

Demonstration of Legal Authority

The following legal authority is demonstrated through the Attorney General's Opinion that was submitted in support of the Georgia Environmental Protection Division's November 15, 1993 and supplemental letter on November 4, 1994, Title V Operating Permit Program submittal. This plan is applicable to all sections 111, 129, and 112 pollutants.

Adequate Legal Authority

The Attorney General's November 1, 1993 opinion states that Georgia EPD has adequate authority to issue operating permits to all regulated sources for all regulated pollutants, including any pollutant regulated under sections 111, 129, and 112 standard. This authority is specified in Attorney General's opinion under the section entitled "*I. Authority to Issue Permits*" of the November 1, 1993 memo. The authority to issue permits in conjunction with the section entitled "*VIII. Incorporation of All Applicable Requirements in the Permit*" satisfies the criteria that emission standards and compliance schedules be included in the plan, as specified in section 60.26(a)(1), and the criteria that requirements to install, maintain, and use emission monitoring devices and to make periodic reports to the State on the nature and emissions from such facilities be included in the plan, as specified in section 60.26(a)(4).

Moreover, as the section entitled "*VI. Monitoring, Recordkeeping, and Reporting*" of the November 1, 1993 memo, opinion makes it clear, Georgia EPD's authority to incorporate monitoring, recordkeeping, reporting, and compliance certification requirements into operating permits satisfies the requirements of section 70.6, which in turn satisfies inclusion of the monitoring, recordkeeping, and reporting requirements, as specified in section 60.25(b)(1) and section 60.26(a)(3).

The section entitled "*VII. Inspection/Entry Authority*" makes it clear that Georgia EPD's inspection authority satisfies the requirements of section 70.6(c)(2), which in turn satisfies inclusion of the inspection requirements, as specified in section 60.26(a)(3).

The section entitled "*XIV. Enforcement of Permit Program Requirements*" of the November 1, 1993 opinion makes it clear that Georgia EPD's enforcement authority satisfies the requirements of section 70.11, which in turn satisfies the requirements of section 60.26(a)(2).

Chapter 391-3-1-.02(1) of the Georgia Rules of Air Quality Control states that no person shall operate any facility in violation of any applicable standard established by EPA in accordance with section 111 of the Clean Air Act.

The section entitled "*XIII. Public Access to Permit Information*" of the aforementioned memo, opinion makes it clear that State law provides authority to make available to the public and any permit application, compliance plan, permit, and monitoring and compliance certification report, which satisfies the criteria for the availability of data to the public, as specified in section 60.26(a)(4).



Department of Law
State of Georgia

MICHAEL J. BOWERS
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November 1, 1993

WRITER'S DIRECT DIAL
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MEMORANDUM

TO: Harold F. Reheis, Director
Environmental Protection Division

FROM: Michael J. Bowers *MJB*
Attorney General

RE: Attorney General's Opinion Regarding State Authority
to Operate the Title V Operating Permit Program in
Accordance with § 502(d) of the Federal Clean Air Act

I hereby certify, pursuant to my authority as Attorney General of the State of Georgia and in accordance with § 502(d) of the federal Clean Air Act, as amended, (42 U.S.C. § 7401, *et seq.*), and 40 C.F.R. § 70.4(b)(3), that in my opinion the laws of the State of Georgia provide adequate authority to carry out all aspects of the program submitted by the Air Quality Branch of the Environmental Protection Division of the Department of Natural Resources, State of Georgia, to the U.S. Environmental Protection Agency for approval to administer and enforce the operating permit program under Title V of the Clean Air Act. The specific state authorities provided, which are contained in statutes, regulations, or other legal authorities lawfully adopted, and which shall be fully effective by the time the program is approved, include those identified below.

This Attorney General's Opinion is submitted in support of the Georgia Environmental Protection Division's November 15, 1993, Title V Operating Permit Program submittal. This Opinion follows the organizational scheme of the Title V Model Attorney General's Opinion provided by the U.S. Environmental Protection Agency (hereinafter U.S. EPA).

The Georgia Air Quality Act, O.C.G.A. §§ 12-9-1 through 25, first became effective in 1967 and has been amended on several occasions since that time. The most recent amendments to the Act became effective on July 1, 1992 (except for minute changes to § 12-9-7 which became effective on March 22, 1993). The Rules of the Georgia Department of Natural Resources for Air Quality Control, Chapter 391-3-1, first became effective on September 26, 1973 and have been amended regularly since that

time. The most recently revised Rules became effective on October 27, 1993. These effective dates are the same, except where noted, whenever the Georgia Air Quality Act or the Rules for Air Quality Control are referred to in the categories of this Opinion. Consequently, there is no separate listing in each category of the effective dates of the Act or Rules unless they are different from those denoted here.

For brevity, the referenced legal authorities in this Opinion will be abbreviated as follows: The Clean Air Act will be CAA; The Code of Federal Regulations will be C.F.R.; the Official Code of Georgia Annotated will be O.C.G.A.; the Georgia Air Quality Act will be GAQA; the Natural Resources Act of 1973 will be GNRA; the Georgia Administrative Procedure Act will be GAPA; and the Rules of the Georgia Department of Natural Resources will be referred to as Rules.

I. AUTHORITY TO ISSUE PERMITS

State law provides authority for the Director of the Environmental Protection Division [hereinafter referred to as Director] to issue operating permits to all air pollution sources within the State that are required to have permits under § 502(a) of the CAA and 40 C.F.R. § 70.3, and to incorporate into permits and assure compliance with each applicable requirement of the CAA and the requirements of 40 C.F.R. Part 70. State law also provides authority to issue operating permits for solid waste incineration units combusting municipal waste under § 129(e) of the CAA that assure compliance with all applicable requirements of the CAA and the requirements of 40 C.F.R. Part 70.

Federal Authority: CAA §§ 129(e), 502(a) - (b), 503, 504(a), 42 U.S.C. §§ 7429(e), 7661a(a) - (b), 7661b, 7661c(a); 40 C.F.R. §§ 70.4(b)(3)(i), 70.4(b)(3)(iv), 70.4(b)(3)(v), 70.5(a), 70.6, 70.7(b).

State Authority: O.C.G.A. §§ 12-2-1(a) (effective March 14, 1991), 12-2-2(a), (b)(1), (c)(1) (effective April 5, 1993); GAQA, O.C.G.A. §§ 12-9-3(a)(31), 12-9-6(b)(3), 12-9-7(a), 12-9-7(b)(1) - (2), 12-9-7(c)(4), 12-9-7(j); Rules 391-3-1-.03(10)(a)1.-4., 391-3-1-.03(10)(b)1.(i) - (v), 391-3-1-.03(10)(b)3.(i) and (ii), 391-3-1-.03(10)(c)1.(i) - (iv), 391-3-1-.03(10)(d)1. - 7., 391-3-1-.03(10)(e)2.

II. AUTHORITY TO ISSUE PERMITS TO NONCOMPLYING SOURCES

State law provides authority for the Director to issue permits to sources that are not in compliance with applicable requirements, and to include compliance schedules in permits to bring sources into compliance.

Federal Authority: CAA §§ 502(b)(5)(A), 504(a), 42 U.S.C. §§ 7661a(b)(5)(A), 7661c(a); 40 C.F.R. §§ 70.5(c)(8), 70.6(c)(3).

State Authority: GAQA, O.C.G.A. §§ 12-9-6(b)(3), 12-9-7(b)(1); Rules 391-3-1-.03(2)(d) (effective November 22, 1992), 391-3-1-.03(10)(c)2., 391-3-1-.03(10)(d)3.

III. PERMIT BOARD MEMBERSHIP AND CONFLICTS OF INTEREST

State law provides that no State board or body which approves operating permits, either in the first instance or upon appeal, shall be constituted of less than a majority of members who represent the public interest and who do not derive a significant portion of their income from persons subject to operating permits. State law also provides that any potential conflicts of interest by members of such board or body or the head of any executive agency with similar powers be adequately disclosed. State law also provides that no permit for a solid waste incinerator unit may be issued by an agency, instrumentality, or person that is also responsible, in whole or in part, for the design and construction or operation of the unit.

Federal Authority: CAA §§ 128(a)(1) - (2), 129(e), 42 U.S.C. §§ 7428(a)(1) - (2), 7429(e); 40 C.F.R. §§ 70.4(b)(3)(iv).

State Authority: GNRA, O.C.G.A. §§ 12-2-21, 12-2-22 (effective July 1, 1973); GAQA, O.C.G.A. §§ 12-9-5(a), 12-9-6(a); O.C.G.A. § 45-10-22(a)(2) (effective July 1, 1984); Georgia Dept. of Human Resources v. Sistrunk, 249 Ga. 543, 291 S.E.2d 524 (1982); Op. Att'y Gen. 82-82 (effective October 27, 1982).

IV. PERMIT FEES

State law provides authority for the Director to assess and collect annual permit fees from sources within the State which are subject to the requirements of Title V of the CAA and 40

C.F.R. Part 70, in an amount sufficient to cover all reasonable direct and indirect costs required to develop, administer, and enforce the State's Title V program.

Federal Authority: CAA § 502(b)(3)(A), 42 U.S.C. § 7661a(b)(3)(A); 40 C.F.R. § 70.9(a) - (d).

State Authority: GAQA, O.C.G.A. § 12-9-10(a) - (h); Rule 391-3-1-.03(9)(a) - (h) (effective date July 21, 1993).

V. PERMIT TERM

State law provides authority to issue operating permits for a fixed term not to exceed five years. State law provides a fixed term not to exceed 12 years for solid waste incineration units combusting municipal waste under Section 129(e) of the CAA and a review of such permits at least every five years. State law provides authority to issue permits with acid rain provisions for a fixed term of five years.

Federal Authority: CAA §§ 129(e), 408(a), 502(b)(5)(B), 42 U.S.C. §§ 7429(e), 7651g(a), 7661a(b)(5)(B); 40 C.F.R. §§ 70.4(b)(3)(iii) - (iv), 70.6(a)(2), 72.70(b), 72.72(a).

State Authority: GAQA, O.C.G.A. §§ 12-9-6(b)(3), 12-9-7(c)(1) - (3); Rule 391-3-1.03(10)(d)1.(i).

Remarks of the Attorney General: Georgia will submit all missing portions of its Acid Rain Program no later than January 1, 1995.

VI. MONITORING, RECORDKEEPING, AND REPORTING

State law provides authority to incorporate monitoring, recordkeeping, reporting, and compliance certification requirements into operating permits consistent with 40 C.F.R. § 70.6. State law provides authority to incorporate into the permit periodic monitoring or testing requirements where the existing State implementation plan or other applicable requirement does not contain such a requirement consistent with 40 C.F.R. §§ 70.6(a)(3)(i)(B).

Federal Authority: CAA §§ 502(b)(2), 503(b)(2), 504(a) - (c), 42 U.S.C. §§ 7661a(b)(2), 7661c(a) - (c); 40 C.F.R. §§ 70.4(b)(3)(ii), 70.6(a)(3), 70.6(c)(1), 70.6(c)(5).

State Authority: GAQA, O.C.G.A. §§ 12-9-5(b)(6), 12-9-6(b)(3), 12-9-7(b)(1); Rules 391-3-1-.03(10)(d)1.(i), 391-3-1-.03(10)(d)3.

VII. INSPECTION/ENTRY AUTHORITY

State law provides authority to incorporate into permits inspection and entry requirements consistent with 40 C.F.R. § 70.6(c)(2).

Federal Authority: CAA § 504(c), 42 U.S.C. § 7661c(c); 40 C.F.R. § 70.6(c)(2).

State Authority: GAQA, O.C.G.A. §§ 12-9-6(b)(3), 12-9-11; Rule 391-3-1-.03(10)(d)3.

VIII. INCORPORATION OF ALL APPLICABLE REQUIREMENTS IN THE PERMIT

State law provides authority to incorporate into an operating permit, upon issuance or renewal, all applicable requirements as defined in 40 C.F.R. § 70.2, and as provided generally in the CAA and 40 C.F.R. Part 70.

Federal Authority: CAA §§ 502(b)(5)(C), 504(a), 42 U.S.C. §§ 7661a(b)(5)(C), 7661c(a); 40 C.F.R. §§ 70.4(b)(3)(v), 70.6(a).

State Authority: GAQA, O.C.G.A. § 12-9-6(b)(3); Rule 391-3-1-.03(10)(d)1.(i).

IX. PERMIT REOPENING

State law provides authority to revise permits with remaining terms of three or more years to incorporate new applicable requirements which become effective after issuance of the permit. State law provides authority to reopen permits when additional acid rain requirements become applicable, regardless of the remaining permit term. State law provides authority to terminate, modify, or revoke permits for cause at any time during the permit term consistent with 40 C.F.R. § 70.7(f) and (g).

Federal Authority: CAA §§ 502(b)(5)(D), 502(b)(9), 42 U.S.C. §§ 7661a(b)(5)(D), 7661a(b)(9); 40 C.F.R. §§ 70.4(b)(3)(vi), 70.6(a)(6)(iii), 70.7(f) - (g).

State Authority: GAQA, O.C.G.A. §§ 12-9-7(e)(1) - (4), 12-9-7(f)(1) - (2); Rules 391-3-1-.03(10)(d)1.(i), 391-3-1-.03(10)(e)6.(i)(I) - (IV), (ii), and (iii), 391-3-1.03(10)(e)7. (i) and (ii).

Remarks of the Attorney General: Georgia will submit all missing portions of its Acid Rain Program no later than January 1, 1995.

OPERATIONAL FLEXIBILITY

State law provides authority to issue permits which allow changes within a permitted facility without requiring a permit revision if the changes are not modifications under any provision of Title I of the CAA, and the changes do not exceed the emissions allowable under the permit, provided that the source provides at least seven days written notice to the State and to EPA. State law provides authority for permits to include terms and conditions for reasonably anticipated, alternative operating scenarios in permits.

Federal Authority: CAA § 502(b)(10), 42 U.S.C. § 7661a(b)(10); 40 C.F.R. §§ 70.4(b)(12), 70.6(a)(9).

State Authority: GAQA, O.C.G.A. § 12-9-6(b)(3); Rules 391-3-1-.03(10)(b)5.(i) and (ii), 391-3-1-.03(10)(b)6.(i) - (iv), 391-3-1-.03(10)(b)7., 391-3-1-.03(10)(d)1.(i) and (ii), 391-3-1-.03(10)(d)5.(i)-(iii), 391-3-1-.03(10)(e)4.(i)-(iv).

XI. PERMIT MODIFICATIONS

State law provides authority to process permit modifications in a manner that conforms to, or is substantially equivalent to, the procedures set forth in 40 C.F.R. § 70.7(e).

Federal Authority: CAA § 502(b)(6), 42 U.S.C. § 7661a(b)(6); 40 C.F.R. §§ 70.4(b)(13), 70.7(e).

State Authority: GAQA, O.C.G.A. § 12-9-7(e) - (f); Rule 391-3-1-.03(10)(e)5.(i) - (iii).

XII. PUBLIC PARTICIPATION

State law provides authority for procedures to allow public participation in the Director's action to issue or deny an operating permit, to modify a permit (except as provided in 40 C.F.R. § 70.7(e)(2) and (3)), or to renew a permit. Public participation under State law includes the opportunity for public comment and the opportunity for a hearing on draft permits in accordance with the requirements of the CAA and 40 C.F.R. § 70.7(h). State law provides for affected states to review permit applications in accordance with the CAA and 40 C.F.R. § 70.8(b).

Federal Authority: CAA §§ 502(b)(6), 505(a)(2), 42 U.S.C. § 7661a(b)(6), 7661d(a)(2); 40 C.F.R. §§ 70.7(h), 70.8(b).

State Authority: GAQA, O.C.G.A. § 12-9-9(a)(3); Rules 391-3-1-.03(10)(e)8., 391-3-1-.03(10)(f)2.(i) and (ii).

XIII. PUBLIC ACCESS TO PERMIT INFORMATION

State law provides authority to make available to the public any permit application, compliance plan, permit, and monitoring and compliance certification report, except for information entitled to confidential treatment. State law provides that the contents of an operating permit shall not be entitled to confidential treatment.

Federal Authority: CAA §§ 114(c), 502(b)(8), 503(e), 42 U.S.C. § 7414(c), 7661a(b)(8), 7661b(e); 40 C.F.R. §§ 70.4(b)(3)(viii).

State Authority: GAQA, O.C.G.A. § 12-9-19; O.C.G.A. §§ 50-18-70(a) - (f) (effective April 15, 1993), 50-18-71(a) - (f) (effective April 6, 1992), 50-18-72(a) - (g) (effective July 1, 1993); Rules 391-3-1-.03(5) (effective November 22, 1992), 391-3-1-.08 (effective November 20, 1975).

XIV. ENFORCEMENT OF PERMIT PROGRAM REQUIREMENTS

State law provides civil and criminal enforcement authority consistent with 40 C.F.R. § 70.11, including authority to recover penalties in a maximum amount of not less than \$10,000.00 per day per violation.

Federal Authority: CAA § 502(b)(5)(E), 42 U.S.C.
§ 7661a(b)(5)(E); 40 C.F.R. §§ 70.4(b)(3)(vii), 70.11.

State Authority: GAQA, O.C.G.A. §§ 12-9-6(b)(1), 12-9-6(b)(9),
12-9-6(b)(10), and 12-9-6(b)(11), 12-9-12, 12-9-13, 12-9-14,
12-9-23(a) - (d), 12-9-24(a) - (d); Rule 391-3-1-.09(1) - (2)
(effective November 22, 1992).

XV. AUTHORITY TO ENFORCE LAPSED PERMITS

State law provides authority to enforce the terms and conditions of a permit which has expired, if the source has filed a timely and complete application for renewal, so as to assure compliance with all applicable requirements.

Federal Authority: CAA § 502(b)(5)(A), 42 U.S.C.
§ 7661a(b)(5)(A); 40 C.F.R. § 70.4(b)(10).

State Authority: GAQA, O.C.G.A. § 12-9-8(a) - (b); Rule
391-1-3-.03(10)(e)3.(iii).

XVI. EPA PERMIT VETO

State law provides that an operating permit will not issue if the Administrator of EPA objects in a timely manner to its issuance pursuant to 40 C.F.R. § 70.8(c) or, if the permit has been issued, but the Administrator objects pursuant to 40 C.F.R. § 70.8(d).

Federal Authority: CAA §§ 502(b)(5)(F), 505(b), 42 U.S.C.
§ 7661a(b)(5)(F), 7661d(b); 40 C.F.R. §§ 70.4(b)(3)(ix),
70.8(c) - (d).

State Authority: GAQA, O.C.G.A. § 12-9-7(a); Rule
391-1-3(10)(f)3.(i).

XVII. FINAL AGENCY ACTION ON PERMITS

State law provides that, solely for the purpose of obtaining judicial review in State court for the Director's failure to take final action, "final permit action" shall include the failure of the Director to take final action on an application for a permit, permit renewal, or permit revision within 18 months from the date a completed permit application is received.

Federal Authority: CAA § 502(b)(7), 42 U.S.C. § 7661a(b)(7);
40 C.F.R. § 70.4(b)(3)(xi).

State Authority: GAQA, O.C.G.A. § 12-9-7(i); Rules
391-3-1.03(10)(e)1.(ii), 391-3-1-.03(10)(e)5.(i)(IV) and
(ii)(IV).

XVIII. DEFAULT PERMIT ISSUANCE

State law does not authorize the issuance, modification, or renewal of any permit based on the passage of a specified time period when the Director has failed to take action on the application, and does not include any other similar provision providing for default issuance of a permit.

Federal Authority: CAA § 505(a) - (e), 42 U.S.C. § 7661d(a) - (e); 40 C.F.R. § 70.8(e).

State Authority: Not applicable; there is no authority for the default issuance of a permit.

XIX. OPPORTUNITY FOR JUDICIAL REVIEW OF PERMIT ACTIONS

State law provides an opportunity for judicial review in State court of any final permit action by the applicant, any person who participated in the public participation process provided pursuant to the CAA and 40 C.F.R. § 70.7(h), or any other person who could obtain judicial review of such actions under State laws. Any provisions of State law which limit access to judicial review do not exceed the corresponding limits on judicial review imposed by the standing requirements of Article III of the United States Constitution.

Federal Authority: CAA § 502(b)(6), 42 U.S.C. § 7661a(b)(6);
40 C.F.R. § 70.4(b)(3)(x).

State Authority: GAQA, O.C.G.A. § 12-9-15(a) - (b); GAPA,
O.C.G.A. §§ 50-13-13(a) (effective November 1, 1992),
50-13-19(a) - (h) (effective July 1, 1980); Op. Att'y Gen.
93-14 (effective July 14, 1993).

XX. LIMITATIONS ON JUDICIAL REVIEW

State law provides that the opportunity for judicial review of a final permit action in State Court described in Paragraph XIX

of this opinion shall be the exclusive means for obtaining judicial review of the terms and conditions of permits. State law provides that petitions for judicial review must be filed no later than 30 days after the final permit action. There is no provision in State law which would allow an individual to bring an action after the 30-day deadline for judicial review; however, the administrative review which precedes such judicial review is de novo and additional evidence may be received by the court if the court is satisfied that the evidence is material and there were good reasons for the failure to present such evidence in the proceedings before the agency. State law further provides that if the final permit action being challenged is the Director's failure to take final action within 18 months, a petition for administrative review must be filed within 30 days of the expiration of the 18 month period or the permit is denied as final agency action. Likewise, issuance or denial of the final permit would provide the appellant or other individual with 30 days to petition for judicial review of the Director's action.

Federal Authority: CAA § 502(b)(6), 42 U.S.C. § 7661a(b)(6); 40 C.F.R. § 70.4(b)(3)(xii).

State Authority: GAQA, O.C.G.A. §§ 12-9-7(i), 12-9-15(a) - (b); GAPA, O.C.G.A. §§ 50-13-13(a) (effective November 1, 1992), 50-13-19(a) - (h) (effective July 1, 1980); Op. Att'y Gen. 93-14 (effective July 14, 1993); Rules 391-1-2-.02(1) and (2)(g) (effective February 19, 1990), 391-1-2-.06(2) - (4) (effective February 19, 1990), 391-1-2-.22(1) - (4) (effective May 14, 1987).

Remarks of the Attorney General: The procedures outlined in O.C.G.A. §§ 12-9-15 and 50-13-19 represent the exclusive means for obtaining judicial review of the terms and conditions of a permit. Only in those rare instances where administrative remedies exact a price which causes them to be no remedy at all will the requirement of exhaustion (of all administrative remedies prior to judicial review) be relaxed. First Union National Bank of Georgia v. Independent Insurance Agents of Georgia, Inc., 197 Ga. App. 227, 398 S.E.2d 254 (1990).

XXI. COORDINATION WITH ACID RAIN PROGRAM REQUIREMENTS

State law is consistent with, and cannot be used to modify, the Acid Rain Program requirements of 40 C.F.R. Part 72.

Harold F. Reheis
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Federal Authority: CAA §§ 408(a), 506(b), 42 U.S.C. §§ 7651g(a), 7661e(b); 40 C.F.R. §§ 70.4(b)(3)(xiii), 72.70(b), 72.72(a).

State Authority:

Remarks of the Attorney General: Georgia will submit all missing portions of its Acid Rain Program no later than January 1, 1995.

Please understand that the foregoing is a legal opinion of this author and not a ruling of law and that a court could reach a contrary conclusion. This opinion is provided to you for the purpose of assisting you in the exercise of your authority under the Georgia Air Quality Control Act and should not be relied upon by third parties in the assessment of their legal rights and the obligations under the Georgia Air Quality Control Act and the Rules and Regulations promulgated thereunder. Notwithstanding the fact that this Opinion is not to be used by third parties in the assessment of their legal rights and obligations, U.S. EPA is not precluded from asserting, and it is intended that it will assert, that this Opinion is an authoritative interpretation of the Georgia Air Quality Control Act and the Rules and Regulations promulgated thereunder.



MICHAEL J. BOWERS
Attorney General

Date: 11-1-93

Department of Law
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MEMORANDUM

TO: Harold F. Reheis, Director
Environmental Protection Division

FROM: Michael J. Bowers
Attorney General

RE: Supplemental Attorney General's Opinion Regarding
State Authority to Operate the Title V Operating
Permit Program in Accordance with § 502(d) of the
Federal Clean Air Act

I hereby certify, pursuant to my authority as Attorney General of the State of Georgia and in accordance with § 502(d) of the federal Clean Air Act, as amended (42 U.S.C. § 7401, et seq.), and 40 C.F.R. § 70.4(b)(3), that in my opinion the laws of the State of Georgia provide adequate authority to carry out the following aspects of the program submitted by the Air Protection Branch of the Environmental Protection Division of the Department of Natural Resources, State of Georgia, on November 15, 1993, to the United States Environmental Protection Agency (hereinafter U.S. EPA) for approval to administer and enforce the operating permit program under Title V of the Clean Air Act. The specific state authorities provided, which are contained in statutes, regulations, or other legal authorities lawfully adopted, and which shall be fully effective by the time the program is approved, include those identified below.

This Supplemental Attorney General's Opinion is submitted in support of the Georgia Environmental Protection Division's November 15, 1993, Title V Operating Permit Program submittal. This Supplemental Opinion responds to Enclosure A, "EPA Comments of (sic) the Georgia Title V Program Submittal," Part I, "Legal Issues/Attorney General Statement," submitted to the

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Air Protection Branch by the U.S. EPA, Region IV, by a letter dated June 28, 1994, and supplements my Attorney General's Opinion Regarding State Authority to Operate the Title V Operating Permit Program in Accordance with § 502(d) of the Federal Clean Air Act dated November 1, 1993. This Supplemental Opinion follows the organizational scheme of the Title V Model Attorney General's Opinion provided by the U.S. EPA.

The Georgia Air Quality Act, O.C.G.A. § 12-9-1 et seq., first became effective in 1967 and has been amended on several occasions since that time. The most recent amendments to the Act became effective on July 1, 1992 (except for minute changes to § 12-9-7 which became effective on March 22, 1993). The Rules of the Georgia Department of Natural Resources for Air Quality Control, Chapter 391-3-1, first became effective on September 26, 1973, and have been amended regularly since that time. The most recently revised Rules will become effective on November 20, 1994. These effective dates are the same, except where noted, whenever the Georgia Air Quality Act or the Rules for Air Quality Control are referred to in the categories of this Supplemental Opinion. Consequently, there is no separate listing in each category of the effective dates of the Act or Rules unless they are different from those denoted here.

For brevity, the referenced legal authorities in this Supplemental Opinion will be abbreviated as follows: The Clean Air Act will be CAA; the Code of Federal Regulations will be C.F.R.; the Official Code of Georgia Annotated will be O.C.G.A.; the Georgia Air Quality Act will be GAQA; and the Rules of the Georgia Department of Natural Resources will be referred to as Rules.

VI. MONITORING, RECORDKEEPING, AND REPORTING

State law provides authority to utilize monitoring or testing methods, other than applicable test methods, for determining compliance with and for establishing violations of emission limitations or standards incorporated into operating permits.

Federal Authority: See page 4 of Attorney General's Opinion Regarding State Authority to Operate the Title V Operating Permit Program in Accordance with § 502(d) of the Federal Clean Air Act (Attorney General's Opinion) dated November 1, 1993; CAA §§ 113(a) and (e), 114(a)(3), 42 U.S.C. §§ 7413(a) and (e), 7414(a)(3).

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State Authority: See page 5 of Attorney General's Opinion dated November 1, 1993; Rules 391-3-1-.02(3)(a), 391-3-1-.02(6)(b)1.(vi).

XIII. PUBLIC ACCESS TO PERMIT INFORMATION

State law provides authority to make available to the Administrator of the U.S. EPA information entitled to confidential treatment obtained by the Director of the Environmental Protection Division. Pursuant to this authority, the Director shall require sources to submit a copy of such information directly to the Administrator.

Federal Authority: See page 7 of Attorney General's Opinion dated November 1, 1993; 40 C.F.R. § 70.5(a)(3).

State Authority: See page 7 of Attorney General's Opinion dated November 1, 1993.

XIV. ENFORCEMENT OF PERMIT PROGRAM REQUIREMENTS

State law provides criminal enforcement authority consistent with 40 C.F.R. § 70.11. The burden of proof and degree of knowledge or intent required under State law for establishing violations is consistent with the burden of proof or degree of knowledge or intent required by 40 C.F.R. § 70.11(b).

Federal Authority: See page 8 of Attorney General's Opinion dated November 1, 1993.

State Authority: See page 8 of Attorney General's Opinion dated November 1, 1993.

Please understand that the foregoing is a legal opinion of this author and not a ruling of law and that a court could reach a contrary conclusion. This Supplemental Opinion is provided to you for the purpose of assisting you in the exercise of your authority under the Georgia Air Quality Act and should not be relied upon by third parties in the assessment of their legal rights and the obligations under the Georgia Air Quality Act and the Rules and Regulations promulgated thereunder. Notwithstanding the fact that this Supplemental Opinion is not to be used by third parties in the assessment of their legal rights and obligations, the U.S. EPA is not precluded from

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asserting, and it is intended that it will assert, that this Supplemental Opinion is an authoritative interpretation of the Georgia Air Quality Act and the Rules and Regulations promulgated thereunder.

Michael J. Bowers

MICHAEL J. BOWERS
Attorney General

DATE: 11-10-94