



January 5, 2007

Mr. James P. Johnston, P.E., Manager
Planning and Support Program
Georgia Department of Natural Resources
Environmental Protection Division, Air Protection Branch
4244 International Parkway, Suite 136
Atlanta, Georgia 30354

SUBJECT: Proposed Revisions to 391-3-1-.02(7)(b)15(i)(V)

Dear Mr. Johnston:

The Georgia Industry Environmental Coalition (GIEC)¹ has reviewed your draft language, which was transmitted to GIEC in a November 29, 2006 letter, regarding EPD's proposed changes to the New Source Review (NSR) reform regulations shared with the NSR stakeholder group on July 17, 2006.

We continue to disagree with both the nature of and need for these proposed changes. These changes would state that if a project's emissions exceed the significance level according to the monitoring provisions in the rule, the project would be considered to have been a major modification at the time the project began.

EPA considered *and rejected* the idea of including such a term in its final rule. Instead, EPA required the source to make calculations and then if its emissions exceeded the significance levels and differed from pre-project projections of actual emissions, a report was to be submitted to the permitting authority. This is because the difference in the projections could be due to several reasons some of which would not result in application of NSR/PSD. For example, the source could have determined that emissions based on projected demand growth would not exceed significance levels. In reality, however, there was unexpected demand growth due to factors unrelated to the change (e.g., shutdown of a competitor facility). Thus, even though emissions increased over significant levels and the source had not projected those increases, NSR/PSD would still not be applicable. If we understand the draft language, it would make NSR/PSD applicable in such situations. This is inappropriate.

EPA explained its rationale in the Response to Comments on the NSR reform rules²:

¹ Formed in 1992, GIEC is a not-for-profit organization of Georgia industries whose member companies are subject to environmental regulations in Georgia. GIEC's mission is to serve as a technically-based advocate for Georgia industry by promoting environmental regulations and policies founded on protection of human health and the environment, sound science, and cost/benefit principles. Many of our member companies represent the largest employers in the State and collectively represent an employee-base that exceeds 55,000. www.giec.org

² *see Technical Support Document for the Prevention of Significant Deterioration and Nonattainment Area New Source Review Regulations*, U.S. EPA, OAQPS, November 2002, Response to Comments at I-4-25.

We believe that the final rules adequately describe how NSR would be applied to a source that exceeds its post-change actual emissions level during the 5- (or 10-) year tracking period. If the post-change annual emissions rate of a pollutant from the emissions unit(s) that is modified results in a significant emissions increase at the emissions unit(s), and the emissions rate is inconsistent with the pre-change projection, then the source should report this to the reviewing authority. If this increase is related to the physical or operational change, then the source is required to comply with the major NSR requirements, including an evaluation of BACT, and an analysis of air quality impacts to ensure that the major modification does not cause or contribute to a violation of any NAAQS or PSD increments. Moreover, the source may be subject to an enforcement action for being in violation of the major NSR requirements. (Emphasis Added)

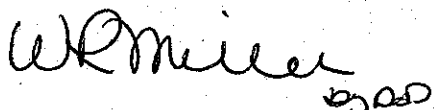
To the extent EPD considers any changes to this rule, they should be made *after* EPA issues its response to the remand from the U.S. Court of Appeals for the D.C. Circuit regarding the reasonable possibility test. *New York v. EPA*, 413 F.3d 3 (D.C. Cir. 2005). EPA is in the process of developing a response to the Court decision and any action at this time by EPD could be inconsistent with the approach EPA is planning to take. Therefore, it would be a waste of resources for EPD to proceed with this rulemaking when EPA is addressing similar issues in its upcoming rulemaking to respond to the Court decision. Furthermore, it could potentially result in confusion for both regulated industry and EPD permitting staff.

In its response to comments dated December 19, 2005, EPD noted that "...Because of vagueness of the "reasonable possibility" test contained in the Federal rule, EPD has replaced it with a more specific threshold based on an existing Georgia requirement." EPA is currently considering, as mandated by the D.C. Circuit, different recordkeeping requirement options for a change that may or may not have the possibility of exceeding the significance levels. This is related to what EPD is now doing because EPD is attempting to determine what the consequences are of exceeding the significance level. Again, it seems only prudent to examine the need for such changes once EPA has responded to the Court's remand.

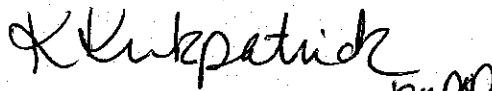
We urge the EPD to withdraw this draft language and appreciate the opportunity to comment on this important regulation.

Sincerely,

GEORGIA INDUSTRY ENVIRONMENTAL COALITION



William R. Miller III, Ph.D.
Air Workgroup Chair



Katie Kirkpatrick, P.E.
Chairman of the Board

cc: Heather Abrams, P.E., EPD Air Protection Branch Chief