



Giving Georgia's Environment Its Day In Court

October 27, 2009

Mr. Stan Meiburg, Acting Regional Administrator
U.S. Environmental Protection Agency, Region IV
Sam Nunn Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303

RE: Environmental Justice and Air Permitting in Georgia

Dear Mr. Meiburg,

While air pollution poses a threat to everyone, studies show that communities of color and lower income communities often face a greater risk of exposure to the negative environmental and public health effects of decreased air quality. Moreover, the Georgia Environmental Protection Division (EPD) does not evaluate or consider the possible disparate impacts to communities of color and low-income communities as a result of their permitting decisions.

An example of this can be found in EPD's failure to consider the disproportionate impacts on low income and minority communities of the Longleaf Energy Station, a proposed coal-fired power plant to be located in Early County, Georgia. The importance of considering these factors cannot be underestimated as pollution from coal-fired power plants impacts certain communities at a higher rate than the general population. It is well established that fine particle pollution from power plants have been linked to asthma attacks, respiratory disease, heart attacks, and premature deaths.¹ Among the pollutants emitted from power plants are nitrogen oxides and sulfur dioxide, which form particle pollution. These fine particles are inhaled deeply into the lungs, affecting both the respiratory and cardiovascular systems.² While pollution from power plants affects all people, 68 percent of African Americans live within 30 miles of a coal-fired power

¹ Clear The Air, "Dirty Air, Dirty Power, Mortality and Health Damage Due to Air Pollution from Power Plants," June 2004.

² Black Leadership Forum, et al. "Air of Injustice, African Americans and Power Plant Pollution," October 2002, available at <http://www.cleartheair.org/fact/injustice.pdf>.

plant.³ Moreover, asthma occurs disproportionately among African Americans in Georgia, who are two to three times more likely than whites to suffer asthma related deaths.⁴ Nationally, although African Americans represent 12.7% of the U.S. population, they account for 26% of asthma deaths.⁵ Even more alarming is the fact that African American children are five times more likely to die from asthma than white children.⁶

LS Power, by locating the Longleaf Energy Station in Early County, is perpetuating the trend whereby African Americans suffer a disparate burden of air pollution. According to U.S. Census data, 50.2% of Early County residents are African American, while African Americans make up only 29.6% of Georgia's general population. Moreover, 23.3% of Early County residents are below the poverty line, according to Census data; this compares with 13.3%, statewide.

Despite the fact that vulnerable communities would suffer a disparate burden from the proposed Plant, EPD publicly announced that it has not considered these factors in its decision-making process.⁷ EPD should have considered these factors before issuing this permit as it is well established that consideration of these factors is essential to eliminating inequitable exposure to disproportionate environmental and human health risks. In Executive Order 12898, the President acknowledged the importance of considering factors of environmental justice in administering federal programs and called upon agencies to take measures to address the disproportionate, adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations.

“To the greatest extent practicable and permitted by law, . . . each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies,

³ American Lung Association, Lung Disease Data in Culturally Diverse Communities: 2005. Lung Disease Data at a Glance: Asthma, *available at* <http://www.lungusa.org>.

⁴ The Georgia Conservancy citing Dr. Richard Bright of the Morehouse School of Medicine (www.gaconservancy.org).

⁵ American Lung Association, Lung Disease Data in Culturally Diverse Communities: 2005. Lung Disease Data at a Glance: Asthma, *available at* <http://www.lungusa.org>.

⁶ *Id.* citing Environmental Defense, "Clean Air for Life: Dirty Air & Your Health. Asthma and Air Pollution," *available at* <http://www.environmentaldefense.org>.


⁷ EPD Question and Answer Session on the Longleaf Energy Station in Early County, October 17, 2006.

and activities on minority populations and low-income populations in the United States. . . .⁸

Congress, through the federal Clean Air Act delegates authority to state permitting agencies to promulgate and enforce air quality standards.⁹ As an agency responsible for the administration and enforcement of federal laws and programs, EPD is responsible for integrating the consideration of disparate impacts to sensitive communities into its decision-making and permitting processes. The state permitting authority, in administering federal law, should not be able to circumvent federal directives in carrying out their delegated authority. Accordingly, prior to any final decision – a thorough analysis of the disproportionate environmental and public health impacts on the surrounding communities should be completed. Absent such an analysis, the permit should not be issued.

As EPA is the agency responsible for overseeing that EPD carries out its delegated authority appropriately, EPA should require that EPD evaluate possible disparate impacts in issuing air quality permits. Further, EPA should require that all states amend their state implementation plans to include consideration of disparate impacts on communities of color and low-income communities in all air quality permitting decisions.

Thank you very much for your consideration of these comments and for your willingness to create a community forum in which these issues can be raised. I look forward to continuing the dialogue on these important issues. If there are any additional questions, please do not hesitate to contact me at eorenstein@green-law.org or (404) 659-3122.

Sincerely,

Ela Orenstein
Staff Attorney

⁸ Exec. Order No. 12,898, 59 Fed. Reg. 7629 (1994).

⁹ 42 U.S.C. §7409(a).