

Georgia Department of Natural Resources

Environmental Protection Division • Air Protection Branch

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Mark Williams, Commissioner

F. Allen Barnes, Director

August 1, 2011

MEMORANDUM

TO: Eric Cornwell, Program Manager, Stationary Source Permitting Program
Jimmy Johnston, Program Manager, Planning & Support Program

FROM: James Capp, Branch Chief

SUBJECT: Deferral for CO₂ Emissions From Bioenergy and Other Biogenic Sources Under the Prevention of Significant Deterioration (PSD) and Title V Programs

The purpose of the memorandum is to inform the EPD staff, US EPA, affected industry, and the public how we intend to implement the recently published final rule by US EPA providing a 3-year deferral from permitting for CO₂ emissions from bioenergy and other biogenic sources.

On July 1, 2011, the EPA Administrator, Lisa P. Jackson, signed the final rule: "Deferral for CO₂ emissions from Bioenergy and Other Biogenic Sources under the Prevention of Significant Deterioration (PSD) and Title V Programs: Final Rule." The result of this action is that during a three year period biogenic CO₂ emissions are not required to be counted for applicability purposes under the PSD and Title V permitting programs. Please note that this action does not address emissions of other greenhouse gases (GHG) that may be emitted from bioenergy and other biogenic stationary sources. This three year period became effective on July 20, 2011, the *Federal Register* publication date.

PSD Applications

The action by US EPA revised the definition of "subject to regulation" under 40 CFR 52.21(b)(49)(ii)(a) which is addressed by Georgia Rule 391-3-1-.02(2)(7)(a)(2)(iv).

Georgia Rule 391-3-1-.02(2)(7)(a)(2)(iv) is as follows:

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

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

(II) withdrawn, repealed, revoked or otherwise rendered of no force and effect by the United States Environmental Protection Agency, Congress, or Presidential Executive Order.

Such action shall render the regulation as incorporated herein, or that portion thereof that may be affected by such action, as invalid, void, stayed, or otherwise without force and effect for purposes of this rule upon the date such action becomes final and effective; provided, further, that such declaration, adjudication, stay, or other action described herein shall not affect the remaining portions, if any, of the regulation as incorporated herein, which shall remain of full force and effect

as if such portion so declared or adjudged invalid or unconstitutional or stayed or otherwise invalidated or effected were not originally a part of this rule. The Board declares that it would have incorporated the remaining parts of the federal regulation if it had known that such portion thereof would be declared or adjudged invalid or unconstitutional or stayed or otherwise rendered of no force and effect;

As can be seen above, Georgia Rule 391-3-1-.02(2)(7)(a)(2)(iv) already authorizes the biogenic CO₂ emissions deferral (upon July 20, 2011, the effective date of the *Federal Register* notice) because a portion of the “subject to regulation” definition has been withdrawn, repealed, revoked or otherwise rendered of no force and effect by the United States Environmental Protection Agency.

Therefore, PSD applications covered by the deferral that are expected to be processed prior to the end of the deferral period (July 20, 2014) do not have to address CO₂ emissions from bioenergy and other biogenic stationary sources (i.e., biomass sources) in their PSD analysis.

Even though Georgia’s rule already authorizes the biomass deferral, EPD anticipates initiating rulemaking with the next few months to formally adopt the deferral language into our rules.

Title V Applications

The action by US EPA revised the definition of “subject to regulation” under 40 CFR 70.2 which is addressed by Georgia Rule 391-3-1-.03(10)(a)4(iii).

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

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

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

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

As can be see above, Georgia Rule 391-3-1-.03(10)(a)4(iii) already authorizes the biogenic CO₂ emissions deferral (upon July 20, 2011, the effective date of the *Federal Register* notice) because a portion of the “subject to regulation” definition has been withdrawn, repealed, revoked or otherwise rendered of no force and effect by the United States Environmental Protection Agency.

Therefore, Sources that would have been potentially major under Title V due to CO₂ emissions from biomass do not have to submit Synthetic Minor (SM) permit applications by October 1, 2011. EPD

may update this deadline at a later date, but assuming the 3-year deferral period remains unchanged by the U.S. EPA, the new deadline for submitting Synthetic Minor (SM) permit applications is likely to be October 1, 2014.

Furthermore, Sources that would have been subject to Title V due solely to CO₂ emissions from biomass do not have to submit a Title V permit application by July 1, 2012. EPD may update this deadline at a later date, but assuming the 3-year deferral period remains unchanged by the U.S. EPA, the new TV application deadline is likely to be July 20, 2015 (one year after the biomass deferral expires). The biomass deferral expires 3 years from the publication date of July 20, 2011.

Even though Georgia's rule already authorizes the biomass deferral, EPD anticipates initiating rulemaking with the next few months to formally adopt the deferral language into our rules.