

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

_____)	
IN THE MATTER OF)	
HERCULES, INC.)	
BRUNSWICK, GEORGIA)	ORDER RESPONDING TO PETITIONERS'
GUM AND WOOD CHEMICALS)	REQUEST THAT THE ADMINISTRATOR
PETITION IV-2003-1)	OBJECT TO ISSUANCE OF A STATE
)	OPERATING PERMIT
PERMIT No. 2861-127-0002-V-02-0)	
ISSUED BY THE GEORGIA)	
ENVIRONMENTAL PROTECTION)	
DIVISION)	
_____)	

ORDER DENYING PETITION FOR OBJECTION TO PERMIT

On January 23, 2003, the United States Environmental Protection Agency ("EPA") received a timely petition ("Petition") from the Glynn Environmental Coalition and the Center for a Sustainable Coast ("Petitioners"), requesting that the Administrator of the EPA object to the permit issued by the Georgia Environmental Protection Division of the Georgia Department of Natural Resources ("EPD") to Hercules, Inc. ("Hercules" or the "Permittee") for its facility located in Brunswick (Glynn County), Georgia. The permit (the "Hercules permit") is a state operating permit, issued December 17, 2002, pursuant to title V of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. §§ 7661-7661f, EPA's implementing regulations at 40 C.F.R. part 70 ("part 70"), and EPD's fully approved title V program, which is incorporated into Georgia Air Quality Rule 391-3-1-.03(10).

The Hercules facility produces wood rosins and terpenes and further refines such products to produce other products used in papermaking; paints and varnishes; adhesives; asphalt emulsions; solvents for oils, waxes, and resins; and disinfectant cleaners and insecticides. Operations are divided into five general areas: primary processing, the distillation and chemical plant, resins processing, specialty chemical processing, and support operations. Primary air emissions are oxides of nitrogen, carbon monoxide, sulfur dioxide, volatile organic compounds, total particulate matter, particulate matter less than or equal to 10 micrometers in diameter ("PM-10"), and hazardous air pollutants ("HAP"). The facility is subject to: Georgia Rule 391-3-1-.02(2)(a)1, the Georgia State Implementation Plan ("SIP") rule at issue in the Petition; various other SIP and federal requirements; and the Georgia Air Toxics Guidelines. See Title V Application Review, Hercules, Incorporated - Brunswick, Permit No. 2861-127-0002-V-02-0 ("Permit Narrative").

Petitioners have requested that the Administrator object to the Hercules permit pursuant to CAA section 505(b)(2), 42 U.S.C. § 7661d(b)(2). They allege that the permit fails to include all applicable requirements, specifically Georgia Rule 391-3-1-.02(2)(a)1, and that the permit fails to assure compliance with this rule. Based on the information before me, including Petitioners' written comments on the draft Hercules permit, the Hercules permit, EPD's narrative for the permit (also known as the statement of basis), an addendum to the narrative, a letter stating EPD's interpretation of Georgia Rule 391-3-1-.02(2)(a)1, and additional submissions from Hercules and Petitioners, I hereby deny Petitioners' request.

I. STATUTORY AND REGULATORY FRAMEWORK

Section 502(d)(1) of the Act, 42 U.S.C. § 7661a(d)(1), calls upon each State to develop and submit to EPA for approval an operating permit program intended to meet the requirements of CAA title V. EPA granted the State of Georgia's title V program interim approval in 1995, see 60 Fed. Reg. 57,836 (Nov. 22, 1995), and full approval in 2000. See 65 Fed. Reg. 36,358 (June 8, 2000). Major stationary sources of air pollution and other sources covered by title V are required to apply for operating permits that include emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the Act, including the requirements of the applicable implementation plan. See CAA sections 502(a) and 504(a), 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 (referred to as "applicable requirements") but does require permits to contain monitoring, recordkeeping, reporting, and other conditions to assure sources' compliance with existing applicable requirements. See 40 C.F.R. § 70.1(b); 57 Fed. Reg. 32,250, 32,251 (July 21, 1992). 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 operating permit program is a vehicle for ensuring that existing air quality control requirements are appropriately applied to facility emission units and for assuring compliance with such requirements.

Under CAA section 505(a), 42 U.S.C. § 7661d(a) and 40 C.F.R. § 70.8(a), States are required to submit all proposed title V operating permits to EPA for review. Permit objections are addressed in sections 505(b)(1) and 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(1) and (b)(2). Section 505(b)(1) and 40 C.F.R. § 70.8(c)(1) authorize EPA to object to a proposed title V permit within 45 days if it contains provisions that EPA determines are not in compliance with applicable requirements or the requirements of part 70. If EPA does not object to a permit on its own initiative, section 505(b)(2) and 40 C.F.R. § 70.8(d) provide that any person may petition the Administrator, within 60 days after the expiration of EPA's 45-day review period, to object to the permit. Section 505(b)(2) and 40 C.F.R. § 70.8(d) also provide that petitions shall be based on objections that were raised during the public comment period on the draft permit (unless the petitioner demonstrates that it was impracticable

to raise such objections within that period or the grounds for objection arose after that period).

Section 505(b)(2) requires the Administrator to object to a permit if a petitioner demonstrates that the permit is not in compliance with the requirements of the Act, including the requirements of part 70 and the applicable implementation plan. See 40 C.F.R. § 70.8(c)(1); New York Public Interest Research Group, Inc. v. Whitman, 321 F.3d 316, 333 n.11 (2d Cir. 2003). If, in responding to a petition, EPA objects to a permit that has already been issued, EPA or the permitting authority will modify, terminate, or revoke and reissue the permit consistent with the procedures in 40 C.F.R. §§ 70.7(g)(4) or (5)(i) and (ii) for reopening a permit for cause. A petition or an objection does not stay the effectiveness of the permit or its requirements if the permit was issued after the expiration of EPA's 45-day review period. 42 U.S.C. § 7661d(b)(2)-(b)(3); 40 C.F.R. § 70.8(d).

II. PROCEDURAL BACKGROUND

A. Permitting Chronology and Timeliness of Petition

EPD originally received a title V permit application from Hercules on October 22, 1996, and EPD determined that the application was administratively complete on March 18, 1997. EPD received an updated application on November 1, 2001. See Permit Narrative, Introduction, at 1. On June 24, 2002, EPD published a public notice providing for a 30-day public comment period on the draft Hercules title V permit. The public comment period ended on July 24, 2002, and a public hearing was held on September 3, 2002. Petitioners submitted comments to EPD in a letter dated July 24, 2002, which serves as the basis for this petition. EPD subsequently issued the final title V permit to Hercules on December 17, 2002.

EPA's 45-day review period for the proposed Hercules permit ended on November 24, 2002. The sixtieth day following that date, which was the deadline for filing any petitions to object to the Hercules permit with EPA, was January 23, 2003. As noted previously, on January 23, 2003, EPA received the Petition requesting that the Administrator object to the Hercules permit. Therefore, EPA considers the Petition to be timely.

B. Petitioners' Objections¹

1. The Hercules permit does not contain all applicable emission limits and standards as required by the CAA and part 70 because the permit does not contain additional emission limits or standards (including a cumulative impact air toxic study as a "standard or limit") required under Georgia Rule 391-3-1-.02(2)(a)1.

¹The Petition is less than clear on exactly what objections the Petitioner is making. Reading the Petition, together with Petitioners' corresponding comments 5 and 6 on the draft permit, leads EPA to identify these two objections.

2. The Hercules permit violates Georgia Rule 391-3-1-.02(2)(a)1 (an applicable requirement) because the permit does not contain additional emission limits or standards (including a cumulative impact air toxic study as a “standard or limit”) required to be established under Georgia Rule 391-3-1-.02(2)(a)1.

C. Subsequent Submissions to EPA

As described in greater detail below, The Georgia rule that is the subject of the Petition, Georgia Rule 391-3-1-.02(2)(a)1, is a sState rule that is not derived from and does not implement any federal requirement, even though it is part of the EPA-approved Georgia State Implementation Plan (“SIP”). EPA therefore believes it is appropriate to consider Georgia’s interpretation of the rule in evaluating whether the Hercules permit assures compliance with it. Thus, in reviewing the Petition, EPA asked Georgia to provide EPA with EPD’s interpretation of the rule.² In response to EPA’s request, the State submitted its interpretation of the rule to EPA. Memorandum Re: EPD’s Interpretation of Air Quality Control Rule 391-3-1-.02(2)(a)1 from Diane L. DeShazo, Department of Law, State of Georgia, to Ron Methier, Air Protection Branch, EPD (June 14, 2004) (the “Georgia Memo”).³

Both Hercules and Petitioners also submitted materials to EPA after the Petition was filed. Hercules first submitted “Hercules Incorporated’s Response in Opposition to Petition Regarding Title V Operating Permit for Hercules Incorporated - Brunswick” dated May 12, 2004 (“Hercules’s Opposition”). Petitioners submitted “Petitioners’ Response to Hercules Incorporated’s Response in Opposition to Petition Regarding Title V Operating Permit for Hercules Incorporated - Brunswick” dated August 17, 2004

²EPA identified a few decisions by a Georgia Administrative Law Judge (“ALJ”) which discuss the Rule in some detail in the context of sState air quality permits that were issued before the title V program was in effect in Georgia. See, e.g., In Re: Proteus Group, 1992 Ga. ENV LEXIS 12 (Ga. Bd. Nat. Res. Mar. 20, 1992); In Re: Proteus Group, 1992 Ga. ENV LEXIS 4 (Ga. Bd. Nat. Res. Feb. 26, 1992); In Re: Bulk Distribution Centers, Inc., 1989 Ga. ENV LEXIS 33 (Ga. Bd. Nat. Res. Oct. 31, 1989). However, those thedecisions do not indicate how the State interprets the Rule in the context of title V permitting.

³EPD explained that the ALJ decisions are inapplicable to EPD’s interpretation of Georgia Rule 391-3-1-.02(2)(a)1, in part because a Georgia statutory requirement that the EPD Director consider any “nuisance” prior to issuing an air quality permit – which EPD asserts the ALJ who issued the decisions was aware of, based on a discussion in one of the decisions – subsequently was eliminated. Georgia Memo at 10. EPA believes EPD’s reasoning on this point is reasonable and therefore does not address the ALJ decisions further in this Order.

("Petitioners' Response").⁴ Hercules then submitted "Hercules Incorporated's Reply to Petitioners' Response" dated September 1, 2004 ("Hercules's Reply").⁵

III. ISSUES RAISED BY THE PETITIONERS

A. Incomplete Permit

1. Inclusion of All "Applicable Requirements"

Petitioners allege that the Hercules permit fails to address Georgia Air Quality Control Rule 391-3-1-.02(2)(a)1 ("Georgia Rule 391-3-1-.02(2)(a)1," the "Georgia Rule" or the "Rule"), which provides that:

[n]o person owning, leasing or controlling the operation of any air contaminant sources shall willfully, negligently or through failure to provide necessary equipment or facilities or to take necessary precautions, cause, permit, or allow the emission from said air contamination source or sources of such quantities of air contaminants as will cause, or tend to cause, by themselves or in conjunction with other air contaminants a condition of air pollution in quantities or characteristics or of a duration which is injurious or which unreasonably interferes with the enjoyment of life or use of property in such area of the State as is affected thereby. Complying with any of the other sections of these rules and regulations or any subdivisions thereof, shall in no way exempt a person from this provision.

Petitioners state that this Rule was approved by EPA into Georgia's SIP and therefore became a federally enforceable requirement in 1993. Petition at 3. As such, Petitioners claim that it is an applicable requirement that must be included in the Hercules permit,

⁴Petitioners' Response was submitted in accordance with a settlement agreement entered into by Petitioners and EPA to resolve a citizen suit brought by Petitioners to compel a response to the Petition. Glynn Environmental Coalition, Inc. v. EPA, No. CV204-013 (S.D. Ga.) (filed Jan. 26, 2004). The State of Georgia and Hercules intervened in the lawsuit as Defendants-Intervenors. See Notice of Proposed Settlement Agreement, 69 Fed. Reg. 45,703 (July 30, 2004).

⁵In light of EPA's conclusion that Petitioners have not met their burden under CAA section 505(b)(2) because the Hercules permit contains conditions that assure compliance with Georgia Rule 391-3-1-.02(2)(a)1, EPA does not need to address certain issues raised by Hercules and by Petitioners in their response to Hercules's arguments, such as the regulation of emissions of hazardous air pollutants under the Georgia Air Toxics Guideline and the federal Maximum Achievable Control Technology rules, see Hercules's Opposition at 5-6, and whether a subjective SIP provision may be a basis for a citizen suit under section 304 of the CAA. See Hercules's Reply at 1-4.

and that EPD must specifically refer to those portions of the permit that comply with this Rule. Id. at 4-5.

Petitioners are correct that the Georgia Rule is an applicable requirement under title V and EPA's implementing regulations. See 40 C.F.R. §§ 52.570(c) (Georgia SIP provisions) and 70.2 (definition of "applicable requirement" which includes "[a]ny standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in [40 C.F.R. part 52]"). EPD included the Rule as a general condition⁶ in the Hercules permit. See Condition 8.17.2. Condition 8.17.2 almost exactly tracks the Rule's language, and it cites the Rule as the underlying origin and authority. See 40 C.F.R. § 70.6(a)(1)(i) (requiring that a permit specify the origin of and authority for each term or condition); Ga. Rule 391-3-1-.03(10)(d)(1)(i) (incorporating 40 C.F.R. § 70.6(a) by reference). Because the Rule is included in the Hercules permit, Petitioners' request for a title V objection based on the failure to include the Rule as an applicable requirement is denied.

2. Conditions That Assure Compliance With Applicable Requirements

Petitioners also claim that the Hercules permit must contain enforceable emission limitations and standards – namely, "requirement[s] established which limit[] the quantity, rate, or concentration of emissions of air contaminants on a continuous basis including any requirement relating to the equipment or operation or maintenance of a source to assure continuous emission reduction" – to assure compliance with the Georgia Rule and with all EPA-approved SIP rules. Petition at 6 (citing Georgia Rule 391-3-1-.01(v), which defines "emission limitation" and "emission standard"). To support this claim, Petitioners cite section 504(a) of the CAA, 42 U.S.C. § 7661c(a), which requires that title V permits include "enforceable emission limitations and standards, a schedule of compliance, ... and such other conditions as are necessary to assure compliance with the applicable requirements of [the CAA], including the requirements of the applicable implementation plan." Petitioners also cite 40 C.F.R. § 70.6(a)(1)(i), which requires that title V permits include "[e]mission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements," and reference the origin and authority of each term or condition. See Petition at 2, 4-6.

Title V requires that the Hercules permit must assure compliance with all applicable requirements, including the Georgia Rule. See, e.g., 42 U.S.C. §§ 7661a(b)(5)(A), (C) (minimum elements of a title V program include requirements that the permitting authority have adequate authority to assure title V sources' compliance

⁶General conditions address requirements that apply to all title V sources and requirements of Georgia Rule 391-3-1 that apply to all stationary sources of air pollution. See Permit Narrative, § VIII, at 43.

with each applicable standard, regulation or requirement under the Act and assure that “permits incorporate emission limitations and other requirements in an applicable implementation plan”); 42 U.S.C. § 7661c(a); 40 C.F.R. § 70.1(b) (each source subject to title V is required to have an operating permit that “assures compliance by the source with all applicable requirements”); 40 C.F.R. § 70.7(a)(1)(iv) (an operating permit may be issued only if “[t]he conditions of the permit provide for compliance with all applicable requirements and the requirements of [part 70]”).⁷ Towards this end, the Hercules permit does contain conditions to assure compliance with the Georgia Rule. In addition to Condition 8.17.2, Conditions 3.2.5, 3.2.6, 3.2.7, 3.2.8, and 3.4.4 of the permit were included to assure compliance with the Georgia Rule. Conditions 3.2.5 through 3.2.8 contain numerical limits and Condition 3.4.4 contains a requirement relating to the operation of a source.⁸

However, EPA disagrees with Petitioners’ claim that section 504(a) of the CAA and 40 C.F.R. § 70.6(a)(1)(i) limit a permitting authority’s options for assuring compliance with the Georgia Rule to “emission limitations and standards.” Along with “emission limitations and standards,” section 504(a) lists “other conditions” necessary to assure compliance with applicable SIP requirements among several elements of title V permits. The wording and structure of section 504(a) therefore suggests that emission limitations and standards are not the only means by which title V permit conditions may assure compliance with applicable SIP requirements. In addition, section 502(b)(5)(C) of the CAA, which requires that permits “incorporate emission limitations and other [SIP] requirements,” plainly acknowledges that some applicable requirements need not take the form of emission limitations and standards when they are incorporated into title V permits. Moreover, title V and part 70 rely on permitting authorities, subject to EPA oversight, to craft permit conditions that assure sources’ compliance with all applicable requirements. See, e.g., 42 U.S.C. §§ 7661a(b)(5)(A), (C), 7661a(d); 40 C.F.R. § 70.4(b)(3)(i), (v). Therefore, the permit conditions that are necessary to assure compliance with a particular applicable requirement depend in part on the nature of the applicable requirement itself. Where an applicable requirement is not in the form of an emission limitation or standard but instead imposes general duties or prescribes work practices, conditions in a title V permit must reflect such duties or practices. Nothing in title V or part 70 requires that a title V permit contain more specific conditions than an applicable requirement requires, provided that compliance can be assured. See 40 C.F.R. § 70.1(b) (“title V does not impose substantive new requirements”). As stated

⁷EPA therefore disagrees with Hercules’s conclusion that “even if the federally enforceable emissions limitations of a permit do not ensure compliance with Georgia Rule 391-3-1-.02(2)(a)1, neither those emissions limitations nor the permit is invalid under the Clean Air Act. Moreover, the Clean Air Act does not and cannot require that a Title V permit contain emissions limitations that are sufficient to ensure compliance with Georgia Rule 391-3-1-.02(2)(a)1.” Hercules’s Opposition at 11.

⁸Georgia Memo at 2-3; see Permit at 7-8, 13; Permit Narrative, § III(F), at 20-21.

above, Conditions 8.17.2, 3.2.5, 3.2.6, 3.2.7, 3.2.8, and 3.4.4 were included in the Hercules permit to assure compliance with the Georgia Rule.

Petitioners claim, however, that in order to assure compliance with the Georgia Rule, additional conditions are required to be established under the Rule itself, and incorporated into the Hercules permit. To respond to Petitioners' claim, it is therefore necessary to consider whether the Georgia Rule itself requires that the Hercules permit contain emission limitations and standards set under that Rule to assure compliance. In general, EPA presumes that state nuisance rules like the Georgia Rule, which are not derived from and do not implement any federal requirement even if they are part of an EPA-approved SIP, are "general duty" provisions that which impose general obligations on sources and may be incorporated into title V permits without specific emission limitations and standards. Indeed, the plain language of the Georgia Rule imposes a general obligation on sources of air pollution not to create a nuisance.⁹ Further, the Rule does not speak to or expressly impose any responsibilities on EPD (such as the creation of emission standards or limitations), as Petitioners maintain. Yet, because it is a sState rule that is not derived from any federal requirement, EPA believes it is appropriate to consider Georgia's interpretation of the Rule in evaluating whether Conditions 8.17.2, 3.2.5, 3.2.6, 3.2.7, 3.2.8, and 3.4.4 of the Hercules permit assure compliance with it.

EPD interprets the Georgia Rule as "a general duty provision" that which "requires persons owning or operating air contaminant sources to generally not create a 'nuisance' through the emission of air contaminants." Georgia Memo at 4, 8-9. According to the State, "EPD cites this Rule as authority for limitations or conditions added or revised in an air quality permit as a result of its analysis performed pursuant to the Georgia Air Toxic Guideline; however, EPD does not interpret this Rule as requiring it to perform that analysis." *Id.* at 4-5. When issuing a title V permit where a person is not applying to construct or modify its facility, EPD simply carries forward any requirements imposed pursuant to the Rule through previously issued air quality permits so that such requirements are consolidated in the title V permit. *Id.* at 3. Nonetheless, "[s]hould EPD have reason to believe that a person is in violation of [Georgia Rule 391-3-1-.02(2)(a)1, EPD has the authority under the Georgia Air Quality Act ("Act") ... and the Georgia Rules for Air Quality Control ("Rules")... to do any analysis it deems necessary to ensure compliance with the Act and the Rules." *Id.* at 5. Moreover, "[s]hould EPD determine that a person is in violation of [Georgia Rule 391-3-1-.02(2)(a)(1)], it has the authority to include and/or revise emission limitations, i.e., numerical limits and/or equipment or operation or maintenance requirements, in the applicable air quality permit." *Id.*

⁹One federal district court has characterized the Georgia Rule in this manner. See Satterfield v. J.M. Huber Corp., 888 F.Supp. 1561, 1566 (N.D. Ga. 1994) (stating that the Rule restates the Georgia common law of nuisance and is a subjective standard that which prohibits source owners and operators from willfully or negligently allowing air emissions to cause nuisance conditions).

EPA finds EPD's interpretation of the Georgia Rule to be reasonable, particularly in light of the Rule's plain language, which specifically prohibits "person[s] owning, leasing or controlling the operation of any air contaminant sources" from causing nuisance conditions and which does not refer to EPD. Because nothing in title V, part 70, or the Georgia Rule requires that the Hercules permit contain emission limitations and standards to assure compliance with the Georgia Rule, EPA concludes that Petitioners have failed to meet their burden of demonstrating that the Hercules permit does not comply with the Act and applicable requirements thereunder. EPA therefore denies the Petition as to this issue.

B. Non-Compliance with the Georgia Rule

Petitioners further assert that EPD was required to make a specific finding of Hercules's compliance with the Georgia Rule prior to issuing the Hercules permit by analyzing the "cumulative impact[s] of multiple air contaminants" emitted from the facility and other sources in the vicinity, including schools and a Georgia-Pacific facility. Petition at 6. Petitioners argue that such an analysis "is required to satisfy the emissions standards and limitations contained in Rule 391-3-1-.02(2)(a)1" and that "the analysis is a separate and distinct emission standard or limitation, and there must be findings that this Rule has been satisfied before a permit can be issued." *Id.* at 6-7. Finally, Petitioners assert that the Hercules title V permit does not satisfy the Georgia Rule because the only air monitoring data published by EPD for the area in the vicinity of the Hercules facility "shows levels of hazardous air pollutants (HAP) that individually are injurious or unreasonably interfere with the enjoyment of life or use of property in violation of [Georgia Rule 391-3-1-.02(2)(a)1]." Petition at 7, 9.

As stated previously, the plain language of the Georgia Rule imposes a general obligation on sources of air pollution without expressly imposing any responsibilities on EPD. EPD does not "interpret this Rule as requiring it to perform a cumulative impact analysis or any other analysis prior to issuing an air quality permit to determine if additional and/or more stringent emission limitations or other requirements may be required in the unlikely event that the source or sources will create a 'nuisance' even though operated in compliance with the specific emission limitations and other requirements in the permit." Georgia Memo at 4-5.¹⁰ Rather, EPD explains that "[t]his

¹⁰ In response to Petitioners' comments on the draft Hercules permit, in which Petitioners claimed that the permit did not contain evidence that the location of other nearby facilities such as the Georgia Pacific facility and several schools was considered in the Hercules permitting decision, Comments on Draft Title V Permit at 6, EPD stated:

The Title V permit is designed to consolidate existing air quality permits and provide adequate monitoring and reporting to ensure compliance with existing rules and limits. [EPD] feels the Permit as finalized adequately addresses the requirements of the Title V program. This request is not within the scope of the

Rule clearly places the responsibility on the person owning or operating the source(s) of air contaminants to not create a ‘nuisance’ through air pollution.” *Id.* at 8-9. EPD further explains that this Rule “recognizes that there may be times when compliance with the specific emission limitations or other requirements in a permit may not be sufficient to prevent a ‘nuisance’” and that in such circumstances, EPD has broad authority under state law to pursue enforcement actions and/or impose emission limitations in an air quality permit.¹¹ Yet, according to EPD, the Georgia Rule does not require EPD to determine whether a source’s emissions will create a nuisance prior to issuing an air quality permit. Georgia Memo at 9. Nevertheless, EPD did find the Hercules facility to be in compliance with the Rule at the time of permit issuance. *Id.* at 2-3.

Because EPA finds EPD’s interpretation of the Georgia Rule to be reasonable for the reasons set forth in the previous section of this Order, EPA concludes that Petitioners have not met their burden of demonstrating that the Hercules permit is not in compliance with the Georgia Rule. The permit contains a general condition, Condition 8.17.2, which tracks the regulatory text of the Rule and imposes the same general duty established in the Rule on Hercules’s Brunswick facility. The permit also contains Conditions 3.2.5, 3.2.6, 3.2.7, 3.2.8, and 3.4.4 to assure compliance with the Rule.¹² Petitioners have not demonstrated that any more specific conditions are required to assure compliance with the Georgia Rule. Therefore, EPA denies the Petition as to this issue.

Title V permit.

See Petition at 4 (quoting EPD, Title V Application Review - Addendum to Narrative, Hercules, Incorporated - Brunswick, TV-9244, at 1-2).

¹¹In response to Petitioners’ comments at a public hearing that the facility’s “history of violations, citizen complaints, consent orders and ‘sloppy housekeeping’” evidenced a violation of the Georgia Rule and should be taken into account in the permitting process, EPD stated:

The Stationary Source Compliance Program handles all violations, citizen complaints and consent orders as merited. Each complaint filed with the Division is researched, investigated and appropriate action is taken against the facility. “Sloppy housekeeping” is handled through un-announced on-site inspections.... The Division believes it has adequately addressed all applicable air regulations ... to provide reasonable assurance of compliance.

EPD, Title V Application Review - Addendum to Narrative, Hercules, Incorporated - Brunswick, TV-9244, at 2.

¹²Georgia Memo at 2-3; see Permit at 7-8, 13; Permit Narrative, § III(F), at 20-21.

IV. CONCLUSION

For the reasons set forth above and pursuant to section 505(b)(2) of the CAA and 40 C.F.R. § 70.8(d), I hereby deny the Petition filed by Petitioners requesting that the Administrator object to the Hercules title V permit.

So ordered.

November 10, 2004

Date:

Michael O. Leavitt
Administrator