



Giving Georgia's Environment Its Day In Court

December 10, 2010

Via Fax (404-362-2691) and Certified Mail

Jane Hendricks
Plant Washington Comments
Watershed Protection Branch
4220 International Parkway Suite 101
Atlanta, Georgia 30354

Re: Plant Washington Comments: Draft NPDES and Water Withdrawal Permit for Power4Georgians, LLC.

Dear Sir or Madam:

The Southern Environmental Law Center (SELC) and GreenLaw respectfully submit the following comments regarding the Draft National Pollutant Discharge Elimination System ("NPDES") Permit (GA0039055) and the Draft Surface Water Withdrawal Permit (No. 150-0391-04) issued to Power4Georgians on behalf of: Altamaha Riverkeeper; Environment Georgia; Fall-line Alliance for a Clean Environment; Flint Riverkeeper; Friends of the Chattahoochee; Georgians for Smart Energy; Ogeechee Riverkeeper; Sierra Club, Georgia Chapter; Southern Alliance for Clean Energy; Southern Energy Network; and Wiregrass Energy Network.

I. THE DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT

As you know, Administrative Law Judge ("ALJ") Ronit Walker issued an Order on July 23, 2010, remanding both the NPDES and water withdrawal permits to the Georgia Environmental Protection Division (EPD) for further consideration. We appreciate that, in addition to those issues the ALJ remanded upon, EPD has also seen fit to improve other areas of the NPDES permit, such as the pH limits, upon which we had previously commented. We offer these comments below in an effort to improve upon the permits in a similar manner, and we appreciate your attention to these comments.

A. Inadequacies Regarding the Temperature Limits.

The permit does not contain the specific temperature limits on page 2 with the tables. We believe that it is important that any member of the public who wishes to determine the specific permit limits for a given permit, or to conduct their own monitoring, can do so easily by looking at the tables. For temperature, however, the actual limits are not addressed until Part III in the special requirements. In other coal-fired power plant permits we have reviewed, the temperature limits are set out up front in the tables, and we believe it would be a better approach to do so here.

Additionally, the monitoring for temperature in the permit is inadequate. As you know, the permit has been revised to include temperature limits with a mixing zone. We appreciate that this change was implemented. However, for the temperature limits to have a meaningful effect, the temperature in the River at the boundary of the mixing zone needs to be monitored more frequently than once per month. In the other power plant permits we have reviewed (for example Plants Mitchell, Branch and Hammond), the temperature is monitored on a weekly basis, and we believe that should be the procedure for Plant Washington. Additionally, although the permit does provide for continuous monitoring of the final effluent, we believe that there should also be continuous monitoring of the upstream and downstream water temperature to ensure that the water quality standards for temperature are protected in a verifiable way. The Clean Water Act's implementing regulations clearly provide that NPDES permit conditions must "ensure compliance" with effluent limitations established by United States Environmental Protection Agency (EPA), DNR Rule 391-3-6.06(4)(a), and "*shall include conditions . . . necessary to . . . [a]chieve water quality standards. . .*" 40 C.F.R. § 122.44 (d)(1) (emphasis added). Federal regulations also provide that "[a]ll permits shall specify . . . [r]equired monitoring including type, intervals, and frequency *sufficient to yield data which are representative of the monitored activity[.]*" 40 C.F.R. § 122.48 (emphasis added).

B. Inadequacies Regarding the Chlorine Limits.

The limits for chlorine in paragraph A.1 of the permit are too high. The permit allows a daily maximum limit for chlorine of 0.2 mg/l. We acknowledge that this limit is consistent with the New Source Performance Standards ("NSPS") for steam generated power plants. However, these standards were enacted 25 years ago and establish a floor, not a ceiling, on pollutant discharge. EPA has published its "Ambient Water Quality Criteria for Chlorine." A copy of the relevant pages is attached. In this document, EPA provides extensive research on the hazardous effects of chlorine on aquatic organisms, noting that chlorine "discharges may be quite toxic to aquatic organisms." EPA states that the 1 hour average concentration should not exceed 19 ug/l. These levels are significantly lower than those in the draft permit, and we believe that the permit limits for chlorine should be adjusted accordingly.

C. Inadequacies Regarding Georgia's Anti-Degradation Policy.

The draft permit fails to comply with Georgia's Anti-Degradation Policy. The antidegradation provision is required by the Clean Water Act, 40 CFR § 131.12, and is intended to ensure that state standards are sufficient to maintain existing beneficial uses of navigable waters and prevent their further degradation. The Georgia antidegradation policy provides that:

Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the division finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the division's continuing planning process, that **allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located.** In allowing such degradation or lower water quality, the division shall assure water quality adequate to protect existing uses fully. Further, the division shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

Ga. Comp. R. & Regs. r. 391-3-6-.03 (2)(b)(ii)(emphasis added).

We believe that the permit as revised continues to fail to meet the requirements of the antidegradation policy. First, the permit allows for the degradation of the waters of the receiving body, the Oconee River, to the extent that the permit allows discharge of pollution and also allows a mixing zone in which water quality standards will be exceeded. Thus, EPD's assertion that it does not expect degradation is refuted by the existence of a mixing zone, and this lowering of the water quality level must be supported by a socio-economic analysis. However, the Antidegradation Report's socio-economic analysis section relies on unverified assertions regarding the need for the proposed project and is thus inadequate. Based on our review of EPD's documents, there is no indication that EPD independently verified the applicant's conclusions. Thus, we believe that the proper procedures as required by the antidegradation policy were not followed.

II. THE WATER WITHDRAWAL PERMIT

The ALJ also ruled that the Applicant's Withdrawal Permit involved an interbasin transfer and therefore remanded the Withdrawal Permit to EPD to satisfy the requirements of the Georgia Water Quality Control Act (GWQCA)—including compliance with the GWQCA's Section 12-5-31(n) and the Georgia Comprehensive State-Wide Water Management Plan (the "Plan"). Our review of EPD's documents show that EPD has failed to comply with the GWQCA and the Plan. Also, EPD continues to violate the GWQCA by failing to consider and allocate flow for agricultural and potential downstream users in its determination of the Withdrawal Permit's non-depletable flow.

A. EPD's Failure to Consider Adequately Agricultural Users.

The GWQCA requires EPD to allocate flow for the "pro rata share of downstream withdrawal" including agricultural users to "ensure the availability of water to downstream users." Ga. Comp. & Regs. r. 391-3-6-.07(2)(k). EPD earlier stated that in issuing the original Withdrawal Permit, agricultural users "were not used in determining the non-depletable flow" and that the "non-depletable flow . . . is based on the non-farm permitted 24-hour maximum daily withdrawal." EPD Letter to Brian Gist at SELC dated April 8, 2010 at 2. There is no indication that on remand EPD has considered agricultural users and the Withdrawal Permit's non-depletable flow calculations remain unchanged. Thus, EPD continues to violate the GWQCA by failing to consider and allocate flow for downstream agricultural users. To comply with the GWQCA, EPD must consider agricultural users downstream and adjust the Withdrawal Permit's non-depletable flow calculations to ensure sufficient flow for these downstream users.

B. EPD's Failure to Consider Adequately Future Users.

Similarly, EPD continues to violate the GWQCA by failing to consider and allocate flow for potential downstream users in its determination of the Withdrawal Permit's non-depletable flow. Under the GWQCA, EPD must assess the condition of a water supply to "assure that the supply is adequate to meet the multiple needs of the citizens of the state as can be reasonably projected for the term of the permit." O.C.G.A. § 12-5-31(h). EPD must ensure that the granting of a permit does not have "unreasonably adverse effects upon other water uses in the area, including but not limited to public use, farm use, and potential as well as present use...." § 12-5-31(g). Thus, the non-depletable flow is intended to ensure availability of water for future as well as current downstream uses. See Ga. Comp. R. & Regs. r. 391-3-6-.07(2)(k).

The original Withdrawal Permit's non-depletable flow was based on EPD's consideration of only three existing downstream permitted users. On remand, EPD did not modify the Withdrawal Permit's non-depletable flow calculations to allocate flow for potential users. By failing to allocate additional flow for potential users downstream, the Withdrawal Permit's non-depletable flow does not ensure the availability of surface water for future users. Ga. Comp. R. & Regs. r. 391-3-6-.07(2)(k). To comply with the GWQCA, EPD must consider future users and allocate flow for these users in its determination of the Withdrawal Permit's downstream flow. Furthermore, EPD takes an unlawfully narrow interpretation of the GWQCA in its consideration of future downstream users. EPD interprets "potential users" only to include existing users

seeking modifications of their permits and existing applications for water withdrawal permits. This position conflicts with the plain language of the GWQCA and with the Act's objective of protecting both the present and future water needs of the state. See O.C.G.A. § 12-5-21(a). By limiting its assessment of future withdrawals downstream to only existing applications, EPD's determination of the Withdrawal Permit's non-depletable flow violates the GWQCA.

C. EPD Failure to Comply With GWQCA's Law on Interbasin Transfers.

On remand, EPD's only attempt to comply with the GWQCA and the Plan's requirements for interbasin transfers is the issuance of the Public Advisory and Notice of Public for the Withdrawal Permit. This falls far short of what is required under Georgia law. EPD has failed to fulfill the GWQCA's requirement that it give "due consideration to competing existing uses and applications for permits which would not involve interbasin transfers of surface water" and that EPD "shall endeavor to allocate a reasonable supply of surface waters to such users and applicants." See O.C.G.A. § 12-5-31(n). Additionally, EPD has failed to consider the criteria for interbasin transfers required by the Plan. EPD may not lawfully issue the Withdrawal Permit without fulfilling the interbasin transfer requirements of Section 12-5-31(n) and the Plan.

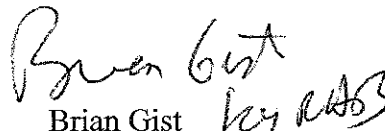
Finally, given that the Department of Natural Resources (DNR) Board is currently amending the GWQCA's regulations for interbasin transfers—rules relevant and applicable to the Withdrawal Permit—EPD should not proceed with issuance of the Withdrawal Permit until after the DNR Board has made its decision. According to EPD's November 29, 2010 memorandum, the DNR Board may approve amended regulations as early as January 2011. The regulations potentially will provide clarity on the exact requirements under Georgia law for withdrawals involving interbasin transfers, a contested and controversial issue subject to litigation on the Withdrawal Permit. We encourage EPD to wait for the amended regulations to be issued so that EPD can ensure the Withdrawal Permit's compliance with such rules and avoid issuing a permit that conflicts with the amended regulations.

We appreciate your attention to this comment letter and await your response to the comments made herein.

Sincerely,



Hutton Brown
Senior Attorney-GreenLaw



Brian Gist
Senior Attorney-SELC