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Georgia Interfaith Power & Light
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Georgians for Smart Energy

November 16 2010

James A. (Jac) Capp
Branch Chief, Air Protection Bureau
4244 International Parkway, Suite 120
Atlanta, GA 30354
EPDComments@dnr.state.ga.us

Subject: Proposed Air Rule Amendments for Greenhouse Gas Controls

Dear Mr. Capp:

Because global warming poses a serious threat to Georgia, we are writing to offer our general support for the greenhouse gas pollution control rules proposed by the Environmental Protection Division (“EPD”).

EPD’s proposed greenhouse gas-related amendments to Rules 391-3-1-.02 and 391-3-1-.03 will help cut pollution and support the growing clean energy economy without burdening small businesses. We need to start now: Global warming is already causing severe storms, droughts, floods, and heat waves. Sweltering summer days also contribute to the conditions that form ozone smog, which causes asthma and other respiratory problems.

EPD’s approach incorporates the terms of the U.S. EPA’s Tailoring Rule into Georgia law. This tailoring approach is reasonable and effective because it gradually phases in global warming pollution controls by focusing only on the massive industrial facilities which emit the lion’s share of pollution and which already have substantial expertise navigating the permitting process. At first, it will only impose permit requirements for those sources already required to get permits based on other pollutants, and only if such new and old modified sources will emit more than 75,000 tons of global warming pollution. At a later date, sources will have to apply based on their greenhouse gas emissions alone, but new sources will have the benefit of a significantly higher threshold of 100,000 tons.

These large pollution sources have the capacity to quickly and efficiently reduce their emissions. The Clean Air Act's "best available control technology" requirement is designed to take "energy, environmental, and economic impacts" into account and to "insure that economic growth will occur in a manner consistent with the preservation of existing clean air resources." See 42 U.S.C. §§ 7470(3); 7479(3). Companies will be able to economically comply with this requirement by installing more efficient boilers, fixing faulty equipment, and using cleaner fuels – processes which create jobs.

Furthermore, we agree with the U.S. EPA that EPD should not include a "litigation" clause in its new rules because such a rule would automatically suspend their effect based on the outcome of ill-advised court challenges to the U.S. EPA's underlying tailoring rule. Generally, Georgia should avoid forcing businesses making permitting decisions to monitor litigation in order to avoid sudden, litigation-driven, changes in the permit regulations. Georgia could, of course, work to alter its own rules in an orderly way should EPA's rule be struck down, but should avoid provisions which would precipitously alter its permitting structure based on the outcome of a court case which it cannot control. Indeed, because states may alter their state implementation plans only with EPA approval, *see, e.g.*, 42 U.S.C. § 7410, such sudden unilateral action is not consistent with the Clean Air Act.¹

The Clean Air Act has a long history of successfully controlling pollution while promoting economic growth. The air in our nation's cities is substantially cleaner than in 1990, when the Clean Air Act Amendments gave the Act its modern form, while the economy has continued to grow. Data from 2005-2007, for instance, show ozone air quality improved in 99 of the 104 areas suffering from ozone smog levels worse than national air quality standards. Most of the country is now meeting air quality targets set years ago for carbon monoxide, nitrogen oxides and sulfur dioxide. Lead levels in ambient air are 91% lower than in 1980, protecting children from brain damage from that toxic pollutant. There is every reason to think global warming pollution controls will be equally successful.

We therefore strongly support EPD's decision to adopt the Tailoring Rule thresholds to begin implementing the Clean Air Act to control Georgia's global warming pollution. Georgia must do our part to protect our state and our nation from the effects of climate change, promote clean air, and support our economy in the long term.

¹ We hereby incorporate EPA's October 26, 2010 comments on this rule in their entirety.

Thank you,

Alexis Chase
Executive Director,
Georgia Interfaith Power & Light

Justine Thompson
Executive Director, GreenLaw

Chandra Brown
Executive Director, Ogeechee Riverkeeper

Jennette Gayer
Director, Environment Georgia

Katherine H. Cummings
Executive Director
Fall-line Alliance for a Clean Environment

Dan Corrie
Wiregrass Energy Network

Midge Sweet
Director,
Georgians for Smart Energy Coalition

Bobby McLendon
President, Friends of the Chattahoochee

Ulla-Britt Reeves
Regional Program Director,
Southern Alliance for Clean Energy

Mark Woodall
Chair, Georgia Chapter of the Sierra Club

Michael Hawthorne,
Georgia Organizer, Greenpeace

Please direct any correspondence, including a response to these comments, to:

Craig Segall
Project Attorney
Sierra Club
408 C St NE
Washington, DC, 20002
Craig.Segall@sierraclub.org

and to:

Justine Thompson
Executive Director
GreenLaw
State Bar of Georgia Building
104 Marietta St. NW, Suite 430
Atlanta, Georgia 30303
(404) 659-3122
jthompson@green-law.org