



September 12, 2005

Ms. Louise Mathis
Georgia Department of Natural Resources
Environmental Protection Division
2 Martin Luther King Jr. Drive
Suite 1152, Floyd Towers East
Atlanta, Georgia 30334

Transmitted via email epdcomments@dnr.state.ga.us.

SUBJECT: Comments on Proposed Amendments to Georgia's Rules for Water Quality Control, Chapter 391-3-6-.(03)2 "Water Quality Enhancement" to be Consistent with EPA's Antidegradation Rule 131.12.

Dear Ms. Mathis:

The Georgia Industry Environmental Coalition¹ (GIEC) supports the Georgia Environmental Protection Division's (EPD's) proposed revisions to the Antidegradation Rule under Georgia's Rules for Water Quality Control. GIEC appreciates this opportunity to submit comments to EPD on its proposed amendments. GIEC member companies include holders of NPDES permits for discharges pursuant to the Georgia Water Quality Control Act.

For some 30 years, we have collectively thought that the meaning and EPD's implementation of Georgia's Antidegradation Rule was substantially the same as the Federal (EPA) equivalent from which the Georgia rule was patterned. In this regard, it is significant that over this long history of Georgia's Antidegradation Rule, EPA has consistently concurred with EPD's issuance of new and renewed permits that have all been subject to Georgia's Antidegradation Rule and subject to EPA oversight of the delegated permit program in Georgia.

While we recognized that the Georgia rule wording was not exactly the same as the Federal Antidegradation Rule, it was generally understood that the meaning was substantially the same and that Georgia NPDES permit requirements were substantially the same as the Federal requirements, with a general consistency of permit requirements across neighboring states.

Recently, however, a Georgia Supreme Court ruling has brought to our attention the fact that the existing wording for Georgia's Antidegradation Rule can be interpreted in

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 and include: Alcan Aluminum Corporation; Arizona Chemical Company; AGL Resources; CE Minerals; Colonial Terminals, Inc.; DSM Chemicals North America, Inc.; Engelhard Corporation; General Electric Company; General Motors; Georgia-Pacific Corporation; Georgia Power Company; Gold Kist Inc.; International Paper; Kerr-McGee Pigments, Inc.; Lockheed Martin Aeronautics Company; Merck & Company, Inc.; Mohawk Industries; Norfolk Southern Corporation; NutraSweet; Omnova Solutions, Inc.; Southern Aluminum Finishing Company; Southwire; Weyerhaeuser Company; and The William L. Bonnell Co., Inc.

such a way as to require much more restrictive NPDES permits in Georgia than is otherwise required under the Federal rules or in neighboring states.

If this recent court interpretation of Georgia's antidegradation wording [i.e., literally requiring the "highest and best (treatment level) practicable"] were applied to existing industrial permits across Georgia, the result would be the tightening of existing permit limits to conform with best-case past performance. This tightening would leave no margin for the inherent variability of industrial operations and treatment processes and leave no room for increased production and economic growth. This best-case tightening effect alone would result in either curtailment of existing industrial operations to maintain permit compliance or costly new treatment additions and associated operating costs just to keep industrial production at existing levels. Either way, existing Georgia industries would be at a distinct competitive disadvantage relative to similar industries in other states where no such "highest-and-best" antidegradation interpretation is being applied. Further, application of the court's interpretation of Georgia's antidegradation wording would have even more of a chilling effect on Georgia's ability to attract new industrial facilities and associated jobs.

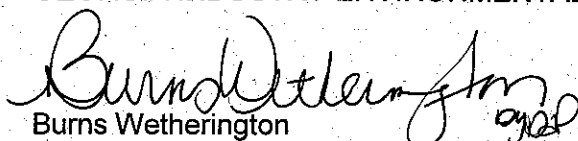
As the Board of the Department of Natural Resources deliberates the proposed rule revision, we respectfully note that all state agencies in Georgia have a particular duty under the Georgia Administrative Procedures Act (GAPA) to adopt (only) rules that are no more expensive than necessitated by the applicable statutes. As per GAPA 50-13-4(a)(4)... "In the formation and adoption of any rule, an agency shall choose an alternative that does not impose excessive regulatory costs on any person or entity which costs could be reduced by a less expensive alternative that fully accomplishes the stated objectives of the statutes which are the basis of the proposed rule." We submit that unless EPD's proposed rule amendment and clarification is adopted by the Board, permit requirements in Georgia will almost certainly become more expensive than necessary and go beyond the mandate of the Water Quality Control Act.

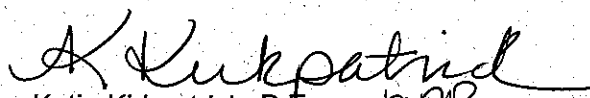
In this situation, it makes sense for EPD to now amend its Antidegradation Rule to conform the wording with the original intent of the rule rather than changing the intent of the rule as the court's interpretation of current wording might otherwise suggest to some. Therefore, GIEC supports EPD's proposed rule revision to conform the words of the antidegradation rule with the long-held meaning and original intent of the rule. This conforming rule revision will continue to protect water quality and existing water uses in Georgia while keeping Georgia industry and economic development on a level playing field with other states.

Please contact either of us if you have any questions.

Sincerely,

GEORGIA INDUSTRY ENVIRONMENTAL COALITION


Burns Wetherington
Water Resources Workgroup Chair


Katie Kirkpatrick, P.E.
Chairman of the Board