

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 Council** (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 CO₂ 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

Chapter 391-3-1

Rules for Air Quality Control

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 CO₂ emissions. Therefore, as of January 2, 2011, CO₂ 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.

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.