.

(xiii) Ultraviolet curing processes where VOC emissions are less than five tons per year and HAP emissions are less than 1,000 pounds per year.

8. Storage Tanks and Equipment.

(i) All petroleum liquid storage tanks storing a liquid with a true vapor pressure of equal to or less than 0.50 psia as stored.

(ii) All petroleum liquid storage tanks with a capacity of less than 40,000 gallons storing a liquid with a true vapor pressure of equal to or less than 2.0 psia as stored that are not subject to any standard, limitation or other requirement under Section 111 or 112 [excluding 112(r)] of the Federal Act.

(iii) All petroleum liquid storage tanks with a capacity of less than 10,000 gallons storing a petroleum liquid.

(iv) All pressurized vessels designed to operate in excess of 30 psig storing petroleum fuels that are not subject to any standard, limitation or other requirement under Section 111 or 112 [excluding 112(r)] of the Federal Act.

(v) Gasoline storage and handling equipment at loading facilities handling less than 20,000 gallons per day or at vehicle dispensing facilities that are not subject to any standard, limitation or other requirement under Section 111 or 112 [excluding 112(r)] of the Federal Act.

(vi) Portable drums, barrels, and totes provided that the volume of each container does not exceed 550 gallons.

(vii) All chemical storage tanks used to store a chemical with a true vapor pressure of less than or equal to 10 millimeters of mercury (0.19 psia).

Authority: O.C.G.A. Section 12-9-1 et seq., as amended.