



FACT SHEET: LONGLEAF APPEAL

The final order of the Superior Court of Fulton County (June 30, 2008) cited six reasons why the permit issued for the Longleaf Energy Station is invalid.

Violations of Health-Based Air Quality Standards

- 1. The ALJ ignored evidence that the coal plant would violate national health-based air quality standards for fine particulate matter.**
 - The federal Clean Air Act prohibits any industrial source from emitting pollution unless it can demonstrate that it will not violate federal air quality standards.
 - A national modeling expert modeled Longleaf's emissions for fine particles (PM2.5) and concluded that the coal plant would violate air quality standards. Although this modeling is relatively inexpensive, Longleaf never modeled for PM2.5 but relied upon a "surrogate" model using larger particles (PM10). The state environmental agency (EPD) and the Administrative Law Judge (ALJ) ignored the evidence that showed violations for PM2.5 and instead relied **solely** on Longleaf's modeling.
 - Consistent with the position of the federal EPA, the Fulton County Superior Court found that evidence of violations of PM2.5 standards cannot be ignored and must be considered in deciding whether to permit the plant.

No Carbon Dioxide Limits

- 2. There was no effort to analyze or limit CO2 emissions.**
 - Language in the Clean Air Act requires that an emissions limit be set for "any pollutant" that is "subject to regulation" under the Act.
 - Since *Mass v. EPA* decided that CO2 is a "pollutant," if CO2 is "subject to regulation," then EPD is required to set an emissions limit for that pollutant.
 - Because there are literally hundreds of regulations under the Act that address CO2, the court only had to put two and two together to find that the CO2 is subject to regulation under the Act, and therefore the Longleaf permit must have a CO2 limit. As there was no CO2 limit, the Court found that the permit was invalid.
 - The Court's decision does not prohibit CO2 emissions, nor does it require the use of technologies that are infeasible or too expensive. The decision only requires that EPD set limits based on the best available technologies.



Failure to Consider IGCC Technology

3. EPD and Longleaf Energy Associates failed to consider relevant pollution control technologies

- Despite claims that Longleaf will be a “clean coal” plant, neither EPD nor the coal company even **considered** important, cleaner technologies in the permitting process. EPD did not require that Longleaf consider using Integrated Gasification Combined Cycle (IGCC), a process which involves gasifying coal and burning the gas instead of the coal itself. This technology could greatly reduce emissions of pollutants from the plant.
- The Court found that the law requires that EPD and Longleaf Energy Associates **consider** IGCC in permitting the plant. The Court did not require that Longleaf **use** IGCC – only that EPD and Longleaf **consider** the technology.

Process Errors

4. No professional engineers were involved with setting the emissions limits in the permit.

- Georgia law and the Georgia Board of Engineers require that the kind of analysis performed to establish emissions limits be performed by qualified, licensed, professionals. The Court found that no licensed professional engineer was involved with setting the emission limits for the plant and sent the permit back to ensure that it was issued by “qualified” professionals.

5. The ALJ applied the incorrect standard of review.

- The ALJ is required to act as an independent reviewer of the agency’s decisions. In this case, when reviewing EPD’s decisions relative to the Longleaf permit, the ALJ gave too much deference to EPD. The Court found that the ALJ erred by failing to make independent “de novo” – Latin for “a new” – findings and decisions. Instead, the ALJ applied a much less stringent standard that improperly deferred to EPD’s decisions. The Court sent the permit back to the ALJ to reissue its opinion applying the correct standard of review.

6. The ALJ improperly refused to consider evidence on the health risks of the plant.

- The Court found that two claims had been improperly dismissed on procedural grounds. These claims pertained to whether Longleaf had adequately studied the health impact of the plant on the local community.
- The Court’s ruling allows these claims to be heard by a judge. www.green-law.org