



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER
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ATLANTA, GEORGIA 30303-8960

OCT 29 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

Thank you for providing us with a copy of the prehearing package of amendments to the Georgia Department of Natural Resources, Environmental Protection Division (GAEPD) title V regulation 391-3-1-.03(10) Title V Operating Permits dated September 30, 2010. This submittal revises GAEPD's title V regulations in order to incorporate by reference regulatory changes set forth in the Greenhouse Gas (GHG) Tailoring Rule (75 FR 31514). We have completed our review of the package and have the following comments.

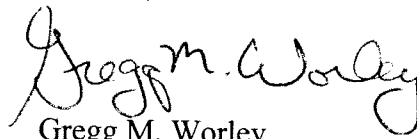
391-3-1-.03(10) Title V Operating Permits

Regarding the addition of new language found at draft Rule 391-3-1-.03(10) (a)(4)(iii), EPA is concerned about the provision at (10) (a)(4)(iii)(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 remains in effect in the wake of such an event. EPA notes that while court decisions have at times impacted approved regulations, EPA and the states have taken action to address the resulting 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 title V submittal.

Under rule 391-3-1-.03(10)(d) Permit Content, subpart 3 Compliance Requirements, the incorrect reference date is listed. The listed reference date of July 27, 2003, should be changed to June 27, 2003.

If you have any questions regarding these comments or need any additional information, please contact Yolanda Adams at 404-562-9214.

Sincerely,

A handwritten signature in black ink that reads "Gregg M. Worley". The signature is written in a cursive style with a large, stylized "G" and "W".

Gregg M. Worley
Chief
Air Permits Section