**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
REGION 4
ATLANTA FEDERAL CENTER
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ATLANTA, GEORGIA 30303-8960

4APT-APB

MAR 29 2002

Mr. Robert Ukeiley
Counsel for Sierra Club
Georgia Center for Law in the Public Interest
175 Trinity Avenue, S.W.
Atlanta, GA 303 03

Dear Mr. Ukeiley:

Thank you for your March 12, 2001, letter on behalf of the Georgia Public Interest Research Group, the Georgia Chapter of the Sierra Club, and Georgia Forest Watch regarding comments on the State of Georgia's title V operating permits program. Your comments were submitted in response to the United States Environmental Protection Agency's (EPA's) notice, *Operating Permits Program; Notice of Comment Period on Program Deficiencies,* published in the Federal Register on December 11, 2000. Pursuant to the settlement agreement discussed in that notice, the EPA agreed to publish in the Federal Register notices of program deficiencies for individual operating permit programs, regarding issues raised that the EPA agrees are deficiencies, and to respond by letter to other concerns that the EPA does not agree are deficiencies.

We have reviewed the issues you raised in your letter and determined that these issues do not indicate any program deficiencies within the Georgia title V operating permits program. The EPA's response to each of your concerns is enclosed.

We appreciate your interest and efforts in ensuring that Georgia's title V operating permits program meets all federal requirements. If you have any questions regarding our analysis, please contact Gregg Worley at (404) 562-9141 or Art Hofmeister at (404) 562-9115.

Sincerely,

Winston A. Smith
Director
Air, Pesticide and Toxics
Management Division

Enclosure

cc: Jimmy Johnston, Georgia Environmental Protection Division

Enclosure

EPA's Response to Comments from Georgia Center for Law in the Public Interest on Georgia's Title V Operating Permits Program

1. *Comment: As emphasized by EPA's Credible Evidence Rule, 62 FR 8314 (Feb. 24, 1997), the Clean Air Act (the Act) allows the public, the Georgia Environmental Protection Division (EPD), EPA, and the regulated facility to rely upon any credible evidence to demonstrate compliance with the terms and conditions of a title V permit. EPD must remove any language that purports to limit credible evidence. Condition 4.1.3 of EPD's permit template appears to limit credible evidence by stating "the methods for the determination of compliance with the emissions limits listed in Sections 3.2, 3.3, 3.4 and 3.5 which pertain to the emission units listed in Section 3.1 are as follows:" and then listing such methods. EPA should require EPD to remove this sentence from Condition 4.1.3 of the permit template and to remove such language from issued permits through reopening. Similarly, Condition 6.1.3 of the permit template could be considered to limit credible evidence. This may be corrected by adding the phrase "and any credible evidence" to the end of the second sentence. EPD should also include standard language in its permits that explicitly states that anyone can use any credible evidence in an enforcement action.*

   For clarification purposes, Condition 4.1.3 identifies the required reference methods to be used to satisfy any testing requirements; it is not intended, in any way, to limit the use of credible evidence. In fact, Condition 4.1.3 allows the use of all credible evidence and information. Georgia Rule 391-3-1-.02(3)(a), which serves as the underlying authority for Condition 4.1.3, references EPD's *Procedures for Testing and Monitoring Sources of Air Pollutants*, which permits the use of all credible evidence. Section 1.3(g) of this document states that "nothing. . .shall preclude the use, including the exclusive use, of any credible evidence or information." Both the rule and referenced procedures are approved parts of Georgia's State Implementation Plan (SIP). Although the language in Condition 6.1.3 may appear to limit the use of credible evidence, EPA believes that this was not the intention of EPD and that such language does not ultimately limit the use of credible evidence because the Georgia SIP expressly prohibits such an exclusion.

   Nonetheless, for further clarification, EPD has added a general condition to the permit template which expressly states that nothing shall preclude the use of any credible evidence. This will ensure that such language will be included in title V permits issued or renewed in the future by EPD.[1]

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[1]EPD provided EPA with a written commitment to add a general condition to the title V permit template expressly stating that nothing shall preclude the use of any credible evidence and to include this condition in every final title V permit not already signed by the Director of EPD by the date of said letter. Existing title V permits will be revised upon renewal to include the new condition. See letter from Ronald C. Methier, Chief, Air Protection Branch, EPD, to James I. Palmer, Jr., Regional Administrator, EPA Region 4 (Mar. 22, 2002).

2. *Comment: EPD uses Section 8.13 of its title V permits to excuse excess emissions when a facility is starting up, when it is shutdown, and when a facility is experiencing an upset. It is true that EPD limits this exception to violations at facilities that are not subject to New Source Performance Standards (NSPS). However, even for facilities subject to NSPS, EPD makes the permit confusing and, therefore, practically unenforceable by including the provision and then excluding it by reference to the fact that the facility is subject to NSPS. Nonetheless, exclusions for facilities not subject to NSPS are likewise illegal. At least one United States Court of Appeals has supported EPA's position that "all excess emissions" are "violations of the applicable emission limitation." Therefore, EPA should require EPD to remove the blanket exception for violations that occur during startup/shutdown/upset and prohibit its use in future permits.*

   Typically, Section 8.13 of the permit template only addresses excess emissions due to "emergencies" in accordance with Georgia Rule 391-3-1-.03(10)(d)7 and 40 CFR § 70.6(g). In several utility-related title V permits, however, EPD added non-template language under Section 8.13 which allows excess emissions during startups/shutdowns/malfunctions for non-NSPS sources, providing that certain, specified criteria are met. Such an exemption is allowed pursuant to Georgia Rule 391-3-1-.02(2)(a)7, which has been approved into the federally-approved Georgia SIP and which constitutes an "applicable requirement" for purposes of title V. See 46 Fed. Reg. 57486 (Nov. 24, 1981); 40 CFR § 70.2. Title V permits are required to assure compliance with all applicable requirements, including requirements of the applicable SIP. Section 504(a) of the Act; 40 CFR § 70.6(a)(1). Because the non-template language contained in permits for certain non-NSPS sources assures compliance with Georgia Rule 391-3-1-.02(2)(a)7 (and other applicable requirements), EPA cannot object to those permits based on the excess emission language. EPD's inclusion of the non-template language gives effect to a SIP requirement and, thus, does not constitute a deficiency in EPD's title V program.

   Furthermore, EPA does not consider the exclusionary provision (referenced by the commenter) to be confusing because it is not uncommon to have both NSPS and non-NSPS emission sources at the same facility. Therefore, the exclusionary language needs to remain in the respective permits to clarify that the exemption applies only to non-NSPS sources at the facility.

3. *Comment: 40 CFR § 70.6(a)(3)(iii)(A) and 42 U.S.C. § 7661(c)(a) require that permits issued by state agencies include a requirement for submittal of reports of any required monitoring at least every six months. However, EPD's permit template does not contain any such requirement. 40 CFR § 70.6(a)(3)(iii)(B) requires "prompt reporting of deviations from permit requirements." While it is true that the regulations do allow the agency discretion in defining of "prompt," it is hard to imagine the six months allowed for reporting deviations not caused by malfunctions or breakdowns as being considered a rational definition of "prompt" by any objective fact finder. EPA believes that "prompt" should be generally defined as requiring reporting with two to ten days of the deviation.*

*Prompt reporting must be more frequent than the semi-annual reporting requirement. EPA should require EPD to require the permittee to report all deviations with seven days.*

40 CFR Part 70 does not specify what form the monitoring report must take. Although the semi-annual monitoring reports required by EPD focus on the reporting of deviations, one can conclude that the monitoring results which are not reported as deviations are considered to be in compliance with the applicable permit terms or conditions by definition. This interpretation is further supported by the fact that EPD still requires reports stating that there were no deviations when there were, in fact, no deviations for a given reporting period. EPD's permits include considerable detail regarding what must be included in a semi-annual monitoring report. These requirements are typically outlined in Condition 6.1.4 in conjunction with conditions under Section 5.3 of the permits, which specify recordkeeping and reporting requirements related to specific monitoring requirements. Specifically, the reports must include: a summary of all excess emissions, exceedances, and excursions and monitor downtime, including any failure to follow work practice standards; total process operating times; the magnitude of all excess emissions, exceedances, and excursions; specific identification of each episode, including the nature and cause and the correction taken; specific identification of each period during which a required monitoring system or device has not been operative, repaired, or adjusted; and, as required by part 70, certification by a responsible official that the contents of the reports are true, accurate, and complete. EPA does not believe that the language suggested by the commenter would improve EPD's permits because it does not clarify what a report of "any required monitoring" must contain. Thus, EPA believes that EPD has reasonably interpreted 40 CFR § 70.6(a)(3)(iii)(A) when it specified what the reports must contain to keep EPD informed of a facility's compliance status and potential problem areas.

40 CFR § 70.6(a)(3)(iii)(B) gives permitting authorities discretion with regard to the definition of "prompt." When there is reason for concern regarding a facility's ability to maintain continuous compliance, EPD will require the facility to submit reports on a quarterly basis rather than semi-annually. Furthermore, EPD requires the submittal of reports within seven days for upset conditions. EPA believes defining "prompt" reporting as being "within seven days" for <u>all</u> deviations, as requested by the commenter, to be unnecessary. Thus, EPA believes that EPD has adequately defined "prompt" pursuant to § 70.6(a)(3)(iii)(B).

4. *Comment: EPD should establish a mailing list to send out notices of draft title V permits. This mailing list is mandated by 40 CFR § 70.7(h)(1).*

EPD created the mailing list required by § 70.7(h)(1) in the first week of June 2001. Therefore, a notice of deficiency with respect to this issue is not required.

5. *Comment: EPD currently charges a fee for photocopying documents used to review title V permits. Public participation is an integral component of the permit program. The public needs to make copies in order to meaningfully participate in the permit program. 40 CFR § 70.9(a) requires that the state charge owners or operators fees sufficient to cover the permit program costs. Therefore, EPD should waive photocopying fees for the public and recover such costs from the fees it charges the owners and operators.*

   EPA agrees with the commenter that permitting authorities are required to establish a fee schedule "sufficient to cover permit program costs" in accordance with § 70.9(b)(1). However, § 70.9(b)(1) is not all-inclusive with regard to what constitutes such costs, including those related to providing copies of relevant materials free to the public. EPA interprets the federal statutory and regulatory provisions to require that permitting authorities "make available to the public" materials relevant to the permit-issuing decision, but not to require the supplying of free copies of such materials. See 42 U.S.C. §§ 7661b(e), 7661a(b)(8), and 40 CFR § 70.4(b)(3)(viii). Nonetheless, EPD does provide, in its public notices, that "[o]ne copy of a single draft permit can be made free of charge." The Act also requires that permitting authorities have "reasonable procedures" for making documents available to the public. See 42 U.S.C. § 7661a(b)(8). Therefore, if permitting authorities have reasonable procedures for making documents available, which could include the imposition of reasonable copying costs, then they are meeting the statutory requirement and, thus, do not have a program deficiency. EPA believes that such is the case with EPD.

   EPA believes that permitting authorities should strive to make documents available to the public as easily and inexpensively as practicable. EPD has taken such an initiative by making permit-related documents (e.g., application, draft permit, narrative, etc.) readily available on the Internet. EPD could recover (from title V sources) the "reasonable" costs associated with providing free copies of title V-related documents to the public although, as noted above, it is not required to do so.

6. *Comment: 40 CFR § 70.7(h) requires that the state agencies provide an "opportunity for public comment and a hearing on the draft permit." No one disputes that EPD must provide an opportunity for public comment. Since the language of § 70.7(h) makes no distinction between the opportunity for public comment and the hearing, it must also be true that EPD must provide a public hearing. Therefore, EPD should be required to adopt a policy or regulation that states it will grant a hearing if requested and inform the public that such is the case.*

   Public hearings are not automatically mandated by 40 CFR Part 70. 40 CFR § 70.7(h)(2) requires the noticing of information relevant to any public hearings that "may be held." Furthermore, the preamble to the final part 70 rule states that public participation includes a hearing "where appropriate." See 57 Fed. Reg. 32290 (July 21, 1992). However, although not mandated by the federal regulations, EPD does grant hearings when requested in

writing. It details the procedures to request a hearing in the public notice, as required by § 70.7(h)(2).

7. *Comment: The Implementation Agreement (IA) between EPD and EPA provides that EPD will put the end dates for both the public comment period and EPA's review period in the public notice. EPD's public notices for draft permits do not contain the end date for either the public comment or EPA review period. These dates are crucial to establishing the public's 60-day period to petition EPA to object to permits.*

   The commenter cites the IA as the authority for requiring EPD to publish the end dates for both the public comment and EPA review periods in public notices; however, the only underlying authority regarding the required contents of a public notice is 40 CFR § 70.7(h)(2). Section 70.7(h)(2) does not mandate that the public notice define the end dates for the public comment period and EPA's review period. EPD's public notice defines the end of the public comment period as "30 days after the date on which this notice is published in the newspaper" in accordance with § 70.7(h)(4). EPA, therefore, believes that EPD's public notices comply with the 40 CFR Part 70 requirements regarding the information that must be contained therein. Nonetheless, in an effort to assist the public in establishing its 60-day petition period, EPD has voluntarily added a column to its title V permits website which defines the end date of EPA's 45-day review period. On March 29, 2002, a conference call was held between the commenter, EPD, and EPA to further discuss this issue. During the call, EPD committed to consider additional, voluntary measures (as recommended by the commenter) to clarify for the public when EPA's 45-day review period occurs and to respond to the commenter with its decision.

8. *Comment: 40 CFR § 70.7(h)(2) states that the public notice will explain where the public can review all relevant supporting documents. In some cases, some relevant supporting documents were only available from other EPD branches; however, EPD did not inform the public that some of the relevant supporting documents were with other branches. Other times, EPD administrative staff has not known where all of the relevant documents were. To meet the requirements of § 70.7(h)(2), EPD's public notice must explain to the public how they can obtain all of the relevant material.*

   40 CFR § 70.7(h)(2) requires the public notice to provide the contact information of an individual from whom the public may obtain additional information, "including. . .all relevant supporting materials" and "all other materials available to the permitting authority that are relevant to the permit decision." This provision does not require the designation of a central location where all relevant documents may be reviewed; instead it assigns responsibility for providing all of the information and materials described in § 70.7(h)(2) to the public. Nonetheless, EPD's public notice explicitly designates a central location where the public may review relevant documents as follows:

   "The draft permit and all information used to develop the draft permit are available for review. This includes the application, all relevant supporting materials and all other

materials available to the permitting authority used in the permit review process. This information is available for review at the office of the Air Protection Branch, 4244 International Parkway, Atlanta Tradeport - Suite 120, Atlanta, Georgia 30354."

Furthermore, EPD's public notice identifies Jimmy Johnston, Stationary Source Permitting Program Manager at EPD, as the person to contact for more information in accordance with § 70.7(h)(2).

In cases of multi-agency involvement, EPD's Air Protection Branch shall assume the role of "lead agency," pursuant to § 70.4(b)(8)(ii), by maintaining all documents relevant to the issuance of the title V permit regardless of the originating agency. It is unreasonable to expect EPD's Air Protection Branch to maintain documents which are relevant only to the duties of other agencies and not relevant to the issuance of the title V permit.

9. *Comment: EPD's public notice routinely states "[t]his permit will be enforceable by the Georgia EPD and the U.S. Environmental Protection Agency." This statement is incomplete. The permit will be enforceable by "any person." "Person" includes individual, corporation, partnership, association, State, municipality, and a political subdivision of a state. Therefore, the public notice must explain that any person can enforce a title V permit.*

Although EPD's original public notice did not specifically name "persons" as being designated enforcers of the title V permit, it still satisfied the requirements of part 70 regarding the contents of an adequate notice. The public notice requirements specified under 40 CFR § 70.7(h)(2) do not require a statement of who may enforce a permit. EPD's public notice accurately stated that the permit will be enforceable by the EPD and EPA. Furthermore, the public notice did not preclude "persons" from enforcing the permit since it did not state that the permit will be enforceable only by EPD and EPA. EPA does not believe that the omission of "persons" compromised the effectiveness of the public notice. Nonetheless, for clarification purposes, EPD has changed its public notice template to ensure that future notices include "persons" as designated enforcers.

10. *Comment: EPD does not appear to have a consistent policy of making permit materials available in the community where the facility is located. EPD should adopt a consistent policy of providing the relevant materials in the local county courthouse every time.*

40 CFR § 70.7(h)(2) does not require that relevant review materials be made available in the community where the facility is located; it requires that public notices include contact information regarding a contact person so that interested persons may obtain the relevant review materials. EPD's public notice is adequate in this respect. EPD goes beyond the minimum requirements by maintaining a website which contains the relevant review materials. Pursuant to Georgia law, all public libraries are required to provide internet access, thus, providing reasonable access to citizens. In cases where relevant documents

are not in electronic form, EPD does make such documents available in the county where the source is located.

11. *Comment: EPD currently requires the permittee to publish the notice of draft permit in the legal notice section, in small print, in the back of the newspaper that the State of Georgia has deemed the "official organ" of the county where the facility is located. EPD should require that the notices be published as an advertisement in the body of the newspaper rather than in the small print legal section. Obviously, more people read the body of a newspaper than the small print legal notices.*

    40 CFR § 70.7(h)(2) does not specify the location within designated publications where public notices must be published. The legal notice section appears to be the logical default for public notices. EPD's public notice is adequate in this respect and, thus, it does not justify a notice of deficiency.

12. *Comment: In order for the public to meaningfully participate in the permitting process, it is axiomatic that the public be given easy access to documents necessary for such participation. Unfortunately, EPD does not maintain adequately trained administrative staff to fulfill this mandated need. We recommend that EPD provide additional training to personnel to improve interaction with the public and to ensure that the public's needs are met. Title V clearly provides that related costs for such training should be paid from permit fees.*

    While exceptional customer service is a laudable goal, 40 CFR Part 70 does not mandate that permit fees be used to train administrative support staff. EPA recommends that citizens experiencing problems with such an issue contact the management at EPD directly to have their concerns addressed.

13. *Comment: Title V regulations provide that permits may not be issued until public participation activities are complete. However, EPD has issued numerous permits without completing basic public participation activities such as notifying the public of draft permits via a mailing list. Therefore, EPA should require EPD to re-notice all permits that had such inadequate public participation.*

    EPA concurs with the commenter that, pursuant to 40 CFR § 70.7(a)(1), the requirements of § 70.7(h) relating to public participation must be satisfied prior to the issuance of a final permit. EPD has issued final permits without first notifying the public of the draft permits via a mailing list required by § 70.7(h)(1). This shortcoming has since been corrected with EPD's creation of a mailing list in June 2001. EPA is not convinced that the existence of such a mailing list would have significantly increased the public participation related to the previously issued permits. Therefore, EPA does not believe that re-noticing the previously issued permits is warranted. The public should be aware that the previously issued permits

will again be noticed during their respective renewal process, which occurred as early as 2001 for some facilities.

14. *Comment: 40 CFR Part 70 regulations require that all part 70 permits for facilities that are out of compliance contain "[a] schedule of compliance consistent with § 70.5(c)(8) of this part." EPD has issued numerous permits that do not include a required compliance schedule or contain an inadequate compliance schedule. EPA should require EPD to review all final permits to ensure that they are not missing a compliance schedule or that the compliance schedule is inadequate. The compliance schedules EPD does have are inadequate.*

    The facilities presented by the commenter in paragraphs A, B, and C of the petition were out of compliance prior to receiving their title V permits. According to EPD, the sources were, however, back in compliance by the time their title V permits were issued, thereby eliminating the need for a compliance schedule. Nonetheless, EPD's permit template Condition 8.14.3 addresses the requirement for a compliance schedule in accordance with 40 CFR § 70.6(c)(3). Therefore, there is no deficiency in EPD's program with respect to incorporating the part 70 requirements related to compliance schedules. With regard to the facilities presented in paragraph D, EPA believes it would be inappropriate at this time, in light of ongoing enforcement litigation, to make decisions regarding the specificity of compliance schedules for such facilities. When the enforcement actions have been completed, the permits may be reopened at that time to include compliance schedules.

    The facilities presented in paragraph E as having inadequate compliance schedules were never out of compliance, according to EPD. Apparently, Section 7.7 of the respective permits, which details requirements for compliance schedules, contains language that should never have been included in the permits and that gives the impression that the facilities are subject to compliance schedules when they are not. EPA will request that EPD remove the erroneous language via administrative amendments.

15. *Comment: EPD's permits and permit template claim to limit those who can bring enforcement actions to "citizens of the United States." However, the Act states that any person can take an enforcement action. Therefore, the permits and permit template must be changed to state that any person can enforce a permit.*

    EPA agrees with the commenter that EPD's original permit template language (Condition 8.2.1) limiting those persons who can enforce the terms and conditions of title V permits to "citizens of the United States" was contrary to the Act and part 70 regulations, which provide for broad public enforcement of title V permits and contain no such limitation. EPD has removed the phrase "of the United States" from Condition 8.2.1 of the permit

template to prevent the inclusion of such language in title V permits issued or renewed in the future by EPD.[2]

16. *Comment: Annual compliance certifications are inadequate. Condition 8.14.1 of the permit template requires the permittee to submit written certification of compliance with the permit conditions no later than January 30 of each year. EPD needs to take steps to ensure that 100 percent of the title V facilities submit annual compliance certifications. More importantly, of those facilities that submitted annual compliance certifications, EPD needs to take steps to ensure that significantly more than 50 percent are in compliance with their permit conditions.*

    The statistics presented by the commenter are based on the commenter's review of EPA's files rather than EPD's. Pursuant to 40 CFR § 70.6(c)(5)(iv), title V sources are required to submit annual compliance certifications to both EPA and EPD. Unfortunately, EPA has not been receiving all compliance certifications. EPA's enforcement section is taking necessary action to ensure that sources are submitting their certifications to both EPA and EPD. Nonetheless, EPD's permit template Condition 8.14.1 requires the submittal of compliance certifications on an annual basis to both EPD and EPA in accordance with § 70.6(c)(5)(iv) and Georgia Rule 391-3-1-.03(10)(d)3. Therefore, there is no deficiency in EPD's program with respect to incorporating the part 70 requirements related to annual compliance certifications.

17. *Comment: The Act requires that permit fees collected pursuant to title V "shall be designed solely to cover the Administrator's costs of administering the provisions of the permit program promulgated by the Administrator." This provision has been interpreted by the EPA to preclude approval of any state program that does not ensure that the title V fees are only used to pay for the title V permit program. Consequently, title V fee revenues collected by EPD should not be used to fund non-title V programs and activities. Georgia should not continue to use title V fees to fund non-title V activities.*

    EPA agrees with the commenter that fees collected pursuant to 40 CFR § 70.9(b)(1) must be used only for title V activities and to do otherwise would be in violation of 40 CFR Part 70 and, thus, constitute a program deficiency. However, based solely on EPD's 1999 *Title V Fee Program Update*, upon which the commenter has based his allegation, EPA is unable to determine whether title V permit fees are being used to fund non-title V activities (e.g., minor new source review permit issuance to non-title V

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[2]EPD provided EPA with a written commitment to delete the phrase "of the United States" from Condition 8.2.1 in EPD's title V permit template and to include the revised condition in every final title V permit not already signed by the Director of EPD by the date of said letter. See letter from Ronald C. Methier, Chief, Air Protection Branch, EPD, to Stanley Meiburg, Acting Regional Administrator, EPA Region 4 (Sept. 6, 2001).

sources). EPA has reminded EPD of the requirement to use title V fee revenues solely for the costs of developing and administering the part 70 permit program.

18. *Comment: 40 CFR § 70.7(a)(5) requires that the permitting authority provide a statement that sets forth the legal and factual basis for the draft permit conditions. EPD calls this statement a narrative. EPD does a good job of providing the legal basis for most permit conditions in most permits. However, the narratives are often simply a reiteration of the permit application or draft permit. They do not provide a complete factual basis for the permits. In general, the narrative provides very limited assistance to the public and sometimes actually misleads the public.*
Based on firsthand reviews of draft title V permits, EPA considers EPD's statements of basis to be adequate and in accordance with the requirements of § 70.7(a)(5). However, as evidenced by the example presented by the commenter, exceptions sometimes do occur. The completeness and accuracy of a statement of basis are oftentimes reflective of a permit writer's style as well as his skills and abilities. Thus, there may be notable differences, including those related to quality, between statements of basis drafted by different permit writers. EPA does not believe this is a systemic issue with EPD's program.

19. *Comment: On several occasions, we have found EPD permits that were simply missing clearly applicable requirements. Oftentimes, it appears that these are simply a result of inadequate quality control or proof reading of permits.*

On occasion, EPA has found instances of applicable requirements being left out of EPD permits. EPA believes that such instances are the result of occasional oversight rather than intentional omission. When notified of such omissions, EPD has readily incorporated the requirements into the title V permit. Thus, this has not been identified to be a systemic issue with EPD's program.

20. *Comment: Title V permits are required to be clear and concise so that they are enforceable as a practical matter. EPD sometimes incorporates applicable requirements by reference in such a confusing manner so as to render permits not enforceable as a practical matter. EPD must modify such permits to provide reasonable assurance of the source's compliance with applicable requirements.*

EPA agrees with the commenter that EPD occasionally incorporates applicable requirements by reference to a degree which may not be clear and concise. Pursuant to EPA's *White Paper No. 2 for Improved Implementation of the Part 70 Operating Permits Program* (Mar. 5, 1996), it is EPA's policy to allow incorporation by reference for streamlining purposes, provided that such reference is of a level of detail which is "unambiguous in its applicability and requirements." EPA has submitted comments to EPD detailing instances of inadequate level of detail; however, based on firsthand reviews of draft permits, EPA has not identified level of detail inadequacy to be a systemic issue

with EPD's program. It should be noted that EPD has, in most cases if not all, readily agreed to address level of detail concerns when prompted by EPA comments.

21. *Comment: Condition 4.1.3 of EPD's permit template allows for "minor" modifications of testing procedures at the Director's discretion. However, "minor" is not defined. Moreover, the permit cites R391-3-1-.02(3)(a) as the authority for this permit condition. R391-3-1-.02(3)(a) does not allow for modification. Therefore, EPA should require EPD to remove this provision from the permit template and to re-open existing permits to delete this provision.*

    Minor changes to testing methodology are allowed pursuant to Georgia Rule 391-3-1-.02(3)(a), which was approved into Georgia's SIP on February 2, 1996 (61 FR 3817). This rule incorporates by reference EPD's *Procedures for Testing and Monitoring Sources of Air Pollutants* which states in Section 1.2(b) that the Director may, in specific cases, specify or approve "the use of a reference method with minor changes of methodology." This document is part of the SIP and, thus, any changes to this document must be approved by EPA and the SIP revised to reflect the date of revision. "Minor" changes include: modified sampling location on a stack, increased sampling time or volume, use of additional impingers, etc. Complete changes of test methods are not considered to be minor.

22. *Comment: 40 CFR § 70.4(b)(9) requires that EPD "submit, at least annually to the [EPA], information regarding the State's enforcement activities including, but not limited to, the number of criminal and civil, judicial and administrative enforcement actions either commenced or concluded; the penalties, fines and sentences obtained in those actions; and the number of administrative orders issued." We have reviewed the title V documents that EPD submitted to EPA and did not find such a report. The lack of a comprehensive report on EPD's title V enforcement actions is a major problem because it makes it near impossible for EPA and the public to have a sense of the overall problems with compliance in Georgia. Without the annual report required by § 70.4(b)(9), it is difficult, if not impossible, to know the degree of non-compliance that exists within Georgia.*

    EPD submits quarterly reports to and conducts conference calls with EPA regarding "high priority" violations, which includes violations related to title V permits. Although EPA does receive details of title V enforcement activities in Georgia through other reports, reports specific to *Title V Enforcement-Related Activities* have not been submitted. EPD has committed to revise the quarterly reports to state that such reports contain the title V-related enforcement activities for said time period. Therefore, notice of deficiency is not required.

23. *Comment: EPA granted Georgia interim approval on December 22, 1995. Therefore, according to 42 U.S.C. § 7661b(c) and 40 CFR § 70.4(11)(ii), EPD was required to issue or deny all of the first round of title V permits by December 22, 1998. There are still over 200 facilities for which EPD has not issued or denied a title V permit and EPD is over two*

*years late. EPA should, at a minimum, mandate EPD hire additional permit writers and prohibit all of EPD title V permit writers from working on construction permits until it addresses the title V backlog.*

EPA concedes the fact that EPD missed the December 22, 1998 deadline for initial title V permit issuance in Georgia. In an effort to put EPD on a reasonable track to complete this initial phase, EPA requested that EPD submit a projected issuance schedule with a revised completion date and meaningful milestones. See letter from Winston A. Smith, Director, Air, Pesticides and Toxics Management Division, EPA Region 4, to Ronald C. Methier, Chief, Air Protection Branch, EPD (Aug. 23, 2001). In response to EPA, EPD proposed an issuance schedule comprised of six-month milestones (i.e., defined every June 30 and December 31) with a revised completion date of December 31, 2003. EPA has determined the revised issuance schedule to be acceptable.[3] Therefore, no notice of deficiency is required at this time.

24. *Comment: Section 112(r) of the Act sets out the requirements for stationary sources to avoid the accidental release of hazardous substances. Section 112(r) is an applicable requirement under title V and, therefore, must be included in title V permits. However, Georgia does not fully include this requirement. The permit template only states "the Permittee shall submit a Risk Management Plan (RMP) in accordance with the 40 CFR Part 68, when and if, such requirement becomes applicable." EPD needs to completely incorporate section 112(r) and part 68 into Section 7.10 of its permit template.*

EPD submitted (to EPA) more detailed permit template language regarding section 112(r) requirements on May 24, 2001, and EPA subsequently approved the revised language on July 2, 2001. EPA considers the revised permit template language to be in accordance with the guidance provided in EPA's *White Paper No. 2* regarding incorporation by reference and level of detail. Therefore, there is no deficiency in EPD's program relating to the incorporation of section 112(r) requirements.

25. *Comment: While reviewing Georgia's title V program for interim approval, EPA stated that Georgia may need to specify certain compliance requirements in a permit that are not stated in 40 CFR § 70.6(c). EPD responded that § 70.6(c)(5)(iii)(E) already provides this authority. Apparently EPD meant § 70.6(c)(iii)(D) since there is no (E). However, § 70.6(c)(5)(iii)(D) only applies to EPD's power to require additional information in the annual compliance certification not additional substantive compliance requirements. Therefore, EPD should amend R391-3-1-.03(10)(d)3 to state that EPD is also allowed to add any additional compliance requirements it deems necessary.*

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[3]EPD committed to front-loading the revised issuance schedule such that approximately 93 percent of the title V sources will have been issued permits by December 31, 2002. See letter from Harold F. Reheis, Director, EPD, to Winston A. Smith, Director; Air, Pesticides & Toxics Management Division; EPA Region 4, transmitting revised issuance schedule (Mar. 25, 2002).

EPD has all the necessary program authority to require additional substantive requirements; however, EPD's authority to include such requirements had been incorrectly cited. The proper citation of authority is § 70.6(c)(6), which allows "[s]uch other provisions as the permitting authority may require." Section 70.6(c)(6) is currently adopted by reference under Georgia Rule 391-3-1-.03(10)(d)3.

26. *Comment: R391-3-1-.03(10)(b)7, which appears as Condition 7.2.2 of the permit template, is written with grammar so far outside the bounds of standard English grammar as to render the provision a violation of due process. EPA should require EPD to re-write the rule and have it go through public comment.*

The language of Georgia Rule 391-3-1-.03(10)(b)7 is identical to that of 40 CFR § 70.4(b)(15), the underlying authority for the Georgia rule. Therefore, no program deficiency exists.