



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

October 26, 2010

Mr. James A. Capp, Chief
Air Protection Branch
Georgia Department of Natural Resources
4244 International Parkway, Suite 120
Atlanta, Georgia 30354

Dear Mr. Capp:

The Region 4 Office of the U.S. Environmental Protection Agency (EPA) received the Georgia Department of Natural Resources, Environmental Protection Division (GA EPD) September 30, 2010, prehearing submittal proposing revisions to the State Implementation Plan (SIP) relating to Regulation 391-3-1-.02(7) - "*Prevention of Significant Deterioration of Air Quality.*" Specifically the revision incorporates by reference the regulatory changes set forth in the Greenhouse Gas (GHG) Tailoring Rule (75 FR 31514) and the New Source Review (NSR) PM_{2.5} Implementation Rule (73 FR 28321). GA EPD requested that EPA parallel process this SIP revision to expedite approval of these regulatory changes into the federally approved Georgia SIP. We have completed our review and offer comments below for your consideration.

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

Regarding the addition of new language found at draft Rule 391-3-1-.02(7)(a)(2)(iv), EPA is concerned about the provision at (7)(a)(2)(iv)(I) and (II) that would render the regulation or a portion thereof automatically invalid in the wake of certain court decisions or other events. While EPA appreciates Georgia's interest in such a provision, it raises significant legal issues and is a matter that EPA has previously counseled against in other contexts. EPA's basis for its concern, as we have already discussed, is based on the fact that it is simply not possible to predict the nature of future events that may impact this regulation. In addition, even if a court were to take one of the actions discussed in Georgia's proposed rule, there could be differences in opinion between EPA and Georgia regarding the interpretation and/or impact of such a decision. As a result, there could be confusion regarding whether the Georgia regulation in the SIP remains in effect in the wake of such an event. EPA notes that while court decisions have at times impacted the appropriateness of SIP-approved regulations, EPA and the states have taken action to address the resulting SIP issues without the need for an automatic invalidation provision. Given the importance of providing certainty to both the general public and the regulated community regarding which regulations are in effect at any given time, EPA urges GA EPD not to include this automatic invalidation provision in its final regulation. If GA EPD does finalize this automatic invalidation provision, EPA recommends that GA EPD not include this provision in its SIP submittal.

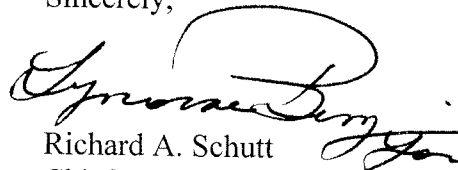
For the final GHG SIP submission to EPA, please clarify (in the cover letter) that Georgia's intent is to incorporate by reference the GHG Tailoring Rule as promulgated on June 3, 2010 and effective August 2, 2010.

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

In addition, on March 31, 2010, EPA stayed the Fugitive Emissions Rule (73 FR 77882) for 18-months to October 3, 2011, to allow the Agency time to propose, take comment and issue a final action regarding the inclusion of fugitive emissions in new source review applicability determinations. Therefore, the 40 CFR Part 51 and 52 administrative regulations that were amended for the Fugitive Emissions Rule are stayed through October 31, 2011. In addition, the Ethanol Rule promulgated May 1, 2007 (72 FR 24060) included provisions to exclude "chemical process plants" that produce ethanol through a natural fermentation process from the NSR major source permitting requirements. EPA does not intend to take action on Ethanol Rule provision at 40 CFR 51.166 and 52.21 at this time due to a petition to reconsider the rule. Pending final resolution of these issues regarding the Fugitive Emissions and Ethanol Rule, we will make a final determination on action regarding this portion of your SIP revision request.

We appreciate your transmittal of this package for our consideration. If you have any questions, please contact Lynorae Benjamin at (404) 562-9040, or have your staff contact Twunjala Bradley of the EPA Region 4 staff at (404) 562-9352.

Sincerely,



Richard A. Schutt
Chief
Air Planning Branch

Cc: Jimmy Johnston, GA EPD