

2. Alcoa's Georgia facilities previously controlled its industrial storm water run-off to the state waters pursuant to General Permit No. GAR000000, issued on June 14, 1993 and reissued on June 1, 1998 ("1998 Permit") by the Georgia Department of Natural Resources under DNR Rules 391-3-6-.16(3)(c).

3. The Code of Federal Regulations implementing the Federal Water Pollution Control Act (the "Clean Water Act") mandates that all National Pollutant Discharge Elimination System ("NPDES") permits "shall be effective for a fixed term not to exceed five years." 40 C.F.R. § 122.46; DNR Rules 391-3-6-.16(13).

4. Accordingly, the Georgia Department of Natural Resources ("DNR") issued a draft storm water general permit on September 13, 2004 to succeed the 1998 Permit and requested comments from all interested parties. 40 C.F.R. 124.6; DNR Rules 391-3-6-.16(7).

5. Alcoa submitted an official set of comments ("Alcoa comments") to the EPD on October 21, 2004, identifying both its agreements and concerns within the draft permit, and suggesting amendments to help clarify certain portions.

6. The final General Permit was signed on March 18, 2005, by the Director of the EPD, and on March 22, 2005, the DNR mailed its responses to Alcoa's comments ("DNR Response"). 40 C.F.R. § 124.17.

STATEMENT OF LEGAL AUTHORITY AND JURISDICTION

7. Section 12-2-2(c) of the Official Code of Georgia ("Georgia Code") provides, in relevant part, that "[a]ny person who is aggrieved or adversely affected by any order or action of the director shall, upon petition within 30 days after the issuance of such order or the taking of such action, have a right to a hearing before an administrative law judge appointed by the Board of Natural Resources." O.C.G.A. § 12-2-2(c)(2).

8. The Georgia Code also provides that “[a]ny request for administrative review by an administrative law judge shall be filed with the [Director].” O.C.G.A. § 12-1-2(c).

9. The Georgia Code further provides that “[w]henever a person is aggrieved or adversely affected by any action or by any order or orders of the director...such person may request and obtain a hearing by filing a petition with the Director no later than 30 days after such order or notice of action is served upon such person.” O.C.G.A. § 12-5-43(a).

10. Georgia also directs the individual agencies to “[a]dopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency.” O.C.G.A. § 50-13-3(a)(2).

11. Accordingly, the DNR has adopted its “Procedures for Disposition of Contested Cases,” for administrative hearings before administrative law judges. Those procedures are published at DNR Rules 391-1-2.

12. The DNR Rules specify the timeliness of a petition for a hearing to be “within 30 days of the mailing of an issued...grant or denial of a...permit.” DNR Rules 391-1-2-.03(1).

13. EPD’s issuance of the final General Permit was completed only by the approval and signature of the Director and therefore constitutes an “action of the director,” subject to review under O.C.G.A. §§ 12-2-2(c) and 12-5-43(a), and DNR Rules 391-1-2-.03(1).

14. Alcoa’s Petition for Hearing is timely, because EPD’s action was mailed on March 22, 2005, which is less than 30 days before the Alcoa’s Petition was filed.

STATEMENT OF PETITIONER’S INTEREST IN THE MATTER

15. Alcoa has at least six (6) facilities in the State of Georgia that previously operated under the 1998 Permit, and must either apply for and operate under the new General Permit or seek an individual permit for each facility.

16. Alcoa is adversely affected and aggrieved by the Director's action in approving the final General Permit without making certain modifications, because Alcoa will be subject to all portions of the General Permit including those that EPD would not modify.

17. The General Permit lists the qualifications and procedural requirements necessary for coverage under the General Permit, and Alcoa recommended substantive clarifications and changes through comments on the Draft General Permit.

18. When issuing the General Permit, EPD responded to a number of Alcoa's comments with little more than a statement that it did not believe that Alcoa's suggestions were appropriate for the General Permit "at this time." EPD Response at pp. 2, 4, and 5.

19. Many of EPD's cursory responses left issues that can and will affect Alcoa's Georgia facilities unresolved and without explanation as to how and why EPD made such decisions.

GROUNDINGS FOR REVIEW OF THE FINAL GENERAL PERMIT

20. EPD's refusal to make certain modifications to the Draft General Permit without justification constitutes an arbitrary and capricious action by the Department of Natural Resources. Furthermore, by approving the final General Permit without making Alcoa's suggested modifications, EPD is in clear violation of federal precedent and guidance that has been set for certain General Permit issues. Finally, EPD's issuance of this General Permit is in violation of the Clean Water Act's procedural requirements by virtue of EPD's inadequate responses to comments on the Draft Permit.

Count I.

No Reasonable Basis for Monthly Monitoring Requirements

21. The Code of Federal Regulations requires that permits establish a monitoring "frequency sufficient to yield data which are representative of the monitored activity." 40 C.F.R. § 122.48(b).

22. The DNR Rules assess General Permit compliance by requiring “monitoring...as may be reasonably required by the Director,” which, according to 40 C.F.R. §122.44(i) must be “established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge.” DNR Rules 391-3-6-.06(11); 40 C.F.R. § 122.44(i)(3-4).

23. Alcoa submitted comments on the Draft Permit indicating that monthly monitoring requirements are not reasonable because they are burdensome and unnecessary, because monthly sampling does not provide significantly more information than quarterly sampling. Alcoa Comments at p. 7.

24. Alcoa also commented that with experience in attempting to monitor storm event discharges, permitting agencies “have learned more about the nature of storm water discharges,” and “have moved toward less frequent testing.” *Id.*

25. Nonetheless, the final General Permit requires each facility that seeks “coverage under this permit for all storm water discharges associated with industrial activity to, or within one (1) linear mile...of an impaired stream segment...must conduct storm water discharge sampling...on a monthly basis for a period of twenty-four (24) months.” General Permit III.C.2.a.

26. Furthermore, the EPD’s responses did not adequately address Alcoa’s comments regarding the frequency of monitoring required and the reasonableness of the monthly requirement in any manner.

27. Alcoa reasserts here that EPD should modify the Timeline figure for Part III.C. of the General Permit and the relevant language to read as follows:

1. III.C.2.a. - first sentence, paragraph two; “Regulated industrial facilities that are subject to the requirements of Part III.C. of this permit must conduct storm water discharge sampling for the pollutant(s) of concern on a quarterly basis for a period of 12 months.”

2. III.C.2.b.- first two lines, paragraph one; “After the twelve (12) month sampling program has ended, facilities with storm water discharges associated with industrial activity that have been found...”
3. III.C.2.c.- line eight, paragraph one; “To evaluate the effectiveness of the Supplemental BMP Program, a minimum of three (3) additional samples must be collected over a twelve-month period at appropriate storm water outfall locations, and analyzed for the impaired segment pollutant(s) of concern, beginning within nine (9) months after the twelve (12) month sampling program has ended.”

28. Without a response that justifies the reasonableness of the monitoring frequency required, and in light of the burdens that it imposes on permittees, EPD’s monitoring requirements are arbitrary and capricious.

Count II.
Inadequate and Contradictory Description of the “No Exposure Exclusion”

29. The State of Georgia follows the Code of Federal Regulations regarding the “No Exposure Exclusion,” providing that “discharges composed entirely of storm water are not storm water discharges associated with industrial activity” if “all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff” and the discharger satisfies certain requirements. 40 C.F.R. § 122.26(g); DNR Rules 391-3-6-16.

30. The General Permit defines “Storm Water Associated with Industrial Activity” to include, among other things, manufacturing buildings that would require a storm resistant shelter in order to qualify for the “No Exposure Exclusion.” General Permit at p. 39.

31. The CFR, however, does not include such buildings in its description of industrial materials or activities. Alcoa therefore questioned EPD how facilities applying for the General Permit could qualify for the “No Exposure Exclusion” when they have manufacturing buildings that themselves constitute industrial storm water runoff, which are not protected by a storm resistant shelter. 40 C.F.R. § 122.26(g); Alcoa Comments at p. 2.

32. EPD responded that it “recognizes that manufacturing buildings are included in the definition... However for the purposes of meeting the requirements for the Industrial No Exposure Exclusion, any manufacturing building that meets the definition of a storm resistant shelter would not disqualify a facility.” EPD Response at p. 1.

33. EPD’s Response fails to adequately address Alcoa’s comments concerning the “No Exposure Exclusion” for manufacturing buildings that satisfy the definition of “Storm Water Associated with Industrial Activity” and are not protected by an additional storm resistant shelter.

34. Alcoa reasserts that the following modification should be included in the General Permit to clarify the “No Exposure” exclusion for permittees:

1. Appendix- definition of “Storm Water Associated with Industrial Activity”; the term manufacturing buildings should be removed from this definition

35. In its comments, Alcoa also requested that EPD clarify several other aspects of how the "No Exposure" exclusion would operate. EPD provided a general response that clarified its position on those issues. However, EPD did not agree to make the changes in the General Permit itself that were requested by Alcoa, which are needed to ensure that the General Permit provides clear legal direction on those issues.

36. Alcoa reasserts that the following language be added to Part II.A.6. of the General Permit to ensure that the “No Exposure” exclusion is clear for all permittees:

1. II.A.6. - (1)(a)For as long as the no exposure exclusion applies to the facility, any non-storm water discharge authorized under this general permit, as set forth in Part I.1.3.B. above, must either be permitted under an individual NPDES permit or any general permit developed by EPD for such discharges, or these non-storm water discharges must not be allowed to be discharged off-site to a receiving stream.
2. II.A.6. - (b)The facility is to develop and maintain a no exposure management system that ensures no exposure will occur for the life of the no exposure exclusion period, or 5 years, whichever is shorter. Any such system is to include

adequate safeguards, best management practices, periodic storm water management program reviews, site inspections, and maintenance schedules to ensure no exposure at all times.

3. II.A.6. - (c) Exposure is defined as storm water coming into contact with the activities identified in Appendix A of this permit (storm water associated with industrial activity) that discharges off-site to a receiving stream. Should a potential condition of exposure be identified during non-storm periods and the facility is satisfied that the potential exposure occurred after the last known precipitation event and the facility can address the situation such that no exposure is again assured prior to the next storm event, then this would not be a condition of exposure. (An example would be finding a rip in a tarp covering material stored outside that is discovered and repaired prior to the next storm event that generates runoff, and the facility knows that the tarp was not ripped before the last known storm event).
 1. If exposure occurs, the facility must apply for permit coverage for its storm water discharges, either under this general permit, an individual NPDES permit, or an alternate general permit, no later than 30 days after the exposure occurs.
 2. If the facility cannot definitively determine if exposure occurred in a particular instance, but has reason to believe exposure probably did occur, then the facility must apply for either this general permit, an individual NPDES permit, or an alternate general permit for its storm water discharges, within 30 days of making that determination.
 3. A facility that elects no exposure and subsequently has exposure cannot reapply for the “no exposure” exclusion again for the remainder of the life of this permit unless it can demonstrate that the condition causing exposure has been remedied so that exposure will not occur again. Documentation to this effect must be attached to the No Exposure Certification and be made available to EPD upon request.
4. II.A.6. - (d) EPD reserves the right to revoke a facility’s no exposure exclusion status if, after a site inspection or through other investigations, it determines the facility cannot justify the “no exposure” exclusion or cannot demonstrate to the satisfaction of EPD that exposure has not occurred. If EPD revokes the no exposure exclusion, the facility must apply as soon as possible for this general permit, an individual NPDES permit, or an alternate general permit. EPD’s decision to revoke a facility’s no exposure exclusion status shall be subject to administrative review pursuant to the Georgia Administrative Procedures Act.

37. Alcoa also reasserts its request from the comments that EPD develop a general permit or some other permitting opportunity for non-storm water flows authorized under III.A.2. of the

General Permit “that will allow dischargers electing the ‘no exposure’ exclusion the ability to ensure the non-storm water discharges are properly permitted.” Alcoa Comments at p. 3.

38. EPD’s failure to adequately address the “No Exposure Exclusion” concerns raised by Alcoa is arbitrary and capricious, is contrary to federal requirements, and violates the Georgia Administrative Procedure Act § 50-13-4 and 40 C.F.R. § 124.18.

Count III.
Improper Establishment of Benchmark Levels as Water Quality Standards

39. The State of Georgia does not have In-Stream State Water Quality Standards for a number of pollutants, including Five-Day Biochemical Oxygen Demand (BOD₅) and Total Suspended Solids (TSS). EPD Response at p. 4.

40. Regardless, EPD has included benchmark values as the water quality standards in the monitoring requirements for a facility’s storm water discharges to impaired stream segments. General Permit Part III(C)(2)(b).

41. Alcoa commented that the benchmark values, however, were “developed for use as screening levels, not as bright-line tests for determining whether water quality is in compliance with the Clean Water Act, or for determining whether further controls must be installed.” Alcoa Comments at p. 8.

42. Alcoa also commented that the benchmark levels did not undergo formal rulemaking procedures by either EPA or the State of Georgia, and thus cannot be made legally binding. Alcoa Comments at p. 8.

43. Official Code of Georgia Annotated § 50-13-3 (“Georgia Administrative Procedure Act”) states that “No agency rule, order, or decision shall be valid or effective against any person or party nor may it be invoked by the agency for any purpose until it has been published or made available for public inspection as required.” O.C.G.A. § 50-13-3(b).

44. EPD makes the benchmarks binding in the General Permit, however, because failure to meet the benchmark levels 75% of the time over the 24 month monitoring period requires a facility to seek an individual permit or develop a supplemental Best Management Plan (BMP). General Permit III(C)(2)(b).

45. As a result, EPD's issuance of the General Permit improperly gives legal force to the target levels for BOD₅, TSS, and all other pollutants subject to benchmark levels in the General Permit. This action is arbitrary and capricious and contrary to state law and procedural requirements.

46. Alcoa thus recommends that the benchmark levels used for the various pollutants of concern be removed from the General Permit for lack of authority to use them.

Count IV.
Benchmark Levels for BOD₅ and TSS are Excessive

47. The General Permit specifically sets unduly low benchmark levels compared those in neighboring states for BOD₅ and TSS. Alcoa Comments at p.8.

48. EPD's only justification for selecting the benchmark levels rested on the fact that they came from an EPA list, and that it "believes the limits...represent standards that will be protective of water quality in [impaired] stream segments." EPD Response at p. 4.

49. Even if benchmark levels are allowed, EPD provides no proof that the levels set for BOD₅ and TSS are any more protective of Georgia's waters than a different number.

50. EPD failed to adequately respond to Alcoa's comments, and EPD's blanket reliance on unproven benchmark levels for BOD₅ and TSS without reasonable justification is arbitrary and capricious.

51. Alcoa again recommends that the benchmark levels for BOD₅ and TSS be removed from the General Permit for lack of authority to use them and justification for the specific levels

Count V.
Inadequate Responses to Alcoa Comments on Draft Permit

(i) Comment 3: Releases in excess of reportable quantities

52. Federal and state law requires EPD to respond to all significant comments. 40 C.F.R. § 124.18(a)(2); O.C.G.A. § 50-13-4(a)(2).

53. Alcoa filed a set of responses to the Draft Permit on October 21, 2004 that encompassed eleven (11) pages and nine (9) separate comments.

54. Comment three (3) by Alcoa pointed out that every storm water discharge will inevitably contain “de minimus quantities of hazardous substances and oil, due to the nature of industrial activity,” partially because “it is impossible to clean up every bit of material that might escape during routine manufacturing activities.” Alcoa Comments at p. 6

55. Comment three also pointed out that the language on “Spills” in the Draft Permit (and now the General Permit) “effectively bar[s] all dischargers from using the general permit, because it bans the discharge of any hazardous substance or oil in any quantity resulting from an on-site spills,” without distinguishing a spill from a leak or a release. Alcoa Comments at p. 6.

56. Alcoa also discussed EPA’s views on such language in general permits, and suggested language to comport with EPA action on the topic with the exceptions provided in EPA’s Multi-Sector General Permit. Alcoa Comments at p. 6.

57. Alcoa reasserts now that Part III.B. of the General Permit should be renamed “Hazardous Substances or Oil” and that the following language should replace or be added to the existing language in order to provide clarification and consistency for permittees:

1. III.B.1. - “The permittee must prevent or minimize the discharge of hazardous substances or oil in any discharge(s) in accordance with the SWPPP for the facility. This permit does not relieve the permittee of the reporting requirements of 40 C.F.R. § 110, 40 C.F.R. § 117 and 40 C.F.R. § 302 relating to spills or other releases of oils or hazardous substances.”

2. III.B.1.a. - Single Releases and Spills. Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 C.F.R. § 110, 40 C.F.R. § 117 and 40 C.F.R. § 302, occurs during a twenty-four (24) hour period:
 4. The permittee must notify the National Response Center (NRC) (800-424-8802); in accordance with the requirements of 40 C.F.R. § 110, 40 C.F.R. § 117 and 40 C.F.R. § 302 as soon as he or she has knowledge of the discharge;
 5. The permittee must modify the facility's SWPPP required under Part IV within 14 calendar days of knowledge of the release and provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the SWPPP must be reviewed to identify measures to prevent the reoccurrence of such release and to respond to such releases, and the SWPPP must be modified where appropriate
3. III.B.1.b. - Anticipated Discharges. Anticipated discharges containing a hazardous substance in an amount equal to or in excess of reporting quantities are those caused by events occurring within the scope of the relevant operating system. If the facility has (or will have) more than one anticipated discharge per year containing a hazardous substance in an amount equal to or in excess of a reportable quantity, the permittee must:
 1. Submit notifications of the first release that occurs during a calendar year (or for the first year of this permit, after submittal of an NOI); and
 2. Provide a written description in the SWPPP of the dates on which such releases occurred, the type and estimate of the amount of material released, and the circumstances leading to the releases. In addition, the SWPPP must address measures to minimize such releases.
 3. Where a discharge of a hazardous substance or oil in excess of reporting quantities is caused by a non-storm water discharge (e.g. a spill of oil into a separate storm sewer), that discharge is not authorized by this permit and must be reported as required under 40 C.F.R. § 110, 40 C.F.R. § 117 and 40 C.F.R. § 302 (see Paragraph B.1.a.1. above). In the event of a spill, the requirements of Section 311 of the CWA and other applicable provisions of Sections 301 and 402 of the CWA and any pertinent Georgia regulations relating to spills continue to apply.

58. EPD's full response to Alcoa's extensive comment three read: "With regard to your comment suggesting alternate language for Part III.B Releases in Excess of Reportable Quantities, EPD does not believe this would be an appropriate change in the permit at this time." EPD Response at p. 2.

59. EPD's response is entirely inadequate to respond to Alcoa's comments on the Draft Permit and violates the Georgia Administrative Procedure Act § 50-13-4 and 40 C.F.R. § 124.18. Further, EPD's failure to provide such de minimis exceptions is arbitrary and capricious.

(ii) Comment 5: Measures and controls in SWPPP for non-storm water discharges

60. Comment five (5) submitted by Alcoa specifically requested that the Draft Permit "differentiate between non-storm water discharges authorized in this permit for which appropriate BMP's have been developed and incorporated in the SWPPP [Storm Water Pollution Prevention Plan], and any new non-storm water discharges." Alcoa Comments at p. 9.

61. Alcoa believes that such a clarification is needed to avoid confusion for permittees and went as far as to suggest language to make this section consistent with the General Permit section III.A. on allowable non-storm water discharges. Alcoa Comments at p. 9.

62. EPD responded to Alcoa's request for clarification in Comment 5 by indicating that "EPD does not feel that a change in the permit is justified at this time." EPD Response at p. 4.

63. Alcoa reasserts that the following language be added to the end of the first sentence of Part IV.D.3.g. (1) of the General Permit to differentiate between authorized and new non-storm water discharges:

1. IV.D.3.g.(1) - " , other than the allowable non-storm water discharges currently identified under Part III.A.2. of this permit and in compliance with Part III.A.2.b. of this permit."

64. EPD failed to adequately respond to Alcoa's comments in violation of the Georgia Administrative Procedure Act § 50-13-4 and 40 C.F.R. § 124.18. Further, EPD's failure to differentiate between authorized and new non-storm water discharges without justification is arbitrary and capricious.

(iii) Comment 6: Recognition of Facilities with Integrated Contingency Plans

65. Comment six (6) noted for EPD the trend that EPA has been “encouraging the development of comprehensive release reporting and countermeasure plans that incorporate release reporting under the various environmental laws and regulations into one document.” Alcoa Comments at p. 9.

66. Alcoa’s comment six also brought to attention EPA’s preference for such integrated contingency plans (ICPs) and that Alcoa’s has developed such a plan according to EPA guidance on the topic. Alcoa requested that EPD add language to the General Permit to recognize facilities with ICPs. Alcoa Comments at p. 9.

67. EPD responded to Alcoa’s request for recognition of facilities with ICPs by indicating that “EPD does not feel that a change in the permit is justified at this time.” EPD Response at p. 4.

68. Alcoa reasserts that the following language be added to Part IV.D. of the General Permit to recognize those facilities with ICP’s :

1. IV.D.6.- end of paragraph; “Facilities that have prepared a comprehensive release reporting plan that complies with EPA’s guidance on integrated contingency plans (ICP) that incorporates the provision of Part IV Storm Water Pollution Prevention Plans in the entirety (as required) shall comply with that plan.”
2. IV.D.8. - end of paragraph; “ Facilities that have prepared a comprehensive release reporting plan that complies with EPA’s guidance on integrated contingency plans (ICP) that incorporates provision of SARA Title III, Section 313 water priority chemicals, including appropriate BMPs, shall comply with that plan.”

69. EPD failed to adequately respond to Alcoa’s comments in violation of the Georgia Administrative Procedure Act § 50-13-4 and 40 C.F.R. § 124.18. Further, EPD’s failure to recognize facilities that have ICPs without justification is arbitrary and capricious.

(iv) Comment 7: Exemption from monitoring requirements for fiber optic cable manufacturers

70. Comment seven (7) requested an exemption of facilities in a certain SIC code from the monitoring requirements because they do not fit within the category of primary metal industries intended for coverage under the General Permit. Alcoa Comments at p. 9.

71. Alcoa believes that “Fiber optic cable manufacturing was placed in SIC 33(3357) for convenience and because other metal cable manufacturers were already in this code, not because it is a primary metal industry,” and commented on the distinguishing characteristics of fiber optic manufacturers. Alcoa Comments at pp. 9-10.

72. Alcoa also pointed out that the SIC code system relied upon by EPD in the General Permit was “developed for economic statistical gathering...and not for environmental purposes,” and that “even EPA exempted and/or regrouped certain SIC codes under their [sic] storm water rules.” Alcoa Comments at p. 10.

73. EPD responded that it “understands that the SIC Code system was not developed for environmental purposes,” but that it has no “authority to alter or make exceptions to the SIC Code system.” EPD Response at p. 4.

74. Alcoa asserts that the following revisions should be made to the language of VI.A.2.a. of the General Permit to exempt fiber optic cable manufacturers from the storm water monitoring requirements:

1. VI.A.2.a. - first sentence: “Facilities with storm water discharges classified as Standard Industrial Classification (SIC) major group 33 (Primary Metal Industry) with the exception of those establishments primarily engaged in manufacturing insulated fiber optic cable....”

75. Alcoa did not ask EPD to modify or alter the SIC code itself but to allow for a specific exemption from monitoring requirements under the General Permit for facilities in a certain SIC code. EPD’s response is an irrelevant and inadequate response to Alcoa’s comments.

Further, EPD's refusal to allow a specific exemption to the monitoring requirements without justification is arbitrary and capricious.

(v) Comment 8: Clarification of scrap metal recycling for monitoring requirements

76. Comment eight (8) requested recognition that certain types of operations that could be considered as scrap metal recycling facilities have "little impact on storm water," and thus should be exempt from storm water monitoring requirements in Part VI.A.2. of the General Permit. Alcoa Comments at p. 10.

77. Alcoa referred to EPA's interpretation in the Multi-Sector General Permit to affirm its belief that certain recycling facilities that recover consumer good materials (i.e. glass, newspaper, tin and aluminum cans, etc.) can be distinguished from true scrap metal recyclers with regard to the exposure of significant materials. Alcoa Comments at p. 10.

78. EPD's responded to Alcoa's comment reiterating that Part VI.A.2. applied to "automobile salvage yards, battery reclaimers, and scrap metal recycling facilities," but it failed to answer Alcoa's request to clarify the definition of "scrap recycling facilities" itself. EPD Response at p. 4.

79. EPD's failure to respond to Alcoa's comment is inadequate under the Georgia Administrative Procedure Act § 50-13-4 and 40 C.F.R. § 124.18. Also, EPD's failure to define or clarify the term "scrap recycling facilities" in the General Permit is arbitrary and capricious.

80. Alcoa suggests that the following language be added to clarify the monitoring requirements of Part VI.A.2. of the General Permit:

1. VI.A.2.(t) - end of paragraph; "Material recovery facilities that receive only source-separated recyclable materials (e.g., glass, plastic, aluminum cans, paper, newspaper, tin cans, magazines, and alike) primarily from commercial and residential sources do not require monitoring under this Part of the General Permit."

(vi) Comment 9: Request for variance from storm event sample type parameters

81. Comment nine (9) recommended that EPD allow for slight variations from the required storm event parameters because “experience has shown that certain precipitation events outside these ranges would be acceptable for storm water monitoring purposes.” Alcoa Comments at p. 10.

82. Alcoa believes that this is important because it would allow for alternative but effective storm event sampling even when EPD designated storm events do not occur. Alcoa Comments at p.10-11.

83. Again, EPD’s only response was that “EPD does not believe that this would be an appropriate change to the permit at this time.” EPD Response at p. 5.

84. Alcoa reasserts that the following language be added to Part VI.A. of the General Permit to allow for reasonable deviations from the storm sample types:

1. VI.A.3.a.(1)- end of paragraph; “Deviations from the parameters listed above are permissible (i.e. less than 0.1 inch storm event or less than 72 hours between storm events) so long as the conditions and rationale for the alternate parameters are scientifically supportable and equivalent results are achieved. Any such deviation using a lower rainfall amount or shorter period between storm events must be documented and an explanation of equivalency must accompany the results. In the event that EPD disagrees with the equivalency determination, it reserves the right to notify the discharger in writing to comply with the 0.1 inch and 72 hour requirements described above.


85. EPD’s response and refusal to explain or demonstrate the need for rigid storm event parameters is inadequate and in violation of the Georgia Administrative Procedure Act § 50-13-4 and 40 C.F.R. § 124.18. Further, EPD’s refusal to allow alternative storm event sampling without justification is arbitrary and capricious.

RELIEF REQUESTED

WHEREFORE, Alcoa respectfully requests the following relief:

1. An order staying General Permit No. GAR000000 pending a final determination on the issues raised above;
2. A full hearing on the merits of this Petition for Hearing;
3. An order to the Director of the Environmental Protection Division requiring a modification or amendment to General Permit No. GAR000000 consistent with the issues raised in this Petition for Hearing; and
4. Such other relief as the administrative law judge deems appropriate.

Respectfully submitted this 20th day of April, 2005,



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**STATE OF GEORGIA
DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION DIVISION**

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PETITIONER :

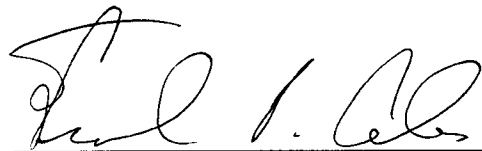
CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of April, 2005 I did cause to be served the original and three (3) copies of this Petition for Hearing and Stay Pending Final Action by First Class United States Mail on the Director of the Environmental Protection Division, Carol Couch, Ph.D., at the following address:

Environmental Protection Division
Attn: Carol Couch, Ph.D., Director
Georgia Department of Natural Resources
205 Butler Street, SE
Suite 1152, East Floyd Tower
Atlanta, GA 30334

With a copy served by certified mail to the Attorney General for the State of Georgia, Thurbert E. Baker, Esq. at the following address:

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