



July 31, 2006

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)(a)3
and 391-3-1-.02(7)(b)15(i)(V)**

Dear Mr. Johnston:

The Georgia Industry Environmental Coalition (GIEC)¹ has reviewed your draft language regarding the New Source Review (NSR) reform regulations that Georgia recently adopted and provides the following initial comments.

We do not agree with the draft changes to the regulations. These changes would state that if a project's emissions exceed the significance level according to the monitoring provisions in the rule, the source would be deemed in violation of the requirement to obtain a major NSR or PSD permit.

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 describes 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)

Contrary to EPA's statement that the source *may be* subject to enforcement for being in violation of NSR requirements,³ the EPD draft appears to require enforcement or at least expose the source to citizen suits. If a source made a reasonable projection at the time of the change, EPD may well determine that enforcement is not appropriate. The draft rule appears to seek to remove NSR enforcement discretion. In light of the statement that exceeding the significance level would be a violation of the NSR regulations, could EPD enter into a settlement that restricts emissions below significance levels in the future?

Finally, 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.

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

Sincerely,



William R. Miller III, Ph.D. *by pss*
GIEC Air Workgroup Chair



Katie Kirkpatrick, P.E. *by pss*
GIEC Chairman of the Board

Cc: Dr. Carol Couch, EPD Director
Heather Abrams, P.E., EPD Air Protection Branch Chief

³ EPA further emphasized that the consequence of emissions over the significance level would be determined based on the facts of a particular case, stating "the 5-year tracking provision in the final rule will assure that any subsequent emissions increase that exceeds the projected level (insofar as it represents a significant emissions increase) must be reported to the reviewing agency and then appropriate review will take place." *Ibid* at I-4-17 (emphasis added).