

**Responses to Comments Received During the Public Comment Period
December 31, 2006 through February 16, 2007
Proposed Revisions to Air Quality Rules, Chapter 391-3-1**

On December 31, 2006, EPD issued a public notice requesting comments on several proposed revisions to the Georgia Rules for Air Quality, Chapter 391-3-1. The proposed changes included the addition of the Clean Air Mercury Annual Trading Program, Multipollutant Control for Electric Utility Steam Generating Units, Mercury Emissions from New Electric Generating Units, and the Georgia Mercury Trading Rule. Written comments were received during the public comment period. Oral and written comments were received during the public hearing on January 30, 2007. Comments received as of February 16, 2007, are summarized in this memo.

Comments were received from the following individual and/or organizations:

Name & Title	Affiliation	Type of Comment
David Dean, Environmental Scientist	ArcTellus	Oral
Clarence Mitchell VP of Contract Operations and Environmental	Oglethorpe Power Corporation	Oral
Dennis Chastain VP of Community and Economic Development	Georgia Electric Membership Corporation	Oral
Laura Wright Senior Engineer	Georgia Power Company	Oral
April Ingle Executive Director	Georgia Riverkeeper Network	Oral
John Jansen Southern Company	On Behalf of Dr. Leonard Levin of the Electric Power Research Institute	Oral
The Sierra Club	On Behalf of 938 Georgia Residents (See Note 1)	Oral and Written
Julie Mayfield VP and General Counsel	Georgia Conservancy	Oral and Written
Jim Grode Senior Attorney	Southern Environmental Law Center (SELC)	Oral and Written
Randy Eminger VP of South Region	Center for Energy and Economic Development (CEED)	Oral and Written

Name & Title	Affiliation	Type of Comment
Gail Charnley Ph.D in Toxicology	HealthRisk Strategies Washington, D.C.	Oral and Written
Jennie Trujillo, Citizen	South Carolina Citizen	Written
Chandra Brown Executive Director	Ogeechee-Canoochee Riverkeeper	Written
Doug Fulle, Director, Environmental Affairs	Oglethorpe Power Corporation	Written
Mike Wilder, Manager, Air Programs	Georgia Power Company	Written
Doug Cloud Attorney	On Behalf of MEAG Power	Written
Les Oakes Attorney	On Behalf of Longleaf Energy Associates	Written
Kathy French Environmental Manager	Longleaf Energy Associates	Written
Robert Schaffeld Director, Compliance and External Affairs	Southern Power Company	Written
Doug Neeley Chief, Air Toxics and Monitoring Branch	US EPA Region 4	Written

Note 1: Presented comments at December 5, 2006 Georgia DNR Board Briefing on this Proposed Rulemaking. 938 post cards from individual citizens each with identical comments were submitted following an oral statement by a Sierra Club representative.

Mercury Hot Spots in Georgia

Dr. Gail Charnley: Comprehensive evaluation of existing air pollution emissions trading programs demonstrates that trading does not create air pollutant hot spots; it smoothes them out. Any assertions that a power plant mercury trading program in Georgia would create mercury hot spots are speculative and unsupported by actual data.

David Dean: The creation of mercury hot spots in Georgia under a mercury cap-and-trade program is very unlikely.

Oglethorpe Power Corporation: There is a lack of evidence from data or computer simulations that “hot spots” – defined by EPA as any location where deposition from U.S. power plants alone is enough to raise mercury in fish tissue above the level EPA deems safe to consume – currently exist due to any single power plant or any group of power plants.

Chandra Brown: The commenter expressed concern that the rules as drafted will result in hotspots of mercury contamination that will not result in an overall reduction of mercury in fish in the Ogeechee River.

GA EPD Response: The phenomenon of the creation (or lack thereof) of high mercury concentrations at ground level is closely linked with the phenomenon of wet and dry mercury deposition. Thus, Georgia EPD will respond to the commenter's statements under the next section of this document.

Mercury Deposition in Georgia

Oglethorpe Power Corporation: Despite assumptions made in the models embedded in EPA's TMDL analysis, there is not clear and scientifically supportable relationship between changes in the loading of mercury to a water body from atmospheric deposition and the resulting changes in accumulation of mercury in fish tissue. EPD itself recognizes that the fate and transport of mercury are largely unknown.

Oglethorpe Power Corporation and Electric Power Research Institute: Mercury deposition modeling conducted, in part, by EPA and the Electric Power Research Institute (EPRI) confirms that imposing mercury reductions beyond the Federal CAMR program will produce negligible reductions in mercury deposition in the state.

Oglethorpe Power Corporation, Electric Power Research Institute, and David Dean: Further reductions in mercury emissions from Georgia coal-fired power plants beyond the Federal CAMR program will not reduce mercury exposure in Georgia. EPA and EPRI's analyses indicate that deposition in Georgia, and the U.S., is driven primarily by world-wide sources of mercury emissions, particularly from the developing world.

GA EPD Response: All but one of the commenters urge Georgia EPD to not regulate applicable coal-fired electric utility generating units (EGUs) beyond the regulatory framework of the Federal Clean Air Mercury Rule (CAMR) program. The commenters assert that (1) the Federal CAMR cap-and-trade program will not result in the development of "hot spots"; (2) imposing mercury reductions beyond the Federal CAMR program will produce negligible reductions in mercury deposition in the state; and (3) mercury deposition in Georgia, and the U.S., is driven primarily by world-wide sources of mercury emissions, particularly from the developing world.

The Georgia CAMR stakeholder community discussed and debated the need (or lack thereof) to go beyond the Federal CAMR requirements. In that spirit the following topics were discussed as part of the stakeholder process:

- Should Georgia EGUs be required to reduce mercury emissions
- sooner than that imposed by EPA timelines; and
 - beyond that imposed by the Federal CAMR program;

- reduce the likelihood of formation of mercury hot spots locally and regionally;
- further reduce wet and dry mercury deposition locally and Georgia's contribution regionally to soils and water bodies; and
- contribute to further reduction in methylmercury formation in applicable Georgia waterbodies?

The stakeholder community debated and supplied some analyses depicting local and regional deposition modeling results from scenarios depicting the Federal CAMR program and from going beyond this program.

After review of available information, Georgia EPD has concluded the following:

- The Federal CAMR program allows trading of mercury emissions allowances and seeks to reduce mercury emissions within the U.S. as a whole. The Federal CAMR program as a whole does not specifically require reductions of mercury emissions in Georgia;
- A portion of the mercury emitted from Georgia coal-fired power plants can be deposited on soils and water bodies locally and regionally; and
- Requiring mercury controls sooner can reduce the contribution to the local and regional landscapes and water bodies.

Georgia Public Health Impacts from Mercury

Dr. Gail Charnley and David Dean: Current methylmercury exposures do not appear to pose a public health threat for women and children in the US. Eating fish plays an important role in cardiovascular health and in neurological development and function. Reducing methylmercury concentrations in Georgia fish, should it occur, will have little or no impact on most Georgia residents' methylmercury exposure or risk.

Dr. Gail Charnley, David Dean, Center for Energy and the Environment (CEED), and Oglethorpe Power Corporation: EPA's analyses supporting the Federal CAMR program demonstrates that the additional health benefits of any state's actions to exceed the requirements of the EPA mercury rule would be negligible.

GA EPD Response: All the commenter's seem to agree that methylmercury, consumed in fish or seafood at high enough levels can be a health risk for certain sensitive portions of the population, such as pregnant women and young children. The commenters mainly argue that reducing mercury emissions in Georgia will have little impact on potential health effects in Georgia. Available information does indicate that emissions from Georgia EGUs do contribute to local mercury deposition, which in turn contributes to mercury levels in fish tissue in Georgia. There is no guarantee under the Federal CAMR program that mercury emissions would be reduced in Georgia since the

rule establishes a nation-wide cap-and-trade program. Therefore, EPD is proposing a rule which requires specific mercury controls on Georgia EGUs.

391-3-1-.02(2)(sss) - Multipollutant Control for Electric Utility Steam Generating Units

Unit Specific Mercury Emission Limits

Clarence Mitchell and Doug Fulle of Oglethorpe Power Corporation and Georgia Power: The commenters support an equipment-based rule in lieu of unit specific mercury emission limits. For the most part, the best available control technology for controlling mercury emissions will be installed even though such equipment has not been tested for long-term reliability and sustainable performance at full-scale operation. In addition, mercury emission monitoring systems remain unproven for long-term reliability and accuracy.

Jim Grode, Julie Mayfield, and The Sierra Club (Oral and Written Comments), April Ingle (Oral Comments), Chandra Brown and Jennie Trujillo (Written Comments): The commenters expressed concern that rule lacks mercury emission limits which are needed to achieve mercury reductions and does not require Georgia EPD to incorporate mercury emission limits in the applicable Title V permits at some time in the future. Lastly, the Sierra Club commenters urged Georgia EPD to require power plants in Georgia to use existing and proven effective mercury-reducing technology to keep at least 90% of their mercury emissions out of Georgia's air and water.

GA EPD Response: After significant stakeholder input, Georgia EPD has decided to require the installation and operation of specific mercury controls on specific units on a specific schedule. Following installation and operation of such controls, permittees will be required to develop and implement parametric or surrogate pollutant monitoring provisions to ensure proper operation and maintenance of such controls.

Rulemaking Record Does Not Support Information Provided in Statement of Rationale for This Rule

Oglethorpe Power Corporation: In its Statement of Rationale, EPD notes that while the rule incurs significant costs, such costs are "consistent with meeting Federal requirements." In addition, EPD notes that "...*cost analysis has demonstrated an overwhelming public health benefit when compared to the cost of control for each pollutant.*" The commenter notes that they are unaware of any analysis performed by EPD that would quantify the benefits to public health for its proposed CAMR. With that in mind, OPC requests that EPD share with the CAMR stakeholders its analyses that justify the proposed Georgia CAMR, in terms of the expected benefits to public health

resulting from the Georgia rule, including the proposed provisions that would go beyond the Federal CAMR.

GA EPD Response: The basis for this statement came from the U.S. EPA's analyses regarding the minimization of mercury emissions. Georgia EPD will remove this statement from future "Statements of Rationale" regarding CAMR rulemakings.

Schedule for Installation and Operation of Air Pollution Control Equipment

Georgia Power: The deadline for installation of SCR and FGD at Bowen Unit 3, the deadline for installation of FGD at Hammond Units 1-3 and the deadline for installation of SCR and FGD at Hammond Unit 4 should be moved from June 1, 2008, to December 31, 2008.

The deadline for installation of SCR and FGD at Wansley Unit 2 should be moved from June 1, 2009, to December 31, 2009.

GA EPD Response: GA EPD agrees to make these changes.

MEAG Power, Written Record: MEAG will bear substantial capital and operating costs for the proposed SCR and FGD requirements for these units. Given these substantial costs, it is important to MEAG that the rulemaking record include a full discussion of the technical basis and rationale supporting the proposed SCR and FGD requirements. The basis and rationale should include the current ozone; fine particulate matter and haze impacts by the units; the improvements expected with the addition of SCR and FGD at the units; other requirements that EPD expects to propose for reducing emissions from industrial, mobile, and area source emissions; and the related air quality improvements from the emissions reductions from these sources.

GA EPD Response: GA EPD has posted results pertaining to this matter on <http://www.georgiaair.org/airpermit/cair/CAMR.html> under "Additional Documents." The documented results are identified as follows:

Boylan, J., A. Marmur, M. Khan, and D. Cohan, "8-Hour Ozone and PM_{2.5} Modeling to Support Georgia SIP", Extended Abstract #509.

Power Point Presentation entitled, "Modeling and Analysis to Support GA SIP Development" December 2006 Update, Data & Modeling Unit, Planning & Support Program, Meeting with Georgia Power, December 14, 2006.

Scherer Electric Steam Generating Plant (Plant Scherer)

Georgia Power: The deadline for installation of a baghouse with sorbent injection at Scherer Unit 3 should be moved from December 31, 2008, to June 1, 2009.

GA EPD Response: GA EPD agrees to make this change.

MEAG Power, Written Comments: Sections (sss)9.(iii), and (sss)11.(iii) would require year-round operation of SCR systems at Plant Scherer Units 2 and 1. However, MEAG understands that the proposed requirements for the SCR systems are based on reducing NOx emissions from these units during the ozone season (May 1 to September 30). The rule should, therefore, be revised to only require operation of the SCR systems during the ozone season.

Georgia Power, Written Comments: These units will be equipped with baghouses and sorbent injection for reduction of mercury emissions. The installation and operation of SCRs and FGDs are not expected to achieve any significant additional reduction of mercury emissions compared to the baghouses and sorbent injection alone. EPD has requested that the SCRs be installed not to address mercury, but instead, as part of the Atlanta and Macon 8-hour ozone non-attainment and maintenance SIPs. Thus, the SCRs are necessary to capture NOx emissions during ozone season months and are not needed for year-round operation. While Georgia Power may elect to operate the SCRs in non-ozone season months in order to assist with compliance with the CAIR NOx budgets, Georgia Power does not want the proposed rule to require the operation of the SCRs year round and thus remove flexibility. Accordingly, each of the subparagraphs in this proposed rule that address the deadline for operation of SCRs at the Scherer Units should be revised as follows [paragraph (sss)7.(i), 8.(i), 9.(iii) and 11.(iii)] should be revised accordingly:

7. **Effective December 31, 2011**, no person shall cause, let, permit, suffer or allow the operation of the following units except as specified below:
 - (i) Plant Scherer Unit 3 unless such source is equipped and operated with selective catalytic reduction, flue gas desulfurization, sorbent injection, and baghouse, provided that the owner or operator is not required to operate the selective catalytic reduction system during the non-zone season months of January through April and October through December of each year.
8. **Effective December 31, 2012**, no person shall cause, let, permit, suffer or allow the operation of the following units except as specified below:

- (i) Plant Scherer Unit 4 unless such source is equipped and operated with selective catalytic reduction, flue gas desulfurization, sorbent injection, and baghouse, provided that the owner or operator is not required to operate the selective catalytic reduction system during the non-zone season months of January through April and October through December of each year.
9. **Effective December 31, 2013**, no person shall cause, let, permit, suffer or allow the operation of the following units except as specified below:
- (iii) Plant Scherer Unit 2 unless such source is equipped and operated with selective catalytic reduction, flue gas desulfurization, sorbent injection, and baghouse, provided that the owner or operator is not required to operate the selective catalytic reduction system during the non-zone season months of January through April and October through December of each year.
11. **Effective December 31, 2014**, no person shall cause, let, permit, suffer or allow the operation of the following units except as specified below:
- (iii) Plant Scherer Unit 1 unless such source is equipped and operated with selective catalytic reduction, flue gas desulfurization, sorbent injection, and baghouse, provided that the owner or operator is not required to operate the selective catalytic reduction system during the non-zone season months of January through April and October through December of each year.

GA EPD Response: GA EPD agrees to make these changes. Note that subparagraphs 7, 8, 9, and 11 referred to above have been renumbered subparagraphs 6, 7, 8, and 10 in the new proposed rule.

Effective Date of Proposed Georgia Rule (sss)13. – Small Units

Georgia Power: First, Georgia Power believes the proposed heat input limits should not take effect until 2018 for reasons specified in their comments.

Jim Grode: SELC requests that the date referenced in draft Georgia Rule (sss)13. be January 1, 2010, rather than January 1, 2018.

GA EPD Response: Georgia Power may need to temporarily rely on a small unit(s) to account for significant changes in annual unit utilization which will take place in the coming years during phase I of CAMR. With that in mind, the draft rule is not changed based on SELC's comment. Note that subparagraph (sss) 13 has been renumbered (sss) 12 in the new proposed rule.

Intent of Proposed Georgia Rule (sss)13. – Small Units

Georgia Power: The commenter requests the following changes be made to draft subparagraphs (sss)13.(v) and 13.(vi):

- (v) The owner/operator shall evaluate the economic and technical feasibility of additional mercury controls on the applicable affected unit specified in subparagraphs (13).i through 13.(iv), and submit a ~~control technology demonstration~~ report on their findings to the Division no later than September 1 of the calendar year following the calendar year that the annual heat input exceeded the applicable level specified in subparagraphs 13.(i) through 13.(iv).
- (vi) The Division will review the control technology demonstration report submitted in accordance with subparagraph 13.(v) and determine if additional mercury controls are required and, if additional mercury controls are required, establish deadlines for submission of a permit application(s) to the Division and for start-up of such mercury controls.

Jim Grode: SELC requests draft Georgia Rule (sss)13.(v) through (vi) be revised to require/infer that once the annual heat input (from coal combustion) of an affected unit or group of affected units exceeds the levels specified in draft Georgia Rule (sss)13.(i) through 13.(iv), that controls be required or that fuel usage be reduced.

April Ingle: Proposed rule lacks control requirements on “small” units as specified in proposed Georgia Rule (sss)13.

GA EPD Response: Georgia EPD supports Georgia Power’s recommended wording changes and those changes have been made to the draft rule language. After substantial stakeholder input, Georgia EPD has proposed that the requirement to evaluate controls on “small units” be triggered when all such units at a specific site significantly increases their annual heat input, and thus mercury emissions, beyond historical levels. If triggered, the owner/operator must evaluate which, if any, mercury control measures are technically and economically feasible. Georgia EPD will review such determinations and, if additional mercury controls are technically and economically feasible, require such controls and set necessary deadlines. Note that subparagraph (sss)13 has been renumbered to subparagraph (sss)12 in the new proposed rule.

Alternative Control Technologies (sss)15.

Georgia Power Company: The commenter requests the following wording changes:

- 15. Alternative Control Technology: The owner/operator of an affected unit specified in subparagraphs 1 through 12 may operate alternative control

technology from that specified in the applicable subparagraphs 1 through 12 if the following requirements are met:

- (i). The Division has approved the operation of the alternative control technology or the alternative method of emission reductions, including, without limitation, unit retirement, load reductions, emission limits or other method, as being capable of achieving reductions of NO_x, SO₂, and/or mercury emissions equivalent to or ~~lower~~ greater than the control technology requirement specified in applicable subparagraphs 1 through 12 for the respective plant site as a whole; and
- (ii). The owner/operator has submitted the appropriate permit application(s) or other documents to the Division at least twelve months before the effective date of the applicable subparagraph 1 through 12.

GA EPD Response: Georgia EPD agrees that alternative methods of reducing mercury emissions may be considered in addition to alternative control technologies. Any such alternatives will be reviewed and approved or disapproved following submittal. To keep this provision as flexible as possible, the suggested specific examples of alternative methods of mercury reductions will not be included in the rule. Any such alternative control technologies or methods of reductions must be practically enforceable and thus included in a source's permit. Thus the suggested addition to subparagraph (ii) is not included. Note that subparagraph (sss)15 has been renumbered (sss)14 in the new rule.

Draft Georgia Rule(sss)17. - Technology and Mercury Impact Review

Oglethorpe Power Corporation and David Dean: The commenters request deletion of this subparagraph based, in part, on the following reasons:

- Attempts to go beyond the Federal CAMR program will lead to minor mercury reductions for the proposed fish tissue study by 2023. Study results will be inconclusive.
- EPD does not have an adequate or suitable baseline of mercury in the environment. EPD has already agreed that the State's monitoring database remains insufficient to relate mercury emissions from EGUs to mercury concentrations in fish. Without a robust set of baseline data, it is difficult to see how anyone could conclude that the planned reductions from 2010 through 2022 in coal-fired EGU emissions will have led to any discrete reductions in methylmercury in fish.
- Language in this subparagraph clearly predisposes the conclusion that further controls on coal-fired EGUs are needed. The requirements of this subparagraph are meant to be the vehicle for the establishment of further controls on mercury emissions from coal-fired EGUs regardless of whether such reductions will in fact

lead to reduced concentrations of mercury in Georgia's water and fish or whether those reduced concentrations will result in any public health benefits.

- There is no provision in Georgia law that would bar EPD from undertaking a study of mercury in the State. EPD has the ability now to conduct the type of study it envisions in this provision.

Chandra Brown, Written Comment: The commenter expressed concern that the estuarine areas have been omitted from mercury monitoring and should be added to the fish tissue testing regime. In addition, the commenter requests that the first review be conducted in 2018 rather than as proposed, namely, by December 31, 2023.

April Ingle, Oral Comments: The proposed provision lacks the requirement for fish tissue sampling.

GA EPD Response: While Georgia EPD agrees that the study could be conducted without requiring it in a rule, it has been included due to the long time frame required for conducting the study. If any actions are required, they will be based on the results of study. If the study shows that additional time is needed to collect necessary data, the rule is provisioned so as to allow such.

Georgia EPD, in conjunction with the Department of Natural Resources Wildlife Resources Division and Coastal Resources Division has established a state-wide fish tissue trend monitoring network. Sampling began in 2006. The network includes three sites that include estuarine areas. An illustration of the network can be found on EPD's CAMR website at <http://www.georgiaair.org/airpermit/cair/CAMR.html>. Note that subparagraph (sss)17 has been renumbered (sss)18 in the new proposed rule.

391-3-1-.02(2)(ttt) - Mercury Emissions from New Electric Generating Units

Objection to Proposed BACT Requirement

Georgia Power Company and Southern Power Company: The commenter opposes the proposed BACT requirements. First, EPA has already completed an extensive notice and comment rulemaking on this subject matter and determined that the new federal NSPS is the appropriate mercury standard for new units. Going beyond EPA's recommendations on the new EGU issue will unnecessarily increase the costs of new coal-fired generation in the State. These additional costs will have an economic impact on all electricity customers in the State and will weaken the State's ability to attract new business and economic growth to Georgia. Georgia would, therefore, be at a competitive disadvantage with its neighbors to attract new business.

Secondly, a BACT requirement would significantly complicate the permitting process for new coal-fired EGUs. Because few, if any, other states are proposing to require BACT for new coal-fired units, there will not be any national mercury BACT database to assist with the permitting process. This will not only make a permittee's BACT demonstration efforts more difficult, but it would also make EPD's ultimate decision more susceptible to legal challenge. The uncertainty that the BACT requirement would infuse in the permitting process, along with the increased costs of compliance with the more stringent standard, could eliminate coal as a viable source of future energy in Georgia.

GA EPD Response: Georgia EPD has already made a preliminary determination that mercury emission limits that are more stringent than the limits in the newly revised 40 CFR Part 60 Subpart Da are technically and economically feasible. Proposed Georgia Rule (ttt) ensures that mercury emission limits for new units will be protective even as technology advances.

Objections to Definitions

Georgia Power Company: In the event EPD decides to move forward with its BACT proposal, Georgia Power recommends the following changes for clarity purposes:

(ttt) Mercury Emissions from New Electric Generating Units

1. No person shall cause, let, permit, suffer or allow the emissions of mercury from an affected unit unless such affected unit has been approved by the Director as meeting the appropriate requirement for all best available control technology in controlling those emissions of mercury.
2. ~~All affected units subject to this subsection which begin initial operation after January 1, 2007, shall be in compliance.~~
3. For the purposes of this paragraph, the following definitions apply:
 - (i) "Affected unit" means:
 - (I) ~~A stationary coal-fired boiler or a stationary coal-fired combustion turbine serving at any time, since the start-up of the affected unit's combustion chamber, a generator with nameplate capacity of more than 25 megawatts producing electricity for sale. all units subject to Georgia Rule 391-3-1-.02(14)(e) which begin initial operation after January 1, 2007.~~
 - (II) For a unit that qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continues to qualify as a cogeneration unit, a

cogeneration unit serving at any time a generator with nameplate capacity of more than 25 megawatts and supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale. If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity but subsequently no longer qualifies as a cogeneration unit, the unit shall be subject to the definition of "affected unit" in subparagraph 3.(i)(I) starting on the day on which the unit first no longer qualifies as a cogeneration unit.

- (ii) "Best available control technology" means....

This revision would clarify that any and all new coal-fired units that would be subject to the federal CAMR program are subject to the proposed rule (ttt). The suggested revision would also ensure that the scope of EPD's rules are consistent with EPA's if/when EPA revises its definitions of cogeneration units.

GA EPD Response: Upon careful evaluation, Georgia EPD has determined that (1) cogeneration units will not be added; and (2) the applicability date should be tied to Georgia EPD's receipt of a complete permit application.

Objection to Applicability Date of this Proposed Rule

Longleaf Energy Associates: LEA is in the process of obtaining the necessary permits for the construction of Longleaf Energy Station (Longleaf), a nominal 1200 MW, pulverized coal-fired electric power generating facility to be located in Early County, Georgia. On November 22, 2004, LEA submitted its application to EPD for an air quality permit to construct and operate Longleaf. As proposed, \$400 million will be for pollution controls with a significant portion of this amount used to limit air emissions, including mercury. LEA has worked closely with EPD to revise and supplement its request to address specific concerns that EPD has identified. This collaboration resulted in EPA's July 2006 Preliminary Determination and Draft Permit for Longleaf.

With that in mind, LEA believes draft Georgia Rule (ttt)2. threatens to undermine the considerable effort LEA and EPD have invested in the Longleaf application over the past several years. Further, LEA believes that this same provision would not withstand legal review in Georgia's courts. LEA provides further legal evidence supporting this claim. LEA requests the revision of draft Georgia Rule (ttt)2. as follows:

2. All affected units subject to this subsection which are deemed to have complete permit applications after the effective date of this subsection, shall be in compliance. All affected units which are deemed to have complete permit

applications prior to the effective date of this subsection shall comply with this subsection by instituting those mercury controls listed in their final permit.

GA EPD Response: Please see the response to the comment immediately preceding this one.

391-3-1-.02(14) - Clean Air Mercury Annual Trading Program

Rule Should Prohibit Banking and Trading of Mercury Emissions

Chandra Brown and Jennie Trujillo (Written Comments) and The Sierra Club (Oral and Written Comments): The commenters do not support the banking and trading of mercury emissions.

GA EPD Response: Georgia EPD, based in part on stakeholder involvement, agrees that there is no guarantee under the Federal CAMR program that mercury emissions would be reduced in Georgia since the Federal rule establishes a nation-wide cap-and-trade program. In addition, Georgia EPD has concluded that:

- A portion of the mercury emitted from Georgia coal-fired power plants can be deposited on soils and water bodies locally and regionally; and
- Requiring mercury controls sooner can reduce the contribution to the local and regional landscapes and water bodies.

One option of increasing the likelihood of reducing Georgia's EGU mercury emissions from contributing to local and regional wet and dry deposition would be to opt out of the national cap-and-trade program. As an alternative to opting out of the national cap-and-trade program, Georgia EPD has proposed Georgia Rule 391-3-1-.02(2)(sss) [Georgia Rule (sss)]. Draft Georgia Rule (sss) includes a requirement to install and operate air pollution controls, in part, for the minimization of mercury emissions in Georgia. Draft Georgia Rule (sss) provides a regulatory mechanism to increase the likelihood of achieving mercury emission reductions in Georgia when compared to the national-cap-and-trade program. Therefore, EPD is proposing to allow Georgia EGUs to participate in the national cap-and-trade program.

Adopt This Rule As Soon As Possible to Avoid Being Subject to Federal CAMR FIP

MEAG Power, Oglethorpe Power Corporation, and Georgia Power: The commenters support this rule and requests that the Georgia DNR Board adopt this rule as quickly as

possible in order for Georgia to avoid being subject to an EPA CAMR Federal Implementation Plan.

GA EPD Response: Georgia EPD agrees. U.S. EPA has agreed to work with Georgia EPD to ensure that Georgia's mercury allocation scheme is used to issue mercury allowances to Georgia sources.

Retired Units – Need for Clarity

OPC, Written Comment: Draft subparagraph (f)1.(i) uses the phrase “permanently retired” yet the phrase is not defined. The commenter requests that this phrase be defined so that it triggers the preclusive effect of this rule. The commenter suggests the following addition to this draft subparagraph.

A Utility Unit becomes presumptively “permanently retired” under paragraph (14)(f) when it has no heat input for an entire control period. This presumption can be rebutted by the unit owner or operator, showing that the unit(s) at issue is constantly being kept in a state of operational readiness, such that the unit can be started up in a reasonable amount of time and using its traditional procedures for unit startup.

GA EPD Response: Georgia EPD recognizes that, where applicable and appropriate, prescriptive rule language should be used but in this case Georgia EPD does not agree with the commenter that the phrase “permanently retired” should be defined. In particular, the commenter's proposed definition is not compatible with proposed subparagraph (w)1.(ii). No changes to this draft subparagraph are recommended.

Proposed Georgia Rule (14)(w)1.(i) – Requested Language Revisions

MEAG Power, Written Comment: The commenter requests the following wording change:

- (i) The baseline heat input (in MMBtu) used for calculating the mercury allowance allocations . . .”

GA EPD Response: Georgia EPD agrees to revise the draft subparagraph as noted above.

Proposed Georgia Rule (14)(w)1.(ii) – Requested Language Revisions

MEAG Power, Written Comment: The commenter requests the following wording change:

- (ii) For a mercury budget unit that has operated during any or each of the years that are five, six, seven, eight, and nine years before the

year for which the mercury allocation is being calculated, the baseline heat input (in MMBtu) used for”

GA EPD Response: Georgia EPD agrees to revise the draft subparagraph as noted above.

Proposed Georgia Rule (14)(w)2 – Requested Language Revisions

MEAG Power: The commenter mentions requested revisions for draft subparagraph (w)2. yet provides no further clarification.

GA EPD Response: No changes have been made to this subparagraph based on comment.

Georgia Power, Written Comment:

- The commenter requests revisions to the definition of EF_j (Emission Factor) in draft Georgia Rule (14)(w)2.(ii)(I) as follows:

EF_j = 4-Year Calendar Average Mercury Emission Factor (pounds per trillion Btu) for control periods 2010 through 2013, with such factor calculated by dividing the average mercury emissions from 2010-2013 by the average heat input from the same period.

- The commenter requests revisions to the definition of EF_j (Emission Factor) in draft Georgia Rule (14)(w)2.(ii)(II) as follows:

EF_j = Mercury Emission Rate Factor (pounds per trillion Btu) for type of mercury control; in other words:

- The commenter requests revisions to the definition of HI (Heat Input) in draft Georgia Rule (14)(w)2.(ii)(III) as follows:

HI = Highest ~~Annual~~ Calendar Year Amount of the Mercury Budget Unit’s coal-fired Heat Input (trillion Btu per year) for control periods 2004 through 2013.

- The commenter requests revisions to the definition of HI (Heat Input) in draft Georgia Rule (14)(w)2.(iii)(I) as follows:

HI = Highest ~~Annual~~ Calendar Year Amount of the Mercury Budget Unit’s coal-fired Heat Input (trillion Btu per year) for control periods 2010 through 2019.

- The commenter requests revisions to the definition of EF_j (Emission Factor) in draft Georgia Rule (14)(w)2.(iii)(II) as follows:

EF_j = 4-Year Calendar Average Mercury Emission Factor (pounds per trillion Btu) for control periods 2016 through 2019, with such factor calculated by dividing the average mercury emissions from 2016-2019 by the average heat input from the same period.

GA EPD Response: Georgia EPD agrees to revise the draft subparagraph as noted above.

Proposed Georgia Rule (14)(w)3.(iv) – Requested Language Revisions

U.S. EPA: First, in line 3, replace the word “emissions” with “allowances.” Secondly, EPA suggests that Georgia consider adding procedures and deadlines for requests by owners or operators for additional allowances, procedures, criteria, and deadlines for the Director’s actions on such requests, including how the Director will handle cases where the total amount of requests exceeds the amount of allowances in reserve.

GA EPD Response: Georgia EPD agrees to revise the draft subparagraph by replacing the word “emissions” with “allowances.” Allocation of allowances from the “reserve” account will be determined by the Director on a case-by-case basis. Since it is impossible to foresee what circumstances would necessitate issuance of allocations from the “reserve” account this far in advance of the implementation of draft subparagraph (w)3.(iv), specific procedures, criteria, and deadlines are not established at this time.

Proposed Georgia Rule (14)(w)5 – Requested Language Revisions

Georgia Power, Written Comment: The commenter requests that in draft (14)(w)5.(i) the reference to 37,296 ounces be revised to 37,301 ounces.

GA EPD Response: Georgia EPD agrees to revise the draft subparagraph as noted above.

Proposed Georgia Rule (14)(aa) – Requested Language Revisions

Georgia Power, Written Comment:

Regarding draft (14)(aa)1.(ii) should be revised as follows:

- (ii) By December 1, 2009, and December 1 of each year thereafter, the Administrator will record in the Mercury Budget source’s compliance account the mercury allowances allocated for the mercury budget units at the source, as submitted by the Permitting Authority or as determined by the Administrator in accordance with subparagraph (v)1.(ii) for the control period in ~~2013.~~ the year that is four years after the year of the applicable deadline for recordation under this subparagraph.

The commenter requests that EPD strike draft (14)(aa)1.(iii) in its entirety or explain its purpose. The commenter recognizes that the text was generally copied from 40 CFR 60.4153; however, it does not appear to make any sense or serve a purpose.

GA EPD Response: Georgia EPD agrees to revise the draft subparagraph as noted above.

391-3-1-.02(15) – Georgia Mercury Trading Program

Do Not Support Adoption of This Rule

Clarence Mitchell (Oglethorpe Power Corporation) and Southern Power Company: Georgia's draft state mercury trading rule practically prohibits the use in Georgia of federally authorized mercury allowances from other states. There does not appear to be any scientifically based evidence for going beyond requirements to the federal rule. The commenters also state that it is unnecessary that Georgia EPD also constrain the mercury allowances based in part on the fact that some of the state's coal-fired assets will be equipped with air pollution control devices earlier than required by Federal CAMR according to draft Georgia Rule 391-3-1-.02(2)(sss).

U.S. EPA: If Georgia submits this rule as part of Georgia's CAMR State Plan under 40 CFR 60.24(h), EPA would disapprove Georgia's CAMR State Plan on the grounds that the Georgia Mercury Trading Rule is intended to, and in fact does, create a trading restriction that limits the ability of mercury Budget units to transfer mercury allowances to mercury Budget units in Georgia for use in meeting the allowance-holding requirements of the EPA-administered mercury trading program.

GA EPD Response: Based on EPA's comments that the rule as proposed would prevent EPA from approving Georgia's CAMR State Plan, EPD does not intend to move forward with this rule.

Rule is Illegal

MEAG Power, Oglethorpe Power Corporation, and Georgia Power Company: The commenters note that the effect of this draft rule is to limit the full and robust participation by Georgia's affected units in the EPA-administered trading program. The Rule interferes with the rights of MEAG, Oglethorpe Power, Georgia Power and other owners of jointly-owned units established under the Clean Air Act regarding ownership and transfer rights for allowances, constituting an illegal restraint of trade in violation of the Commerce Clause of the U.S. Constitution. Further, it is preempted by federal law. [Clean Air Mkts. Group v. Pataki, 338 F. 3d 82 (2d Cir. 2003).]

GA EPD Response: Based on EPA's comments that the rule as proposed would prevent EPA from approving Georgia's CAMR State Plan, EPD does not intend to move forward with this rule.

Rulemaking Record Lacks Documented Substantiation of Environmental Benefit With Adoption of This Rule

MEAG Power: It is not clear from the rulemaking record what the actual incremental environmental benefits of this proposed rule would be, if any.

GA EPD Response: Based on EPA's comments that the rule as proposed would prevent EPA from approving Georgia's CAMR State Plan, EPD does not intend to move forward with this rule.

Issue: Barrier to Entry of New Coal-Fired EGUs in Georgia

MEAG Power, Georgia Power Company, Southern Power Company, Oglethorpe Power Company, Longleaf Energy Associates: This draft rule allocates mercury allowances to "new" sources as does draft Georgia Rule 391-3-1-.02(14) [referenced as GA CAMR SIP rule]. As part of the draft GA CAMR SIP rule, a "new" source needs to purchase allowances for the first year of its operation from other applicable owner/operators as the owner/operator of a "new" CAMR source is not allocated any mercury allowances. There will very likely be no in-state allowance market for new units to take advantage of, and new units will be unable to comply with this rule. This lack of an in-state market and virtual certainty of noncompliance will act as a barrier to new owners and operators seeking to locate in the State.

With that in mind, this draft rule effectively eliminates coal as a viable source of future energy for the State due, in part, to the fact that the operation of the existing fleet after the installation and operation of mercury controls may not be able to meet the state budget (i.e., the state budget will result in a very tight mercury cap). With that in mind, the commenters cannot recommend that the State adopt a rule that would prevent them or any other entity from being able to reasonably consider coal as a practical option in the future.

Oglethorpe Power Corporation: Georgia law requires that EPD consider and balance the need for environmental protection with the need to foster economic growth:

It is declared to be the public policy of the State of Georgia to preserve, protect and improve air quality and to control emissions to prevent the significant deterioration of air quality and to attain and maintain ambient air quality standards so as to safeguard the public health, safety, and welfare consistent with providing for maximum employment and full industrial development of the state.

O.C.G.A. 12-9-1. EPD should carefully consider all aspects of the Georgia trading rule, in light of the foregoing general duty clause. It should give serious consideration to permanently exempting new sources from the Georgia Trading Rule.

GA EPD Response: Georgia's proposed mercury related rules have been developed in accordance with the provisions of O.C.G.A. 12-9-1. Since EPD will not be moving forward with the Georgia Mercury Trading Program, barriers to entry of New Coal-Fired EGU's in Georgia will be no different than in any other state participating in the EPA administered cap and trade program.

Issue: Negative Economic Impact to State

Dennis Chastain (Georgia Electric Membership Corporation), Georgia Power Company, Southern Power Company: It is our understanding that the surrounding states for the most part are not going beyond the Federal CAMR program. If Georgia goes substantially beyond the Federal CAMR this could result in an increase in our electricity prices relative to our surrounding states that we compete with. If this increased stringency is driven by realistic expectations of public health being benefits so be it. However, absent a public health benefit, our concerns are that if our electricity prices are no longer in line with those of our neighbors, Georgia's ability to compete for economic development will be diminished thereby costing Georgia jobs and economic growth.

GA EPD Response: Based on EPA's comments that the rule as proposed would prevent EPA from approving Georgia's CAMR State Plan, EPD does not intend to move forward with this rule.

Include a Provision Sunsetting This Rule

Longleaf Energy Associates: It is LEA's understanding that the state-only program is intended to prevent any additional mercury emissions beyond the state cap in the event that mercury deposition is more local or regional in nature. LEA recommends deletion of this rule in the event that the scientific review required by draft Georgia Rule (sss)17 determines that mercury deposition in Georgia is not local or regional in nature.

GA EPD Response: Should the technology and mercury impact review required under draft Georgia Rule 391-3-1-.02(2)(sss) determine that revisions to any of Georgia's mercury related rules are necessary, such would be included in the report as specified in draft subparagraph (sss)17.(vii) [now draft subparagraph (sss)18.(vii)]. Any rule changes would be determined by the Georgia DNR Board and in accordance with the Georgia Administrative Procedures Act.

Miscellaneous Changes

391-3-1-.02(2)(sss) - Multipollutant Control for Electric Utility Steam Generating Units

In addition to comments received on the proposed rules, EPD, through stakeholder involvement, has identified a number of additional changes that are included in the proposed rules.

Issue: Georgia EPD is aware that there may be periods of time that the owner or operator of units covered by draft Georgia Rule 391-3-1-.02(2)(sss) 1. through 11. may not be able to operate required air pollution controls. With this in mind and based on stakeholder involvement, new subparagraph 16. has been added to draft Georgia Rule 391-3-1-.02(2)(sss) which specifies periods in which the required control technology is not required to be operated. New subparagraph 17. has also been added to clarify that any exemptions specified in subparagraph 16. do not alleviate the owner or operator from complying with any other applicable air quality regulation.

Issue: Draft Georgia Rule 391-3-1-.02(2)(sss) subparagraphs 18.(v) and 18.(vii) [formerly subparagraphs 17.(v) and 17.(vii)] have been updated based on stakeholder involvement to read as follows:

- (v) technically and economically feasible controls for the reduction of mercury emissions from coal-fired EGUs or other sources;
- (vii) recommendations for any necessary revisions to paragraph (sss) or other actions as needed to address other sources; and