



Giving Georgia's Environment Its Day In Court

VIA EMAIL DELIVERY

Mr. Eric Cornwell

Manager, Stationary Source Permitting Program

Georgia Air Protection Branch

4244 International Parkway, Suite 120

Atlanta, GA 30354

Re: Draft Renewal Title V Major Source Operating Permit for the Wansley Steam-Electric Generating Plant, Permit No. 4911-149-0001-V-03-0

Dear Mr. Cornwell:

GreenLaw respectfully submits the following comments on the draft Major Source Operating Permit (“Draft Permit”) for Southern Company/Georgia Power Company’s (“SC/GPC”) Wansley Steam-Electric Generating Plant on behalf of Fall-line Alliance for a Clean Environment¹, Ogeechee Riverkeeper,² Southern Alliance for Clean Energy³ and Sierra Club.⁴ The Draft Permit has been placed on public notice for Clean Air Act (“CAA” or “Act”) Title V permit renewal by the Georgia Environmental Protection Division (“EPD”). We appreciate the opportunity to submit these comments.

¹ Fall-line Alliance for a Clean Environment (“FACE”) is an organization of 200 members and supporters that has been at the forefront of investigation, education, and advocacy for a safe and clean environment for the Middle Georgia area identified geographically as the Fall Line. FACE’s primary work focuses on the threat posed by coal-generated power, and specifically the toxic pollutants emitted by coal-fired power plants and impacts from these pollutants on the quality and availability of water supplies. The organization has also been active on issues including landfills, tire incinerators, and land use.

² Ogeechee Riverkeeper (“ORK”) is membership corporation with approximately 1400 members. ORK’s mission is to protect, preserve and improve the water quality of the Ogeechee River basin. One of the pollution concerns in the Ogeechee River basin is due to mercury, which is emitted in large quantities by power plants.

³ Southern Alliance for Clean Energy (“SACE”) has been a leading voice for energy policy to protect the quality of life and treasured places in the Southeast since 1985. <http://www.cleanenergy.org/index.php?/Who-We-Are.html>.

⁴ Sierra Club is a national nonprofit organization with over 1.3 million members nationwide. The Georgia chapter has 117,000 members in Georgia, some of whom live, work, and recreate in the vicinity of Plant Wansley and/or in areas impacted by emissions from the Plant. The mission of Sierra Club is to explore, enjoy and protect the wild places of the earth, practice and promote the responsible use of the Earth’s ecosystems and resources, educate and enlist humanity to protect and restore the quality of the natural and human environment, and use all lawful means to carry out these objectives.

I. Background

The Wansley Electric Generating Plant (“Plant Wansley” or “Plant”) is situated on 5,200 acres near Carrollton, Georgia. Plant Wansley consists of two 865 megawatt coal-fired units, one 60 megawatt oil-fired combustion turbine burning No. 2 fuel oil, and four natural gas-fired combined-cycle power blocks. The draft permit covers only the two coal-fired units and the oil-fired combustion turbine.

Emissions from the two coal-fired units are controlled by flue gas sulfurization for the control of sulfur dioxide (“SO₂”) emissions, selective catalytic reduction for the control of nitrogen oxide (“NO_x”) emissions, and electrostatic precipitators (“ESPs”). Emissions from the oil-fired combustion unit are controlled by water injection.

During normal operation, each of the coal-fired units exhaust to separate liners within a single stack⁵; the combustion turbine has its own 32-ft exhaust. Draft Permit at 1. During bypass, it appears that the steam-generating units exhaust to separate liners within another stack. Permit Application at A7.

The previous Title V permit for the Plant expired on January 1, 2012. 2007 Title V Permit at 1. EPD received SC/GPC’s application for renewal of the Title V permit for the Plant on June 29, 2011. Narrative at 1. EPD issued for public notice the Draft Permit and an accompanying Narrative for this facility. The deadline for public comment is May 18, 2012.

II. Regulatory Framework

All major stationary sources of air pollution are required to apply for operating permits under Title V of the CAA. These permits must include emission limitations and other conditions necessary to assure continuous compliance with all applicable requirements of the Act, including the requirements of the applicable State Implementation Plan (“SIP”). See 42 U.S.C. §§ 7661a(a) and 7661c(a). The Title V operating permit program does not generally impose new substantive air quality control requirements but does require that permits contain monitoring, recordkeeping, reporting, and other requirements to assure continuous compliance by sources with all existing applicable emission control requirements. 57 Fed. Reg. 32250, 32251 (July 21, 1992) (EPA final action promulgating Part 70 rule). One purpose of the Title V program is to “enable the source, states, EPA, and the public to better understand the requirements to which the source is subject, and whether the source is meeting those requirements.” Id. Thus, the Title V program is a vehicle to ensure appropriate application of and compliance with applicable CAA requirements.

The regulations require each Title V permit to include “[e]missions limitations and standards, including those operational requirements and limitations that assure compliance with

⁵ There appears to be some contradiction between the application and the permit as to the exhaust during normal and bypass operations. See below, section IVd.

all applicable requirements at the time of permit issuance.” See Ga. Comp. R. & Regs. r. 391-3-1-.03(10)(d)1(i) (incorporating by reference 40 C.F.R. § 70.6(a)) (emphasis added). Permits must also include “[a]ll emissions monitoring and analysis procedures or test methods required,” and “periodic monitoring sufficient to yield reliable data from the relevant time period that is representative of the source’s compliance with the permit.” See id. Monitoring requirements must “assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement.” Ga. Comp. R. & Regs. r. 391-3-1-.03(10)(d)3 (incorporating by reference 40 C.F.R. § 70.6(c)); see 40 C.F.R. § 70.6(c)(1) (requiring “compliance certification, testing, monitoring, reporting and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit”).

A Title V permit is issued for a term of no more than five years, 40 C.F.R. § 70.6(a), and the applicant must submit an application for renewal of the permit “at least 6 months prior to the date of permit expiration, or such other longer time as may be approved by the Administrator that ensures that the term of the permit will not expire before the permit is renewed.” 40 C.F.R. § 70.5(a)(1)(iii). Permit renewals are subject to the same procedural requirements, including those for public participation and EPA review that apply to initial permit issuance. 40 C.F.R. § 70.7(c)(1)(i). Permitting authorities should analyze timely filed renewal applications and issue renewed permits *prior to expiration* of the existing Title V permit.

III. Address

The Plant is physically situated on 5,200 acres located in Carroll and Heard counties, and thus should be subject to nonattainment standards in both counties. As Carroll County is nonattainment for particulate matter less than 2.5 micrometers (“PM_{2.5}”), and Carroll County is nonattainment for ozone, the Draft Permit should incorporate standards for major facilities in nonattainment areas for both pollutants. Narrative at 2, 10.

As currently drafted, the permit contains nonattainment provisions for ozone, but not for PM_{2.5}. See Narrative at 10. The provisions responding to PM_{2.5} should be revised to reflect that the Plant lies within a nonattainment area for PM_{2.5} as well.

IV. The Draft Permit is Incomplete

The Draft Permit does not fulfill the Title V program’s fundamental purpose: to consolidate in a single document all CAA requirements that apply to a source. The lack of information and clarity undermines the central purpose of the Title V program, which is to allow the “source, States, EPA and the public to better understand the requirements to which the source is subject, and whether the source is meeting those requirements.” 57 Fed. Reg. 32250, 32251 (July 21, 1992).

a. Ownership and Operational Units

The Draft Permit should clearly identify the entities responsible for liability imposed on the Plant under the Clean Air Act and Georgia statutes and regulations. Further, the Draft Permit should be revised to include all activities on the Title V site.

The current Draft Permit does not discuss ownership of the Plant, resulting in ambiguity as to which corporate entities are bound by the terms of the Draft Permit, and whether EPD can practically enforce such terms. According to Georgia Power, the units covered within the Draft Permit (Units 1, 2, and 5A) are jointly owned by Georgia Power, Oglethorpe Power, MEAG Power and the City of Dalton. February 14, 2007 Georgia Power Petition to Have the Administrator Object to Wansley Steam-Electric Generating Plant's Title V Permit ("2007 Wansley Petition"), available at http://www.epa.gov/region7/air/title5/petitiondb/petitions/gapower_wansley_petition2008.pdf (last accessed May 18, 2010) at 3. However, while it appears that only the "Permittee" is bound by the terms and conditions of the Draft Permit, that term is undefined within the Draft Permit. This lack of definition results in an ambiguity as to whether the "Permittee" is Plant Wansley and thus comprised of the four entities discussed above, or if the "Permittee" is SC/GPC and thus no liability can be imposed on the other three entities that own Plant Wansley. This lack a specific definition, as well as discussion regarding the other owners, could lead to administrative inefficiency and waste of resources should EPD find that enforcement against the "Permittee" is required. This should be addressed in the final permit by including a precise definition of "Permittee," which should include both a discussion of the various owners and a provision stating that Georgia Power is primarily charged with all liability on the units covered by the Draft Permit.

Further, the Draft Permit is incomplete because it does not include the other units that make up the entire Title V site. See Draft Permit at 1. Title V of the Clean Air Act defines "major source" as "any stationary source (or any group of stationary sources located within a contiguous area and under common control)" that is also a major source as defined by Section 112 or the General Provisions of the Act. 42 U.S.C. § 7661(2) (citing 42 U.S.C. § 7412 and 42 U.S.C. § 7602, defining criteria and hazardous pollutant thresholds for "major" sources). The EPA has previously found that property ownership and corporate ownership are both independently sufficient to find "common control." See *Sierra Club v. EPA*, 496 F.3d 1182, 1188 (11th Cir. 2007) (finding that Georgia Power and Oglethorpe share ownership of Plant Sherer Units 1 & 2 and discussing EPA's evaluation of Oglethorpe's compliance history under theory that Oglethorpe controlled said units); see also, 2007 Wansley Petition at 8 ("Ownership Interests. Common control can be established through (corporate or property) ownership.") (citing to Letter to Mr. Michael L. Rodburg, Lowenstein, Sandler, Kohl, Fisher & Boylan from Steven C. Riva, Chief, Permitting Section, Air Programs Branch, U.S. EPA Region 2 (November 25, 1997)). Since MEAG and Oglethorpe Power control Units 1, 2, and 5A by ownership interests in those units, and Southern Power and Georgia Power have a "corporate relationship" as both are owned by Southern Company, there is common control throughout the units that

comprise the Title V site. See 2007 Wansley Petition at 3. As a result of this common control, the Title V permit should be revised to include the other units that comprise the Title V site, namely, those units identified under AFS No. 149-00001, 149-00011, 149-00006, 149-00007.

Additionally, the Draft Permit is incomplete because it does not include the activities of the ash-processing facility, treating it as a separate, and thus minor, source of air pollutants. Draft Permit at 1. Although the ash processing facility is not operated by GPC, this is not enough to make it a separately regulated source. As discussed in the preceding paragraph, Title V defines “major source” to include contiguous property under common control. EPD reasons that even though the ash processing facility is “contiguous” to the Plant, there is “no common control.” Draft Permit at 1. However, the Plant cannot continue to operate without some sort of ash processing or disposal, and it must not be artificially segmented in order to escape applicable regulations or to disaggregate the relevant applicable regulations into different permits. As phrased in the Draft Permit, “Plant Wansley is currently contracting with an ash processing facility located on site. . . .” Id. GPC asserts control through the terms of the contract. The ash-processing facility is only one of the ancillary facilities that could potentially be contracted out by the Plant's operator, and it is inappropriate to treat any subpart of the Plant as a separate source simply because GP has contracted with another entity to process its waste.

b. Megawatt Capacity and Heat Input Rates

The narrative lists the “maximum heat input capacity” for each of the primarily coal-fired steam generating units as 9420 million British Thermal Units per hour (“MMBtu/hr”) and for the combustion turbine unit 5A as 904 MMBtu/hr. Narrative at 8.

It is not clear that any of the above values represent a maximum allowable heat input for each unit, nor is any such value stated in the Draft Permit. It is essential to the integrity of the Draft Permit's emissions limitations that the maximum allowable heat inputs be stated clearly in the Title V permit. Heat input values and pollutant emission factors are used to estimate the maximum emissions of pollutants from the Plant. Pollutant emission rates or limits are expressed as pounds per MMBtu (“lb/MMBtu”) heat input. Thus, both the legal limit on emissions and the amount of pollutants actually emitted change in proportion to the heat input, all other things being equal. Without maximum hourly heat input values, the Draft Permit fails to inform the public of the amount of pollutants the Plant will potentially emit on a short-term basis, and fails to inform as to the quantity of emissions that can be emitted on a short-term basis by each Unit. Stating maximum heat input values in the Narrative is not sufficient because, as the Narrative states, it is provided merely “as an adjunct for the reviewer and to provide information” and “has no legal standing.” Narrative at 1.

c. Unclear and Incomplete Permit Terms

The Draft Permit purports to be a stand-alone document, stating on its face that it is “subject to and conditioned upon the terms, conditions, limitations, standards, or schedules

contained in or specified on the attached **57** pages.” Draft Permit cover page (emphasis in original). However, the Draft Permit and Narrative both reference the requirements of other key documents that are not contained within the four corners of the Draft Permit. This creates confusion about what in fact constitutes the permit and whether requirements that lie outside the fifty-seven pages of the permit are practically and federally enforceable. The permit must incorporate and consolidate all applicable requirements, and the public must have adequate notice of precisely what constitutes the Draft Permit.

d. The Permit Must Address, Define and Limit Bypass Operations

The application submitted by Georgia Power states “[s]team generating unit 1 and 2 each exhaust through separate liners of the 675 foot stack, except when in bypass mode when they each exhaust through separate liners of the 1000 foot stack.” Application at A7. However, section 1.3 (Overall Facility Process Description) of the Draft Permit only discusses exhaust through the 1000 foot stack, with no discussion of exhaust during bypass operations. Draft Permit at 1 (“Each steam generating unit exhausts through its own stack liner in the 1000-ft stack.”). This inconsistency should be corrected by clarifying the facility processes during bypass operations.

Further, although the Draft Permit does mention a “scrubber bypass stack,” neither the Narrative nor the Draft Permit explains or defines the circumstances under which bypassing the scrubber is allowed. Bypass of the scrubber should only be allowed under those circumstances exempted by Rules (sss) and (uuu) – otherwise, the Draft Permit violates those rules. At a minimum, the Draft Permit should be revised to clarify that scrubber bypass is not permitted outside of the exceptions contained in paragraph 20 of Rule (sss) (as revised) and paragraph 4 of Rule (uuu). Moreover, those exceptions should be limited and clarified as suggested in Section VI, below, so that bypass occurs only in rare, unforeseen and unavoidable circumstances.

V. Emission Standards

a. Heat Inputs

As explained above in Part IV.b., an increase in hourly heat input rate increases pollutant emissions from the Units at the Plant, and effectively increases their lb/MMBtu emission limitations. It is important that these values not only be included in the permit, but also that they be made enforceable limits. Without an enforceable maximum hourly heat input limit, each Unit is unconstrained as to its maximum short-term emissions.

Maximum short-term pollutant emissions from the Plant can form the basis for air quality planning, i.e., an assessment of air quality impacts from this source, and establishing emissions limitations necessary to achieve and maintain compliance with air quality standards. A higher heat input may require more stringent lb/MMBtu emission limitations, control efficiency requirements or operational conditions in order to assure compliance with other air quality standards such as the new short-term one-hour NAAQS for NO_x and SO₂.

Finally, without enforceable maximum hourly heat input limits, the public and affected states have no opportunity to review and comment on a plant with a higher heat input (and thus higher actual emissions and effectively higher total emissions limitations) than what is identified in the Draft Permit. The rated heat inputs represented by GPC in its permit application and relied upon by EPD in issuing any permits for the Plant are applicable requirements (as are all data and assertions in the application) and must be stated as such and included in the permit as conditions that are subject to monitoring, record-keeping and reporting requirements adequate to demonstrate compliance.

b. Fuel Flexibility

The Draft Permit allows the Plant to burn almost any type of fuel, without regard to the pollutant characteristics of the fuels, and without limiting the percentage of non-coal fuels used. Although the Plant's steam-generating units "primarily burn coal," Draft Permit at 1, the permittee is permitted to blend the coal with sawdust and biomass, or fire used oil and coal-derived synthetic fuel. Draft Permit at 3-4. The Plant is also permitted to burn No. 2 fuel oil, biodiesel, or biodiesel blends for startup and shutdown, and "to assist in achieving peak load, and flame stabilization." *Id.* The addition to or replacement of coal with any of the other permitted fuels could significantly change the pollutant profile of this plant. Further, the fuel characteristics of different coals such as heat value and the content of pollutants such as mercury and sulfur also affect the type and quantity of pollutants emitted. Thus, the use of non-coal fuels must be more specifically defined and strictly limited in the final permit. The chemical characteristics of all permitted fuels, including coal, should be monitored and limited.

The only restrictions placed on the use of these alternative fuels are on coal-derived synthetic fuel, used oil and biomass. The Draft Permit limits the percentage the mercury and binder content of the coal-derive synthetic fuel, and the used oil may not be burned during startup or shutdown. However, there are no limits on the quantity or characteristics of any of these fuels, and no limits on fuel characteristics but for those on mercury and binder in coal-derived synthetic fuel. Further, the one meaningful limitation to the definition of "Biomass," municipal solid waste, still leaves a very broad range of materials that may fall under this term. As to the use of No. 2 fuel oil, biodiesel, and biodiesel blends, the operational conditions during which these fuels may be used are much too vaguely defined. Because the Draft Permit does not limit the maximum hourly heat input rate, allowing the burning or blending of various non-coal fuels could drastically affect the Plant's actual emissions, even when burning fuels that otherwise meet the permit's lb/MMBtu specifications.

The final permit should specifically limit the use of non-coal fuels, because the permit as drafted allows SC/GPC to switch fuels, which would significantly change the emissions contemplated by EPD in issuing this permit. EPD and GPC should perform a thorough and public analysis of the type and quantity of pollutants that may be emitted by all permitted fuels in all potential combinations. Fuel characteristics such as heat input, mercury content, and sulfur

content should be limited and monitored. EPD should also require the permittee to monitor and report the types of fuels actually used at the Plant, including the quantities burned and the pollutant characteristics of each. The permit must also explain what is meant by “achieving peak load” and “flame stabilization” in terms that meaningfully limit when No. 2 fuel oil and biodiesels may be used. Startup and shutdown should also be more strictly defined, as described in Section VI below.

c. Particulate Matter

i. The PM Limit Should be Significantly Lowered

Particulate matter (“PM”), also called particle pollution, is a complex mixture of extremely small particles and liquid droplets in the air. When breathed in, these particles can reach the deepest regions of the lungs. Exposure to particle pollution is linked to a variety of significant health problems, ranging from aggravated asthma to premature death in people with heart and lung disease. Particle pollution is also the main cause of visibility impairment in the nation’s cities and national parks.

The Draft Permit imposes a weak limit on PM emissions from the two steam-generating units of 0.24 lb/MMBtu. Draft Permit at 7, Condition 3.4.1. This lax PM limit derives from Ga. Comp. R. & Regs. r. 391-3-1-.02(2)(d)1(iii), which applies to air emission units constructed or under construction prior to January 1, 1972. It is a grandfathering provision that gave older facilities like Plant Wansley a limit that is unreasonably high by modern standards under the assumption that those units were destined for retirement or would be updated with modern pollution controls.

As noted, Plant Wansley was required to install modern pollution controls by Rule (sss) – specifically, selective catalytic reduction and flue gas desulfurization. According to the Narrative, “GA Power proposes to designate the FGD scrubber as the primary control device to achieve compliance with the PM standard.” Narrative at 26. During periods of scrubber bypass, emissions would be vented to the Plant’s ESP device.

With these controls in place, the Draft Permit’s PM limit is unreasonably lenient. As a comparison, the EPD assigned a rate of .012 lb/MMBtu for PM_{2.5} to the proposed Longleaf facility, and the Draft Permit should include rates that are at least as stringent. Operational variability and the proper operation of the Plant’s control devices can significantly affect PM and opacity emissions. Thus, a lower PM limit can lower actual emissions by forcing a facility to change the way it operates its pollution control equipment. The 0.24 lb/MMBtu limit gives the Plant an enormous compliance margin, and no incentive to operate its controls efficiently or otherwise minimize emissions.

ii. Coarse and Fine Particle Pollution Should be Limited and Monitored Separately

Currently, the Draft Permit inadequately regulates “particulate matter” or “PM” rather than regulate two different types of PM separately. The term “particulate matter,” or “PM,” includes two different types of pollutants: fine particle pollution, or PM_{2.5}, and coarse particle pollution, or PM₁₀. Both forms of PM have been linked to numerous deleterious health effects, including decreased lung function, aggravated asthma, chronic bronchitis, irregular heartbeat, heart attacks, and premature death. However, PM₁₀ and PM_{2.5} differ significantly, and separate NAAQS exist for each pollutant. Both PM₁₀ and PM_{2.5} should be clearly regulated in the Draft Permit.

PM₁₀ and PM_{2.5} are distinct air pollutants that do not share the same physical or behavioral characteristics. See, e.g., EPA, “Clean Air Fine Particle Implementation Rule” 72 Fed. Reg. 20586, 20599 (April 25, 2007) (“PM[2.5] also differs from PM[10] in terms of atmospheric dispersion characteristics, chemical composition, and contribution from regional transport.”). PM₁₀ and PM_{2.5} pose different kinds and levels of risk to human health. Because of its extremely small size, PM_{2.5} can penetrate deep into the lungs, enter the blood stream, and cross the blood-brain barrier. As a result, PM_{2.5} pollution causes more frequent and severe adverse health effects than PM₁₀. EPA, “National Ambient Air Quality Standards for Particulate Matter,” 62 Fed. Reg. 38652, 38665 (July 18, 1997). EPA has recognized a significant correlation between elevated PM_{2.5} levels and premature mortality. See, e.g., EPA, “Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}),” 73 Fed. Reg. 28321, 28324 (May 16, 2008). Older adults, people with heart and lung disease, and children are particularly sensitive to PM_{2.5} exposure. Id.

Finally, and most importantly, because of their different physical and behavioral characteristics, PM₁₀ and PM_{2.5} are not effectively treated with the same pollution controls. In fact, EPA has recognized that PM₁₀ controls do not effectively control PM_{2.5}: “In contrast to PM[10], EPA anticipates that achieving the NAAQS for PM[2.5] will generally require States to evaluate different sources for controls, to consider controls of one or more precursors in addition to direct PM emissions, and to adopt different control strategies.” 72 Fed. Reg. 20586, 20589; see also 62 Fed. Reg. at 38666.

EPA has confirmed that any technical impediments to the separate regulation of PM_{2.5} have been resolved. 73 Fed. Reg. at 28340 (“With this final action [establishing NSR regulations for PM_{2.5} and eliminating the PM₁₀ Surrogacy Policy] and technical developments in the interim, these difficulties have largely been resolved.”). Moreover, EPA announced in the final PM_{2.5} implementation rule that for Title V permits, “as of the promulgation of this final rule, the EPA will no longer accept the use of PM₁₀ emissions information as a surrogate for PM_{2.5} emissions information given that both pollutants are regulated by a National Ambient Air Quality Standard and therefore are considered regulated air pollutants.” Clean Air Fine Particle Implementation

Rule; Final Rule, 72 Fed. Reg. 20586, 20660 (April 25, 2007) (footnotes omitted). EPA explained its decision as follows:

Under the Title V regulations, sources have an obligation to include in their Title V permit applications all emissions for which the source is major and all emissions of regulated air pollutants. The definition of regulated air pollutant in 40 CFR 70.2 includes any pollutant for which a NAAQS has been promulgated, which would include both PM₁₀ and PM_{2.5}. To date, some permitted entities have been using PM₁₀ emissions as a surrogate for PM_{2.5} emissions. Upon promulgation of this rule, EPA will no longer accept the use of PM₁₀ as a surrogate for PM_{2.5}. Thus, *sources will be required to include their PM_{2.5} emissions in their Title V permit applications, in any corrections or supplements to these applications, and in applications submitted upon modification and renewal.* See 40 CFR 70.5(c)(3)(i), 70.5(b), and 70.7(a)(1)(i); 40 CFR 71.5(c)(3)(i), 71.5(b), and 71.7(a)(1)(i).

Id. (emphasis added). The EPA has thus clearly stated that this Draft Permit is deficient and must be revised to include emission limits and monitoring specifically for PM_{2.5}.

d. Opacity

The Draft Permit specifies a 40 percent opacity limit measured over three-hour block averages for each of the Plant's main boilers. Draft Permit at condition 3.4. As with the lax PM limit, the 40 percent opacity limit is too high to ensure efficient operation of control devices and other operational practices that would minimize particulate emissions. It also fails to account for spikes in PM and opacity emissions resulting from operational variability. This extremely lenient opacity limitation must be strengthened to no more than 20 percent to assure proper operation and maintenance of the Plant's particulate controls, particularly during scrubber bypass.

e. The Draft Permit Should Contain Alternative Sections for CAIR and CSAPR Requirements

Currently, the Draft Permit contains provisions designed to comply with requirements under the Clean Air Interstate Rule ("CAIR"); however, the EPA has promulgated the final Cross-State Air Pollution Rule ("CSAPR") as a replacement to CAIR. Although CSAPR is currently stayed pending judicial review, it is likely that the provisions will be effective during the term of the permit. As a result, the draft permit should contain alternative conditions that will replace CAIR requirements and ensure compliance with CSAPR.

Specifically, the Draft Permit currently includes an annual NO_x allowance allocation for the Plant's units through 2013. Draft Permit at 43. However, if CSAPR survives judicial review, it will replace CAIR and all of its compliance requirements. It will impose an annual allowance trading program for SO₂ and NO_x to reduce transport of fine particulate matter and a

separate ozone season NO_x allowance trading program to reduce ground-level ozone. CAIR annual and seasonal NO_x allowances will have no value for CSAPR compliance purposes, although the Acid Rain SO₂ program will continue as a separate program.

The final rule is structured as a Federal Implementation Plan (“FIP”). EPA has given Plant Wansley the following allocations under the final rule:

	SO ₂ Allocation 2012 (tons)	SO ₂ Allocation 2012 (tons)	NO _x Annual Allocation 2012 (tons)	NO _x Annual Allocation 2014 (tons)	NO _x OS Allocation 2012 (tons)	NO _x OS Allocation 2014 (tons)
1	10,672	6,389	4,036	2,606	757	757
2	10,276	6,152	3,887	2,509	776	776
5A	1	1	0	0	0	0
6A	3	3	58	58	32	32
6B	3	3	57	57	28	28
7A	3	3	67	67	49	49
7B	3	3	55	55	27	27
CT9A	1	1	57	57	23	23
CT9B	1	1	66	66	23	23

The above allocations give the facility both an SO₂ and an ozone season NO_x allocation, whereas the CAIR provisions of the Draft Permit provide allocations only for annual NO_x. See Draft Permit at 43.

To ensure that these limits are included within the Draft Permit, EPD should include a discussion of CSAPR provisions, alternative limitations and effective dates. Two suggestions would be to express such limits either as 7.15(a) (CAIR) and 7.15(b) (CSAPR); or to include an appendix of alternative emission limits to replace condition 7.15.

VI. Excess Emissions

The Draft Permit contains two conditions covering excess emissions: one covering emergencies (Condition 8.13) and the other covering excess emissions resulting from startup, shutdown or malfunction (Condition 8.14.4). The former is modeled virtually verbatim after 40 C.F.R. § 70.6(g) and therefore appears legally sufficient. The latter provision, however, is flawed in multiple ways and requires significant revision.

a. Condition 8.14.4 Should Not Include an Affirmative Defense

The Draft Permit exempts the Units from emissions limitations during periods of startup, shutdown, and malfunction. Condition 8.14.4 provides the facility with an affirmative defense against enforcement if it can meet certain showings – although unlike the condition governing excess emissions due to emergency (Condition 8.13), it does not use the term “affirmative defense” or even provide that the facility has the burden of establishing the criteria set out in subparagraphs (i) through (iii). Nevertheless, the condition functions like an affirmative defense provision because it allows the Permittee to escape enforcement under certain circumstances.

Specifically, it provides that “excess emissions resulting from startup, shutdown, or malfunction of any source which occur though ordinary diligence is employed **shall be allowed**” provided three criteria are met, namely that:

- i. The best operational practices to minimize emissions are adhered to;
- ii. All associated air pollution control equipment is operated in a manner consistent with good air pollution control practice for minimizing emissions; and
- iii. The duration of excess emissions is minimized.

In contrast, “[e]xcess emissions which are caused entirely or in part by poor maintenance, poor operation, or any other equipment or process failure which may be reasonably be prevented during startup, shutdown or malfunction are prohibited and are violations of Chapter 391-3-1 of the Georgia Rules for Air Quality Control.”

EPA has issued several guidance documents regarding excess emissions provisions.⁶ EPA has repeatedly stressed that where a single source has the potential to cause an exceedance of the NAAQS or PSD increments – as the agency has noted is often the case with SO₂ emissions from coal-fired units like those at the Plant – preordaining an affirmative defense is not sufficient to protect public health and the environment. In such circumstances, EPA has stated that the only appropriate means of dealing with excess emissions during malfunction, startup and shutdown episodes is by responsibly exercising enforcement discretion rather than by prospectively establishing a blanket exemption.

Even though Condition 8.14.4 tracks the language of the state rule verbatim, and the state rule has been approved as part of the SIP, EPD is not obligated to include such language in the Draft Permit and must not do so for Plant Wansley. For the reasons noted by EPA, Plant Wansley is not the type of facility that can be afforded the benefit of an affirmative defense for excess emissions occurring during startup, shutdown or malfunction. Instead, an enforcement discretion approach is warranted, whereby EPD can refrain, on a case-by-case basis, from imposing penalties for sudden and unavoidable malfunctions caused by circumstances entirely beyond the control of the owner or operator. For this reason, Condition 8.14.4 must be stricken from the Draft Permit. Any excess emissions that occur due to startup, shutdown or malfunction, and which are alleged by the source to have been unavoidable, must be handled through an enforcement discretion approach.

⁶ See generally EPA memo entitled, “State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown,” by Steven A. Herman dated September 20, 1999; EPA Memo entitled “Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions,” by Kathleen M. Bennett dated February 15, 1983; EPA memo entitled “Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions,” by Kathleen M. Bennett, dated September 28, 1982.

b. If an Affirmative Defense is Retained, It Must be Revised to State that All Excess Emissions Are Violations and to Retain the Availability of Injunctive Relief

EPA has repeatedly made it clear that because excess emissions can aggravate air quality so as to prevent attainment or interfere with maintenance of the ambient air quality standards, it views **all** excess emissions as violations of the applicable emissions limitation. While EPA has recognized that the state or EPA can exercise “enforcement discretion” to refrain from taking enforcement action where the excess emissions result from sudden and unavoidable malfunctions caused by circumstances entirely beyond the owner or operator’s control, the excess emissions remain violations subject to enforcement action. The state can excuse the source from penalties if the source can demonstrate that it meets certain objective criteria; however, the state cannot provide that the excess emissions are not violations. Moreover, the state cannot exempt the source from actions for injunctive relief.

As currently written, Condition 8.14.4 violates both prohibitions. It declares that excess emissions “shall be allowed” – i.e., are not violations – provided that the criteria in subparagraphs (i), (ii) and (iii) of paragraph (a) are met. This is improper, as EPA has made it clear that all excess emissions are violations of the applicable emission limitation, and must be treated as such even in those circumstances where it is appropriate to allow a source an opportunity to present an affirmative defense.

In addition, Condition 8.14.4 appears to improperly preclude injunctive relief. In declaring that under certain circumstances excess emissions from startup, shutdown, or malfunction “shall be allowed,” the condition makes no distinction between penalties and injunctive relief: any and all available remedies appear to be precluded. EPA has made it clear that an acceptable affirmative defense provision may only apply to actions for penalties but not to actions for injunctive relief. However, by failing to make any distinction between actions for civil penalties and actions for injunctive relief, Condition 8.14.4 improperly provides a defense against the latter form of enforcement action. This is an inappropriate barrier to enforcement by citizens or EPA.

Therefore, if Condition 8.14.4 is retained in the Permit, it must be revised to state that any excess emissions due to startup, shutdown and malfunction are violations of the Georgia Air Quality Act and federal Clean Air Act. Further, it must be revised to state that any affirmative defense provisions apply only to actions for penalties and not to actions for injunctive relief.

- c. If an Affirmative Defense is Retained, It Must Be Revised to Provide Objective Criteria that Will Allow for Practical Enforceability**
- i. Vague and Undefined Terms Must Be Replaced with Specific and Objective Operational Requirements**

The Clean Air Act expressly defines the term “emission limitation” as a limitation on emissions of air pollutants “on a continuous basis.” 42 U.S.C. § 7602(k). For affirmative defense for excess emissions occurring during startup, shutdown or malfunction to be valid, the permitting authority must demonstrate that any exemptions from emission limitations are unavoidable and ensure that such exemptions are minimized. To establish a work practice standard as an alternative limit during exempt periods, the permitting authority must determine that technological or economic limitations on the application of a measurement methodology to a particular unit would make the imposition of an emissions standard infeasible during such periods. See, e.g., 40 C.F.R. § 51.166(b)(12) (limiting the exemption from BACT emissions limits for startup, shutdown and malfunction). EPD has done no such analysis to justify the exemptions contained in the permit.

In addition, EPD has also failed to provide specific and limiting definitions for the terms “startup,” “shutdown” and “malfunctions” so the limitations apply during these periods only when “the imposition of an emissions standard [is] infeasible.”

Of the three referenced periods, “startup” is the only term that is defined anywhere in the Draft Permit: “for purposes of” the Draft Permit, startup is defined as “the period lasting from the time the first oil fire is established in the furnace until the time the mill/burner performance and secondary air temperature are adequate to maintain an exit gas temperature above the sulfuric acid dew point.” Draft Permit at 4, Condition 3.2.2.

However, the terms shutdown and malfunction are not defined within the permit, and there does not seem to be a referenced definition that provides a limitation to these periods. Although condition 8.1.1 of the Draft Permit states that “[t]erms not otherwise defined in the Permit shall have the meaning assigned to such terms in the referenced regulation,” the regulation referenced by Condition 8.14.4 – Georgia Rule 391-3-1-.02(2)(a)7 – does not define the terms shutdown and malfunction. The terms are instead defined in the definitions section of the Georgia Air Quality Rules. See Rule 391-3-1-.01 at (nn), & (jjj). However, the definitions of shutdown and malfunction provided there are no more specific than the dictionary definitions of those terms,⁷ and thus do not provide any meaningful limits on these exempt periods. In order to ensure that the exemptions only apply when necessary, the final permit should specifically and

⁷ “[M]alfunction” means mechanical and/or electrical failure of a process, or of air pollution control process or equipment, resulting in operation in an abnormal or unusual manner,” Rule 391-3-1-.01(nn), “shutdown” means the cessation of the operation of a source or facility for any purpose,” Rule 391-3-1-.01(jjj), and “startup” means the commencement of operation of any source.” Rule 391-3-1-.01(zzz).

strictly limit the meaning of all these terms so that the periods of exemption do not swallow the emissions limitations.

In lieu of providing these specific definitions or setting numeric limitations that otherwise would apply, the Draft Permit requires the Plant to “minimize” the duration of these exempt periods, and to observe “best operational practices” and “good air pollution control practice.” Draft Permit at 51. Neither Condition 8.14.4 nor the Draft Permit defines the phrases “best operational practices” and “good air pollution control practice.” This omission impermissibly undermines the enforceability of these requirements.

The final permit should translate the terms “best operational practices” and “good air pollution control practice” into specific and objective operational conditions to ensure that they are practicably enforceable. As EPA has stated, “[s]tart-up and shutdown events are part of the normal operation of a source and should be accounted for in the design and implementation of the operating procedure for process control equipment. Accordingly, it is reasonable to expect that careful planning will eliminate violations of emission limitations during such periods.” Kathleen M. Bennett, EPA, “Policy on Excess Emissions During Startup, Shutdown, Maintenance and Malfunction” (Sept. 28, 1992). Similarly, prudent planning and design can also help minimize emissions during periods of malfunction. Standard permit conditions for coal-fired electric generating units include particular Best Management Practices as a safeguard to minimize emissions during limitation exemptions for startup, shutdown, and malfunction. To avoid emissions during these periods, operators should be required to continuously monitor boiler conditions, oxygen levels, soot blowers, trouble alarms, precipitator hopper levels, and other monitoring safeguards. The final permit should require that the amount, and not just the duration, of emissions be minimized and include qualifying language such as “at all times” and “to the maximum extent practicable,” that would allow for meaningful enforcement. Further, it must require contemporaneous recordkeeping to document the owner or operator’s actions during the periods of startup, shutdown or malfunction.

ii. The Permit Must Include Separate Criteria for Malfunctions

As currently written, Condition 8.14.4 fails to acknowledge any distinction between, on the one hand, startup and shutdown, and on the other, malfunction events. All such episodes are treated alike: if it can be shown, presumably by SC/GPC, that (1) best operational practices to minimize emissions were adhered to; (2) pollution control equipment was operated consistent with good air pollution control practices for minimizing emissions; and (3) the duration of excess emissions was minimized, then the source can escape any liability for the excess emissions. This is improper. As EPA has noted, startup and shutdown of process equipment are part of the normal operation of a source and should be accounted for in the design and implementation of the operating procedures for the process and control equipment. For this reason, EPA has stated that it is reasonable to expect that careful planning will eliminate violations of emission limitations during such periods. See Kathleen M. Bennett, EPA, “Policy on Excess Emissions

During Startup, Shutdown, Maintenance, and Malfunctions” (Sept. 28, 1982). In contrast, if properly defined and limited, a malfunction – whether it occurs during or outside of a startup or shutdown – can be the type of sudden and unavoidable event that produces excess emissions despite the facility’s best efforts.

Excess emissions during startup or shutdown can be the result of a malfunction; in such cases, the malfunction should be handled as any other malfunction. However, where there is no alleged malfunction, excess emissions occurring during startup or shutdown must be treated differently because they very likely could have been avoided. As EPA has stated, “[a]ny activity or event which can be foreseen and avoided, or planned, falls outside of the definition of sudden and unavoidable breakdown of equipment.” Kathleen M. Bennett, EPA, “Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions,” (Feb. 15, 1983).

For these reasons, any affirmative defense provision in Condition 8.14.4 must apply different criteria to alleged malfunctions than it does to startup and shutdown. See Steven A. Herman, EPA, “State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown” (Sept. 20, 1999). If the permit provides an affirmative defense for malfunctions, it must provide that the Permittee has the burden of proof of demonstrating that:

1. The excess emissions were caused by a sudden, unavoidable breakdown of technology, beyond the control of the owner or operator;
2. That the excess emissions (a) did not stem from any activity or event that could have been foreseen or avoided, or planned for, and (b) could not have been avoided by better operation and maintenance practices;
3. To the maximum extent practicable the air pollution control equipment or processes were maintained and operated in a manner consistent with good practices for minimizing emissions;
4. Repairs were made in an expeditious fashion when the operator knew or should have known that applicable emission limitations were being exceeded. Off-shift labor and overtime must have been utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable;
5. The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions;
6. All possible steps were taken to minimize the impact of the excess emissions on ambient air quality;
7. All emission monitoring systems were kept in operation if at all possible;

8. The owner or operator's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence;
9. The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and
10. The owner or operator properly and promptly notified EPD.

For excess emissions occurring during routine startup or shutdown, the provision should state that the permittee has the burden of proof to demonstrate that:

1. The periods of excess emissions that occurred during startup and shutdown were short and infrequent and could not have been prevented through careful planning and design;
2. The excess emissions were not part of a recurring pattern indicative of inadequate design, operation or maintenance;
3. If the excess emissions were caused by a bypass (an intentional diversion of control equipment), then the bypass was unavoidable due to an emergency, as per Condition 8.13;
4. At all times, the facility was operated in a manner consistent with good practice for minimizing emissions;
5. The frequency and duration of operation in startup or shutdown mode was minimized to the maximum extent practicable;
6. All possible steps were taken to minimize the impact of the excess emissions on ambient air quality;
7. All emission monitoring systems were kept in operation if at all possible;
8. The owner or operator's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence; and
9. The owner or operator properly and promptly notified the appropriate regulatory authority.

Finally, the provision should make it clear that if excess emissions occur during routine startup or shutdown periods due to malfunction, then such instances will be treated the same as other malfunctions.

d. Condition 8.14.4 Must Be Revised to Address National Emissions Standards for Hazardous Air Pollutants

As currently written, paragraph (c) states that the provisions of Condition 8.14.4 do not apply to sources subject to New Source Performance Standards. This paragraph must be rewritten to make it clear that the affirmative defense provision does not apply to any federally promulgated performance standards or emission limits, including not just new source

performance standards but also national emissions standards for hazardous air pollutants (“NESHAPS”). See Steven A. Herman, EPA, “State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown” (Sept. 20, 1999). As EPD is aware, EPA issued a NESHAP for utility boilers that became final and effective on December 16, 2011, and thus is applicable to this Draft Permit. See below Part X.

VII. Compliance Assurance Monitoring and Reporting

EPA’s Part 70 monitoring rules (40 C.F.R. §§ 70.6(a)(3)(i)(A)-(B), (c)(1)) are designed to satisfy the statutory requirement in section 504(c) of the Act that “[e]ach permit issued under [Title V] shall set forth . . . monitoring . . . requirements to assure compliance with the permit terms and conditions.” 42 U.S.C. § 7661c(c). Permitting authorities must take three steps to satisfy the monitoring requirements in the Part 70 regulations. First, under 40 C.F.R. § 70.6(a)(3)(i)(A), permitting authorities must ensure that Title V permits contain all applicable monitoring requirements. Second, if an applicable CAA requirement contains no periodic monitoring, permitting authorities must add “periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit.” 40 C.F.R. § 70.6(a)(3)(i)(B). Third, if there is some periodic monitoring in the applicable requirement, but that monitoring is not sufficient to assure compliance with permit terms and conditions, permitting authorities must supplement monitoring to assure such compliance. 40 C.F.R. § 70.6(c)(1). In all cases, the rationale for the selected monitoring requirements must be clear and documented in the permit record. See 40 C.F.R. § 70.7(a)(5); Ga. Comp. R. & Regs. r. 391-3-1-.03(10)(a)(2) (requiring that Title V permits “assure compliance with all applicable requirements”), and (d)(1) (incorporating 40 C.F.R. Part 70.6(a) and 40 C.F.R. 70.7(f)).

a. Particulate Matter and Opacity

i. The Frequency of PM Testing Must Be Increased

Compliance with the facility’s PM limit is demonstrated via stack tests. For the Steam Generating Units 1 and 2 scrubber bypass stacks, the tests will be conducted the first of 30 days following 8760 operating hours or 60 months for the unit. Draft Permit at 14, Condition 4.2.1a. For the combined scrubber stack, testing is required every 60 months, or once per permit term. Id. at Condition 4.2.1b. As a result, the Plant may only conduct combined stack testing for PM emissions once every five years.

The expected operational variability of these units can significantly affect ESP and scrubber control efficiency and thus, resulting emissions. Federal regulations make clear that monitoring and reporting requirements must, to the extent possible, match the time period over which an emission limitation is measured. The Draft Permit’s infrequent and intermittent compliance testing requirements will not assure or demonstrate compliance with PM limitations, which are applicable on a continuous basis. Nor will they adequately address this facility’s contribution to NAAQS violations that are based on one-hour averages.

The Draft Permit should be revised to mandate the installation and use of a continuous emissions monitoring system (“CEMS”) for PM in lieu of the requirements of draft condition 4.2.1. PM₁₀ CEMS are common and have been readily available on a commercial scale for many years. EPA, Current Knowledge of Particulate Matter (PM) Continuous Emissions Monitoring (Sept. 2000), available at <http://www.epa.gov/ttnemc01/cem/pmccemsknowfinalrep.pdf>. PM CEMS should be installed “to assure compliance with the permit terms and conditions” as required by Title V of the Clean Air Act. 42 U.S.C. § 7661c(c).

ii. Parametric Monitoring is Inadequate to Assure Compliance

Because the units lack PM CEMS, it is critical that stack testing be accompanied by rigorous parametric monitoring to ensure that the periodic stack tests are representative of normal operations. Parametric monitoring is also critical to control emissions of PM_{2.5}, for which CEMS do not exist.

The Draft Permit mandates the use of continuous opacity monitoring systems (“COMS”) for both steam-generating units during bypass, Condition 5.2.1. According to the Narrative, during scrubber bypass, only the Units’ ESP devices will control PM emissions. Narrative at 26. Given the Draft Permit’s lax opacity limit, additional parameters should be considered, including proper voltages in the charging and collection portions of the ESPs, proper gas conditioning requirements to ensure that particle resistivity remains within acceptable ranges, and flow indicators that ensure there is no gas flow mal-distribution into the ESPs.

b. SO₂

i. The Draft Permit’s SO₂ Monitoring and Compliance Provisions Must be Revised to be Consistent with the 1-hr SO₂ NAAQS

On June 2, 2010, the EPA finalized a one-hour primary NAAQS for SO₂. The final standard, which was set at 75 parts per billion (“ppb”), replaces two primary standards of 140 ppb, measured over 24 hours, and 30 ppb, measured over one year. In revising the limit to a one-hour standard, EPA cited significant health benefits, particularly for at-risk populations. SO₂ is a known precursor of fine particle pollution.

The Draft Permit’s sole SO₂ limit is the one derived from Rule (uuu). The facility may not discharge into the atmosphere from any of its Units “any gases which contain SO₂ emissions in excess of 5 percent (0.05) of the potential combustion concentration on a 30-day rolling average basis.” Draft Permit at 9, Condition 3.4.13. As noted previously, the facility is relieved of this obligation during periods of startup, shutdown, and malfunction, as well as during other periods specified in Condition 3.4.14. Id.

Compliance with the 95 percent reduction mandate of Condition 3.4.13 is to be demonstrated via initial and subsequent performance tests. Condition 4.2.2.a. An “initial performance test” was completed as of the first 30 successive boiler operating days following

January 1, 2010. After the initial performance demonstration, the Draft Permit requires a separate performance test at the end of each operating day and the calculation of a new 30-day percent reduction calculated to demonstrate compliance. *Id.* The Draft Permit does not specify what constitutes a “performance test” for purposes of this provision; presumably the demonstration is made via SO₂ CEMS.

Condition 5.2.1 requires that CEMS be installed and operated on Steam Generating Units 1 and 2 at the combined inlet and outlet of the wet scrubber. Draft Permit at 15, Condition 5.2.1.c.

The Draft Permit requires calculation and reporting of a 30-day rolling average emission rate. Draft Permit at 32, Conditions 6.1.15. and 6.2.16. Although the Draft Permit also requires calculation of 1-hour averages, Condition 5.2.15, it does not appear to require reporting on an hourly basis.

The Draft Permit’s SO₂ monitoring and compliance provisions are insufficient in light of the one-hour SO₂ NAAQS. Because the Draft Permit requires CEMS, there is no technical obstacle to requiring the facility to monitor and report its SO₂ emissions on an hourly basis. Unless such revisions are made, the final permit will lack an SO₂ limit that is designed to achieve and maintain the SO₂ NAAQS, and will lack a compliance provision designed to show that the limit is being met over the same averaging period as the prevailing air quality standard.

ii. The Permit’s Terms are Inconsistent with Regard to Control Devices Needed for Compliance with Rule (uuu) on a Unit-Specific Basis

The Draft Permit is unclear as to whether EPD requires the Plant to install and operate one or two CEMS to monitor SO₂ emissions. Compare Page 3 (listing two FGD scrubbers for two separate lines of exhaust) with page 15 (“Sulfur dioxide emissions are monitored at both the inlet and outlet of the SO₂ control device.”). This should be clarified within the draft permit by changing the language on page 15 to say “Sulfur dioxide emissions are monitored at both the inlet and the outlet of each SO₂ control device.”

iii. The Permit Should Clearly Require SO₂ CEMS Operation During All Periods of Operation except CEMS Breakdown and Repair

The Draft Permit properly requires that SO₂ CEMS for the bypass stacks be operated during all periods of operation, including periods of startup, shutdown, malfunction or emergency. Draft Permit at 21, Condition 5.2.14. While the permit appears to give limited exceptions for “CEMS breakdowns, repairs, calibration checks, and zero and span adjustments,” condition 5.2.14 also exempts a broad range of periods through the statement “and any period allowed under Georgia Rule 391-3-1-.02(2)(uuu)(4).” This regulation exempts the Plant’s units from the 95% SO₂ reduction requirements during periods of “black starts” and scheduled or preventive maintenance as well as during periods of startup, shutdown or malfunction provided

such episodes are consistent with the air quality rule governing allowable “excess emissions,” Rule 391-3-1-.02(2)(a)7. Draft Permit at 21.

Thus, while appearing at first blush to require the operation of SO₂ CEMS during periods of startup, shutdown, or malfunction, the Draft Permit appears ultimately to eliminate any such requirement for normal operation – i.e., when both units are exhausting through the wet scrubber(s). Draft Permit at 1, 3.

The CEMS data are used to demonstrate compliance with the permit’s SO₂ limit under Rule (uuu). See Draft Permit at 21, Conditions 5.2.14. Under CAA Section 302(k), an emission limitation is one that “limits the quantity, rate, or concentration of emissions of air pollutants **on a continuous basis**, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction. . . .” The permit’s SO₂ emissions limitation is meaningful and enforceable only to the extent that compliance with it can be demonstrated on a continuous basis. A clear requirement to operate SO₂ CEMS during all periods except CEMS breakdown and repair is necessary to “assure compliance with the terms and conditions of the permit.” 40 C.F.R. § 70.6(c)(1).

VIII. Coal Handling System

The Draft Permit does not include or meet regulatory requirements for fugitive emissions from solid fuel handling systems. Fuel handling systems, particularly those for coal-fired power plants such as this Plant, can release significant amounts of PM into the air near the facility. These emissions are at ground level, heightening their impact on air quality and human health in the immediate vicinity of the Plant.

Georgia regulations include a non-exhaustive list of specific control devices and practices that should be applied to this facility and detailed in its Title V permit as enforceable conditions of its operation. These include the application of water or other dust suppressants on surfaces or operations that can give rise to airborne dust, and “[i]nstallation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials.” Ga. Comp. R. & Regs. r. 391-3-1-.02(2)(n)1. The Draft Permit subjects the coal handling system to an opacity limit of 20 percent as required by Ga. Comp. R. & Regs. r. 391-3-1-.02(2)(n)2, but does not include the specific, enforceable best management practices necessary to eliminate or minimize fugitive dust from this component of the plant. Draft Permit at 7. Rather, the Permittee is required to take “reasonable precautions.” *Id.* This requirement is vague and unenforceable.

Specific work practice standards can and should be applied to this major PM emissions source and made enforceable in its Title V permit. The permit provisions covering the solid fuel handling system should specify and require the “reasonable precautions” appropriate to this facility. The permit should include enforceable conditions requiring enclosures and other control devices that are demonstrated to eliminate PM emissions from the fuel handling system. These devices should be described in more detail in the permit or narrative, and should be subject to

monitoring and reporting to demonstrate compliance with a 20 percent opacity limit, so that the public can evaluate their efficacy and, when necessary, seek enforcement of any violations. The required frequency, quantity and duration of dust suppression techniques should also be included in the Draft Permit.

IX. Greenhouse Gas Monitoring and Reporting

As described above, Title V permits must include “all applicable requirements” that will exist during the permit term. Greenhouse gas monitoring and reporting requirements were promulgated on October 30, 2009 and amended on July 12, 2010. 40 C.F.R. § 98. However, the Draft Permit does not identify these requirements as applicable to Plant Wansley. EPA Guidance specifically addresses how greenhouse gases are to be handled under Title V of the Clean Air Act and its Amendments, stating that “as with other applicable requirements related to non-GHG pollutants, any applicable requirement for GHGs must be addressed in the title V permit (*i.e.*, the permit must contain conditions necessary to assure compliance with applicable requirements for GHGs).” U.S. EPA, Office of Air and Radiation, “PSD And Title V Permitting Guidance For Greenhouse Gases” at 52 (March 2011), available at <http://www.epa.gov/region07/air/title5/t5memos/ghgguid.pdf> (last accessed May 18, 2012). EPD must include conditions in Part 2.0, Part 3.0, Part 5.0 and Part 6.0 of the permit specifying the recordkeeping and monitoring requirements of 40 CFR §§ 98.43, 98.44, and 98.47.

X. Hazardous Air Pollutants

As noted supra, CAA 504(a) requires each Title V permit to “assure compliance with applicable requirements of this chapter, including the requirements of the applicable implementation plan [SIP].” 40 C.F.R. § 70.2 defines “applicable requirements” as including “requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future effective compliance dates.”

As the Narrative points out, Plant Wansley is potentially subject to 40 C.F.R. 63, Subpart UUUUU, which the Narrative suggests had not been formally promulgated as of the time of the Draft Permit. Narrative at 14. However, the EPA did promulgate this final rule, titled “National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units,” on February 12, 2012. 77 Fed. Reg. 9304.

This rule works to reduce emissions of heavy metals, including mercury (Hg), arsenic (As), chromium (Cr), and nickel (Ni); and acid gases, including hydrochloric acid (HCl) and hydrofluoric acid (HF) by regulating “coal fired electric utility steam generating units.” Id. Although this rule went into effect on April 16, 2012, it will be applicable to Plant Wansley on April 16, 2015, during the Title V permit term. Thus, the draft permit should include both an

acknowledgement that the Plant is subject to this new regulation, as well as provisions reflecting the emissions standards required under this rule.

We thank you for the opportunity to submit these comments. We look forward to receiving the Department's response to our comments and to receiving notice of the Department's final permit decisions.

Respectfully submitted,

A handwritten signature in cursive script that reads "Ashten Bailey".

Ashten Bailey
Staff Attorney
GreenLaw