

BEFORE THE ADMINISTRATOR  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

_____ )	
IN THE MATTER OF )	
SEMINOLE ROAD LANDFILL )	ORDER RESPONDING TO PETITIONER’S
ELLENWOOD, GEORGIA )	REQUEST THAT THE ADMINISTRATOR
MUNICIPAL SOLID WASTE LANDFILL )	OBJECT TO ISSUANCE OF A STATE
PETITION IV-2001-3 )	OPERATING PERMIT
_____ )	
PERMIT NO. 4953-089-0299-V-01-0 )	
ISSUED BY THE GEORGIA )	
ENVIRONMENTAL PROTECTION )	
DIVISION )	
_____ )	

**ORDER DENYING PETITION FOR OBJECTION TO PERMIT**

On August 22, 2001, the United States Environmental Protection Agency (“EPA”) received a petition from the Georgia Center for Law in the Public Interest (“GCLPI”) on behalf of the Sierra Club (“Petitioner”), requesting that EPA object to the permit issued by the Georgia Environmental Protection Division (“EPD” or the “Department”) to Seminole Road Municipal Solid Waste Landfill (“Seminole”) for its facility, located in Ellenwood (DeKalb County), Georgia. The permit is a state operating permit, issued May 24, 2001, pursuant to title V of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. §§ 7661-7661f.

Petitioner challenged the completeness and accuracy of the permit application, permit, and permit narrative; the permit’s apparent limitation of enforcement authority and credible evidence; and the adequacy of the permit’s reporting requirements and the public notice. Petitioner has requested that EPA object to the Seminole permit pursuant to CAA section 505(b)(2), 42 U.S.C. § 7661d(b)(2). For the reasons set forth below, I deny the Petitioner’s 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 an operating permit program intended to meet the requirements of CAA title V. The State of Georgia originally submitted its title V program governing the issuance of operating permits on November 12, 1993. EPA granted interim approval to the program on November 22, 1995. *See* 60 Fed. Reg. 57836 (Nov. 22, 1995). Full approval was granted by EPA on June 8, 2000. *See* 65 Fed. Reg. 36358 (June 8, 2000). The program is now incorporated into Georgia’s Air Quality Rule 391-3-1-.03(10). All major stationary sources of air pollution and certain other sources are required to apply for title V operating permits that include emission limitations and other conditions as necessary to assure compliance with applicable requirements

of the Act, including 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") on sources. The program does require permits to contain monitoring, recordkeeping, reporting, and other conditions to assure compliance by sources with existing applicable requirements. See 57 Fed. Reg. 32250, 32251 (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 in a single document, therefore enhancing compliance with the requirements of the Act.

Permitting authorities must provide at least 30 days for public comment on draft title V permits and give notice of any public hearing at least 30 days in advance of the hearing. 40 CFR § 70.7(h). Following consideration of any comments received during this time, Section 505(a) of the Act, 42 U.S.C. § 7661d(a), and 40 CFR § 70.8(a) require that states submit each proposed permit to EPA for review. Upon receipt of a proposed permit, EPA has 45 days to object to final issuance of the permit if it is determined not to be in compliance with applicable requirements or the requirements of title V. 40 CFR § 70.8(c). If EPA does not object to a permit on its own initiative, CAA section 505(b)(2), 42 U.S.C. § 7661d(b)(2), and 40 CFR § 70.8(d) provide that any person may petition the Administrator, within 60 days of the expiration of EPA’s 45-day review period, to object to the permit. These sections also provide that petitions shall be based only on objections to the permit raised with reasonable specificity during the public comment period (unless the petitioner demonstrates that it was impracticable to raise such objections within that period or the grounds for such objections arose after that period).

Section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), requires the Administrator to issue a permit objection if a petitioner demonstrates that a permit is not in compliance with the requirements of the Act, including the requirements of 40 CFR Part 70 and the applicable implementation plan. 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 CFR §§ 70.7(g)(4) or (5)(i) and (ii) for reopening a permit for cause. A petition for review 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. See 42 U.S.C. §§ 7661d(b)(2)-(b)(3); 40 CFR § 70.8(d).

## II. PROCEDURAL BACKGROUND

### A. Permitting Chronology

EPD received a title V permit application submitted by Seminole on June 13, 1997. The Department determined that the application was administratively complete on June 17, 1997. On December 14, 2000, EPD published the public notice providing for a 30-day public comment period on the draft title V permit for Seminole. The Petitioner submitted (via facsimile) comments to EPD in a letter, dated January 16, 2001, which serves as the basis for this petition. EPD notified the Petitioner via an e-mail message, dated May 9, 2001, that the permit had been re-proposed to EPA on the same date as the e-mail message. See Exhibit 3 of the petition. EPD subsequently issued the final permit to Seminole on May 24, 2001.

### B. Timeliness of Petition

EPA's 45-day review period for the Seminole permit ended on July 9, 2001. The sixtieth day following that date and the deadline for filing any petitions of this permit was September 7, 2001. As noted previously, on August 22, 2001, EPA received a petition from GCLPI on behalf of the Petitioner requesting that EPA object to the permit. Therefore, EPA considers this petition to be timely.

## III. FACILITY BACKGROUND

Seminole accepts municipal and industrial solid waste from the local area and deposits it directly into the ground. The waste is then compacted and covered with fill dirt to begin the process of natural decomposition. The landfill gases resulting from the decomposition of the waste are collected using a gas collection and control system (GCCS) and then combusted using a flare. The facility also operates a wood chipping process and a leachate collection system.

The primary air emissions from this facility are non-methane organic compounds, which include volatile organic compounds, resulting from the decomposition of the waste materials. However, as mentioned above, these emissions are minimized with the use of the GCCS and flare. The facility is subject to the following federal requirements: 40 CFR 60, Subpart Kb, *Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels)*; 40 CFR 60, Subpart WWW, *Standards of Performance for Municipal Solid Waste Landfills*; and 40 CFR 61, Subpart M, *National Emissions Standard for Asbestos*. The facility is also subject to the following State Implementation Plan (SIP) requirements: Georgia Rules 391-3-1-.02(2)(b), *Visible Emissions*; (g), *Sulphur Dioxide*; and (n), *Fugitive Dust*. See *Title V Application Review, Seminole, Permit No. 4953-089-0299-V-01-0*.

#### IV. ISSUES RAISED BY THE PETITIONER

##### A. Inadequate Reporting

Petitioner's comment: 40 CFR § 70.6(a)(3)(iii)(A) and 42 U.S.C. § 7661c(a) require that permits include a requirement for submittal of reports of any required monitoring at least every six months. The Seminole permit does not contain such a requirement. EPA should object to this permit and modify the permit to include a provision that requires the “submittal of reports of any required monitoring at least every 6 months.” 40 CFR § 70.6(a)(3)(iii)(A).

EPA's response: The part 70 rule cited by the Petitioner, § 70.6(a)(3)(iii)(A), states that each permit shall require “[s]ubmittal of reports of any required monitoring at least every 6 months. All instances of deviations from permit requirements must be clearly identified in such reports.” This rule implements Section 504(a) of the CAA which requires that each title V permit include “a requirement that the permittee submit to the permitting authority, no less often than every 6 months, the results of any required monitoring.” EPD included Condition 6.1.4 in the Seminole permit to satisfy this requirement. This condition requires semiannual reporting of information related to deviations, malfunctions, operating time, monitor down time, and other information.

The Petitioner argues that since § 70.6(a)(3)(iii)(B) requires reporting of deviations, the position EPD has taken that permit Condition 6.1.4 satisfies § 70.6(a)(3)(iii)(A) would render that rule meaningless as it would be redundant to § 70.6(a)(3)(iii)(B). EPA disagrees with this assessment because § 70.6(a)(3)(iii)(B) is a requirement for “prompt” reporting of deviations and is separate from the semiannual reporting requirements. The Seminole permit addresses the “prompt” reporting requirement through Conditions 6.1.2. and 6.1.3.

The Seminole permit, like other title V permits issued by EPD, includes considerable detail in Condition 6.1.4 regarding what must be included in semiannual monitoring reports. Specifically, the reports must include: a summary of all excess emissions, exceedances, and excursions; any failure to follow work practice standards; total process operating times; the magnitude of all excess emissions, exceedances, and excursions; specific identification of each such episode, including the nature and cause and the corrective action taken; and specific identification of each period during which a required monitoring system or device was inoperative, including information about when the system or device has not been inoperative, repaired, or adjusted. Also, as required by part 70, the reports must include a certification by a responsible official that the contents of the reports are true, accurate, and complete.

Although the semiannual monitoring reports required by EPD focus on information related to deviations and monitoring device operation, it can reasonably be concluded that all monitoring results not reported as deviations show compliance with applicable

permit terms and conditions. This interpretation is supported by the fact that the permit requires reports to affirmatively state when there are no deviations during a given reporting period. In addition, the emissions units and activities being monitored and the applicable emission limits and standards addressed in such reports are clearly described in the permit itself. Condition 6.1.3 of the permit requires the facility to provide a statement regarding any failure to comply with or complete a work practice standard or requirement contained in the permit with the semiannual monitoring reports. Therefore, the facility is required to describe any monitoring that was not conducted in accordance with the permit for any reason. The reports must also contain the probable cause of any such failure, the duration of the failure, and any corrective actions or preventive measures taken.

The Petitioner maintains that the permit should be revised to include a provision that requires “submittal of reports of any required monitoring at least every 6 months.” Indeed, many permitting authorities simply include this phrase, taken precisely from § 70.6(a)(3)(iii)(A), in their permits. However, they provide no description of what information such reports must include, thus leaving it up to the source to decide what is appropriate. EPD, on the other hand, has provided clear guidelines for what a monitoring report must contain. Adding the provision suggested by the Petitioner would not improve upon those requirements.

Within the language of § 70.6(a)(3)(iii)(A), EPD has permissibly interpreted the provision to require detailed information regarding the operation of monitoring devices and deviations from monitoring requirements. Note that deviations reported by a facility are not necessarily violations of emission limits, but are generally indicators that a source has operated close to a limit and that corrective action may be warranted. The Seminole permit provides such corrective actions to help prevent actual emission limit violations. The information provided in the semiannual monitoring reports is also used by EPD to determine whether a source has been operating within its emission limitations and whether more effective emission controls or more frequent monitoring is needed.

In addition to identifying all emission units at the facility and describing the monitoring requirements for each, the Seminole permit requires semiannual reports regarding all required monitoring. Thus, EPA believes EPD reasonably interpreted § 70.6(a)(3)(iii)(A) when it specified what the reports must contain to keep EPD informed of the facility’s compliance status and potential problem areas.

For the reasons discussed above, the petition is denied with respect to the issue of inadequate reporting.

## **B. Limitation of Enforcement Authority**

Petitioner's comment: The Seminole permit impermissibly limits who may enforce against violations of the permit. The Act provides that any "person" may take civil action to stop a violation of a title V permit. 42 U.S.C. § 7604(a). The Act defines "person" to include "an individual, corporation, partnership, association, State, municipality, political subdivision of a state. . ." 42 U.S.C. § 7602(e). However, the Seminole permit limits those who can take enforcement actions to "citizens of the United States." This is contrary to statute; therefore, the phrase "of the United States" must be deleted from Condition 8.2.1.

EPA's response: EPA agrees with Petitioner that Condition 8.2.1's language limiting those persons who can enforce the terms and conditions of the Seminole permit to "citizens of the United States" is contrary to the CAA and EPA's part 70 regulations, which provide for broad public enforcement of title V permits and contain no such limitation. However, because EPD has agreed to remove the phrase "of the United States" from Condition 8.2.1 of the Seminole permit, as discussed below, EPA finds that it is not necessary to grant the petition and object to the permit with respect to this issue.

EPD deleted the phrase "of the United States" from Condition 8.2.1 in the Seminole permit by an administrative amendment effective October 31, 2001 (Permit Amendment No. 4953-089-0299-V-01-1)<sup>1</sup>. Furthermore, EPD has already agreed to remove the phrase "of the United States" from Condition 8.2.1 of the permit template.<sup>2</sup> Therefore, the petition is denied with respect to this issue because the issue is moot.

## **C. Inadequate Public Notice**

Petitioner's comment: 40 CFR § 70.7(h)(1) requires that EPD give notice of the draft permit to individuals on a mailing list developed by the permitting authority, including those who have requested to be on such a list. EPD, however, did not provide notice to people on the mailing list. § 70.7(h) also provides that the permitting authority shall provide "adequate" procedures for public notice. While part 70 and the Act do not define "adequate," it is apparent that adequate should at least include information that is

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<sup>1</sup>See letter from John Yntema, Manager, Combustion Permitting Unit, Stationary Source Permitting Program, EPD, to Leroy Scott, DeKalb County Department of Sanitation (Oct. 31, 2001) (transmitting the amendment).

<sup>2</sup>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).

accurate. The public notice itself is inadequate because it contains inaccurate information; it states that the permit is enforceable only by the EPA and EPD. The permit shall also be enforceable by any “person.” 42 U.S.C. § 7604(a). Therefore, because § 70.7(a)(1)(ii) prohibits the issuance of a title V permit unless all the requirements for public participation pursuant to § 70.7(h) are satisfied, EPA should object to the permit and require a new 30-day public comment period and a public notice which clarifies that the public can also enforce this permit. EPD and EPA also have not provided the public with an adequate system of notice of when the public’s petition period begins.

EPA’s response: EPD has issued a number of final title V permits, including one for Seminole, without first notifying the public of the draft permits via a mailing list required to be developed and maintained pursuant to § 70.7(h)(1). As of June 2001, however, EPD addressed the requirement for a mailing list by creating one. See e-mail message from Jimmy Johnston of EPD to Art Hofmeister of EPA, dated June 19, 2001. Although § 70.7(a)(1)(ii) requires that the permitting authority comply with the requirements of § 70.7(h) prior to permit issuance, EPA is not convinced that the existence of a mailing list would have significantly increased the public participation related to previously issued permits. Therefore, EPA does not believe that re-noticing previously issued permits, including the Seminole permit, is warranted.

Although the public notice does not specifically name “persons” as being designated enforcers of the title V permit, it satisfies the requirements of part 70 regarding the contents of an adequate notice. The public notice requirements specified under § 70.7(h)(2) do not require a statement of who may enforce a permit. Nevertheless, the public notice accurately states that the permit will be enforceable by the EPD and EPA. The public notice does not preclude “persons” from enforcing the permit since it does 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. For clarification purposes, however, EPD has agreed to change future notices to include “persons” as designated enforcers. See the public notice for Shaw Industries, Inc. Plant No. 4 (Permit No. 2273-313-0084-V-01-0) as an example of a revised notice.

Part 70 requires that the permitting authority provide at least 30 days for public comment; however, it does not mandate that the public notice define the end dates for the public comment period and EPA’s 45-day review period. EPD’s public notice actually goes beyond the requirements of part 70 by: (1) defining the end date of the public comment period as “30 days after the date on which this notice is published in the newspaper” and (2) establishing the earliest end date of EPA’s 45-day review period by stating that EPA’s review period immediately follows the public comment period. See the public notice for Shaw Industries, Inc. Plant No. 4 (Permit No. 2273-313-0084-V-01-0) as an example. With this information, any person may determine the earliest beginning and end dates of the 60-day petition period (i.e., the public may conservatively assume that it has 135 days from the date of publication in which to file a timely petition). EPD recently took further

action to assist the public in defining the actual 60-day petition period by updating its title V permits website to include the end dates for both the 30-day public comment period and EPA's 45-day review period for respective draft/proposed permits. Any person may now determine, with minimal effort, the time period in which a timely petition must be filed (i.e., within 60 days of the end of EPA's review period).

For the reasons discussed above, the petition is denied with respect to this issue.

#### **D. Limitation of Credible Evidence**

Petitioner's comment: The Seminole permit contains language that appears to limit the use of credible evidence in enforcement actions, specifically Conditions 4.1.3 and 6.1.3. EPD must remove language that intends or appears to limit the use of credible evidence. EPA should further require EPD to affirmatively state in the permit that any credible evidence may be used in an enforcement action.

EPA's response: EPA believes that the Seminole permit as amended (see the discussion below) appropriately provides for the use of reference test methods as the benchmark for determining compliance with applicable requirements and for the use of other credible evidence in enforcement actions and in compliance certifications. By way of background, EPA in 1997 issued final changes to 40 CFR Parts 51, 52, 60, and 61 to clarify the appropriate roles of reference test methods and of other credible evidence. 62 Fed. Reg. 8314 (Feb. 24, 1997). The final regulations made clear (1) that the reference test methods set forth or cited to in federal emissions standards and SIP emission limits remain the official benchmark for determining compliance with those standards; and (2) that other credible evidence such as emissions data, parametric data, engineering analyses, or other information may also be used in compliance certifications under Title V and for enforcement purposes. For example, 40 CFR § 60.11(g) was amended to provide that such other data could be used for these purposes if it were "relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed." Here, it appears that Petitioner has mistakenly concluded that permit conditions specifying that certain test methods are the relevant reference test methods for the emission units in question – which as explained above are entirely proper – actually have the intent or effect of excluding the use of other credible evidence for compliance certification and enforcement purposes. As explained below, EPA believes that the permit as amended allows the use of other credible evidence to show whether the source would have been in compliance if the reference test had been performed at some particular time.

Thus, Condition 4.1.3 of the Seminole permit 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 the Georgia 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. Condition 8.17.1 does not limit the use of credible evidence because it allows the use of “any information available to the Division” and the phrase “but is not limited to” renders the listed forms of acceptable information not exclusive.

Nonetheless, for further clarification, EPD added a general condition to the Seminole title V permit via a minor modification which expressly states that nothing shall preclude the use of any credible evidence. See Seminole Minor Permit Modification No. 4953-089-0299-V-01-2. Furthermore, EPD added this condition to the permit template to ensure that such language will be included in future title V permits issued by EPD.<sup>3</sup> The petition is therefore denied with respect to the issue of limiting credible evidence because the issue is moot.

#### **E. Accuracy of Permit Application**

Petitioner’s comment: The title V permit application for Seminole was inaccurate, in violation of 40 CFR § 70.7(a)(1)(i), because the application claimed the facility was in compliance with all requirements despite the fact that the facility was actually out of compliance with the New Source Performance Standards (NSPS) for landfills. In none of the permittee’s applications did the responsible official state that the facility was out of compliance with the applicable NSPS. Based on this false information, EPA should object to this permit.

EPA’s response: EPD has acknowledged the fact that the facility was out of compliance with the NSPS for landfills (40 CFR 60, Subpart WWW) prior to the permit issuance date. According to EPD, the facility was brought into compliance with the NSPS prior to the permit issuance date through a consent order between EPD and the facility. Petitioner assumes that the facility knowingly submitted false information in the title V application. Petitioner correctly points out that knowingly submitting false information

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<sup>3</sup>EPD provided EPA with a written commitment to add a general condition to the title V permit template, which expressly states 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).

may be a criminal violation. However, EPD addressed this issue with the facility prior to permit issuance and reached the conclusion that bringing the facility back into compliance with a signed consent decree and remedial actions in advance of title V permit issuance was the appropriate response. Because petitioner has not demonstrated that the Seminole permit itself is not in compliance with applicable requirements of the CAA, there are no grounds for an objection. Therefore, the petition is denied with respect to this issue.

#### **F. Completeness of Permit Narrative**

Petitioner's comment: The permit narrative does not provide a complete legal and factual explanation of the draft permit in violation of 40 CFR § 70.7(a)(5). In particular, the narrative did not include an accurate discussion of the facility's compliance status with regard to the applicable NSPS.

EPA's response: § 70.7(a)(5) requires the permitting authority to set forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permit narrative lists all applicable requirements to which the facility is subject along with simple explanations as to why the facility is subject to each regulation. In addition, the narrative includes a detailed discussion of monitoring, reporting, and recordkeeping requirements necessary to show compliance with the applicable requirements. Therefore, EPA rejects the claim that the narrative provided for the Seminole permit does not set forth a complete legal and factual basis for the draft conditions in the title V permit.

Petitioner believes that the narrative should have included discussion of past noncompliance with respect to the NSPS for landfills (40 CFR 60, Subpart WWW). § 70.6(c)(3) requires a permitting authority to include a compliance schedule in a title V permit for applicable requirements for which the facility is not in compliance at the time of permit issuance. In addition, the narrative (i.e., EPD's statement of basis) is required to list the legal and factual basis of the title V permitting action taking place. However, because there were no outstanding compliance issues with this facility at the time of permit issuance, there was no need for a compliance schedule in the permit and no need for a discussion of such in the narrative. Also, there is no regulatory or statutory requirement for a permitting authority to use the narrative as a historical archive for the facility's past episodes of noncompliance with applicable requirements. Therefore, the petition is denied with respect to this issue.

#### **G. Lack of Compliance Schedule**

Petitioner's comment: The Seminole permit does not contain a compliance schedule requiring the facility to undergo non-attainment area new source review (NSR) for major sources.

EPA's response: The permit does not contain a compliance schedule requiring the facility to undergo non-attainment area NSR because the facility is not subject to non-attainment area NSR requirements for major sources, as Petitioner claims. The facility has accepted practically enforceable limits that enable it to legally avoid the need to undergo lowest achievable emission rate and offset requirements by restricting its potential to emit (PTE) of nitrogen oxides (NO<sub>x</sub>) to less than 50 tons per year, the major source threshold for NO<sub>x</sub> in the Atlanta non-attainment area. Specifically, Condition 3.2.1 restricts the hours of operation for the existing tub grinder (and any additional tub grinders that may be added under the pre-approved alternative operating scenario described below) to less than 4200 total hours per any consecutive 12-month period. In addition, Condition 3.2.1 stipulates that the permittee may not use any other tub grinders which can emit more per hour than the existing grinder, grinder GRIN1. The permit application contained a detailed engineering analysis for NO<sub>x</sub> emissions. Thus, by conservatively limiting the capacity of any additional grinder to that of the existing grinder and by limiting the total hours of operation of all grinders to 4200 hours per 12-month period, Condition 3.2.1 will ensure that NO<sub>x</sub> emissions will not exceed the major source threshold for non-attainment NSR. EPA believes that this permit condition and its corresponding monitoring, reporting, and recordkeeping requirements effectively limit the facility's PTE for NO<sub>x</sub> to below the major source threshold for non-attainment NSR to apply.

In accordance with § 70.6(a)(9), should the landfill desire to bring an additional grinder on site during the five-year permit term, the permit pre-approves an alternative operating scenario with the potential to emit NO<sub>x</sub> emissions at the same or lower level as the first grinder. In addition, the permit condition does not allow the facility to opt out of EPD's minor preconstruction permitting program. Rather, it allows the facility to operate the grinder when a minor preconstruction permit has been obtained. Condition 8.10 requires the facility to obtain a minor NSR permit prior to use of an additional grinder. Therefore, the petition is denied with respect to this issue.

#### **H. Unidentified Emissions Unit**

Petitioner's comment: The Seminole permit allows for the use of an unidentified grinder. However, pursuant to 40 CFR § 70.5(c)(3)(i), title V permits cannot include emission units for which the permit and permit application contain no emissions information.

EPA's response: The permit is written to pre-approve an alternative operating scenario that may occur at the facility in the title V operating permit. As discussed above, the landfill may bring additional grinders on site during the five-year permit term which have the potential to emit NO<sub>x</sub> emissions at the same or lower level as the first grinder. This alternative operating scenario is consistent with the title V operating permit regulatory provisions governing the use of pre-approved alternative operating scenarios found at 40 CFR § 70.6(a)(9). To the extent that the emission unit is described in a general manner in which emissions information can be verified, title V regulations allow the

permitting authority to pre-approve the unit in a title V permit. For further information on this topic, please see EPA's guidance document entitled *White Paper for Streamlined Development of Part 70 Permit Applications*, dated July 10, 1995. This document explains why, in some instances, precise emission estimates are not required in title V applications. The petition is denied with respect to this issue.

#### **I. Enforceability of Sulfur and Opacity Limits**

Petitioner's comment: The Seminole permit's sulfur limit is not enforceable as a practical matter and lacks reporting requirements. The permit's opacity limit does not have any monitoring or reporting requirements.

EPA's response: Per the Petitioner's request, EPD added monitoring in the form of recordkeeping regarding the sulfur content of any fuels combusted in the internal combustion (IC) engines. EPA concurs with EPD's determination that recordkeeping of the sulfur content of fuel oil combusted constitutes adequate monitoring for this particular source type to show compliance with the sulfur dioxide emission limit found in Georgia Rule 391-3-1-.02(2)(g). In response to Petitioner's comment regarding the facility's source-wide opacity limit, EPD believes that the IC engines are not likely to violate the 40 percent opacity limit specified by Georgia Rule 391-3-1-.02(2)(b), and thus, is not requiring monitoring to determine compliance with the 40 percent opacity standard. EPA concurs with Georgia EPD's determination that violation of this opacity standard is unlikely, and therefore, no monitoring is necessary to show compliance with this limit. The IC engine will primarily burn diesel fuel with distillate fuel oil as a secondary fuel. Both fuels should burn relatively clean (i.e., much less than 40% opacity) when the IC engine is operated properly. As EPD mentioned in its response to the citizen's comment, it is possible for the IC engine to exceed 40% opacity during periods of heavy load, cold startups and malfunction. However, it is unlikely that the opacity would equal or exceed 40% for more than a few seconds, because such opacity levels would alert the operator to a potential problem that could result in severe damage to the unit. Therefore, it would be highly unlikely for the IC engine to violate the 40% opacity standard, because the appropriate test method (EPA Reference Method 9) requires that a six-minute average be taken. The petition is denied with respect to this issue.

#### **V. CONCLUSION**

For the reasons discussed above and pursuant to Section 505(b) of the CAA, 42 U.S.C. § 7661d(b), and 40 CFR § 70.8(d), I hereby deny the petition of GCLPI on behalf of the Sierra Club concerning the Seminole title V operating permit.

So ordered.

6/5/2002

Date

\_\_\_\_\_  
Christine Todd Whitman  
Administrator

