

**Concerned Citizens of Cook County  
Dr. Treva Gear  
Dr. Victoria Meredith  
Environmental Integrity Project  
Dogwood Alliance  
Georgia Interfaith Power and Light  
Forest Keeper  
Mothers & Others for Clean Air  
Sierra Club Georgia Chapter**

March 18, 2021

Via Certified Mail and Email (Regan.Michael@epa.gov)  
Administrator Michael Regan  
U.S. Environmental Protection Agency  
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Washington, DC 20460

**Petition to (1) Require Compliance with Georgia’s Clean Air Act State Implementation Plan Requirement That the Public Have an Opportunity to Comment for on Draft Synthetic Minor Permits and (2) Find Inadequate and Correct Georgia’s Deficient Minor New Source Review Rules**

In the State of Georgia, the public has no opportunity to comment on a draft air permit authorizing the construction and operation of a new “minor” air pollution source, even under circumstances where the proposed facility has the capacity to emit air pollution above the Clean Air Act’s major source thresholds but is classified as minor based on its commitment to comply with supposedly enforceable emission limits set forth in its permit (“synthetic minor” limits). Recently, a coalition of local residents and allied environmental organizations requested that the Environmental Protection Division of the Georgia Department of Natural Resources (“Georgia EPD”) provide them with an opportunity to comment on the draft synthetic minor permit authorizing Renewable Biomass Group (“RBG”) to construct and operate a new industrial-scale wood pellet manufacturing plant in Adel, Georgia.<sup>1</sup> On January 28, 2021, Georgia EPD denied the coalition’s request, declaring that under Georgia’s air quality rules, a public comment opportunity is available only with respect to “major” source permits, i.e., a Clean Air Act Title V operating permit or a major New Source Review (“NSR”) permit.<sup>2</sup> Thus, Georgia EPD issued RBG’s final permit without providing an opportunity for public comment on the adequacy of the synthetic minor emission limitations set forth therein.<sup>3</sup> Though the facility will be major for Title V purposes—emitting nearly 800 tons of regulated air pollutants each year, including nearly 100 tons of fine particulate matter (PM<sub>2.5</sub>), 250 tons of nitrogen oxides (“NO<sub>x</sub>”), and 216 tons of

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<sup>1</sup> Environmental Integrity Project, *et al.*, Public Comments on Air Permit Application No. 27595 for Renewable Biomass Group, dated Aug. 21, 2020 (Att. B).

<sup>2</sup> Georgia EPD, Permit Narrative for Renewable Biomass Group—Adel Plant, dated Jan. 19, 2021, at 14 (Att. C).

<sup>3</sup> Georgia EPD, Air Quality Permit No. 2499-075-0027-E-01-0 issued to Renewable Biomass Group – Adel Facility on Jan. 28, 2021 (Att. D).

volatile organic compounds (“VOCs”)<sup>4</sup>—the opportunity for public comment on the facility’s Title V permit will not arise until long after the facility is constructed and operating.

As demonstrated below, Georgia EPD’s failure to provide an opportunity for public comment on RBG’s draft permit (and more broadly, its failure to provide for public comment on any draft permits for synthetic minor sources) violates Georgia’s federally approved Clean Air Act state implementation plan (“SIP”), which requires an opportunity for public comment on draft synthetic minor permits. Furthermore, Georgia’s failure to provide for public comment on minor NSR construction permits, generally (including those without synthetic minor limits), contravenes federal regulations establishing the minimum criteria for state minor NSR permit programs.

Pursuant to the Clean Air Act, 42 U.S.C. § 7401, *et seq.* (“CAA” or “the Act”), the Administrative Procedure Act, 5 U.S.C. § 551, *et seq.*, and the Environmental Protection Agency’s Clean Air Act implementing regulations, Concerned Citizens of Cook County, Dr. Treva Gear, Dr. Victoria Meredith, Environmental Integrity Project, Dogwood Alliance, Georgia Interfaith Power and Light, Forest Keeper, Mothers & Others for Clean Air, and Sierra Club Georgia Chapter (the “Petitioners”) hereby petition the Administrator of the Environmental Protection Agency (“EPA”) to take the following actions to address Georgia’s failure to provide an opportunity for public comment on draft synthetic minor air permits, both in general and in particular with respect to the RBG permit.

- 1) **Order Georgia EPD to Comply with the SIP and Revoke the RBG Permit.** Pursuant to 42 U.S.C. § 7413(a)(1)(A), EPA should issue an order requiring Georgia EPD to revoke RBG’s air construction permit (No. 2499-075-0027-E-01-0) which was finalized on January 28, 2021 without any opportunity for the public to comment on a draft permit and the effectiveness of the limits on the facility’s “potential to emit” set forth therein, in violation of Georgia’s federally approved SIP.
- 2) **Prohibit Renewable Biomass Georgia from Constructing its Adel Facility Without Complying with the Act’s New Source Review (“NSR”) Requirements.** Pursuant to 42 U.S.C. § 7413(a)(5), EPA should issue an order prohibiting RBG from constructing its Adel wood pellet manufacturing plant without either (1) complying with the Prevention of Significant Deterioration NSR requirements set forth in Georgia’s SIP at Rule 391-3-1.02(7), or (2) obtaining federally enforceable synthetic minor limits as required by Georgia’s SIP, which can be issued only after an opportunity for public comment on the draft synthetic minor permit.
- 3) **Order Georgia EPD to Cease Issuing Synthetic Minor Permits Without Providing for Public Comment.** Pursuant to 42 U.S.C. § 7413(a)(2)(A), EPA should issue an order directing Georgia EPD to cease issuing synthetic minor permits that establish “potential to emit” limits designed to enable new sources to avoid applicability of federal air pollution control requirements for major sources without

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<sup>4</sup> Renewable Biomass Group, Adel, GA, Air Construction Permit Application, Greenfield Wood Pellet Manufacturing Facility (July 2020) (Att. E), at 3-5.

providing for an opportunity for public comment on draft versions of such permits in accordance with Georgia's SIP.

- 4) **Require Georgia to Correct its Deficient Minor NSR Permitting Requirements.** Pursuant to 42 U.S.C. § 7410(k)(5), EPA should require Georgia to revise its SIP to bring it into compliance with federal minor New Source Review ("minor NSR") regulations at 40 C.F.R. §§ 51.160-51.166, which require, among other things, that a state's minor NSR program provide a for a 30-day public comment period on drafts of all minor NSR construction permits. 40 CFR §§ 51.161(a) and (b)(2).

The legal and factual basis for EPA to take the above actions to remedy Georgia's deficient public participation procedures is set forth below.

## I. PETITIONERS

**Concerned Citizens of Cook County** ("4C") is a non-profit organization that seeks to be a positive force for change in Cook County, promoting equity and advocating for social and environmental justice. In fulfilling this purpose, 4C provides support and information designed to lift people up and give access to people who feel excluded from their communities. 4C members are particularly concerned about the negative health and environmental impacts of an array of industrial facilities on their predominantly African-American communities in Adel, GA and Cecil, GA. They feel that their already overburdened communities cannot bear the additional air and noise pollution and safety risks that would result from construction of RBG's proposed wood pellet manufacturing facility.

**Environmental Integrity Project** ("EIP") is a non-profit, non-partisan watchdog organization that advocates for effective enforcement of environmental laws. EIP has three goals: (1) to illustrate through objective facts and figures how the failure to enforce and implement environmental laws increases pollution and harms public health; (2) to hold federal and state agencies, as well as individual corporations accountable for failing to enforce or comply with environmental laws; and (3) to help communities obtain protections guaranteed by environmental laws. Since 2017, EIP has been heavily involved in air permit proceedings for biomass facilities in Georgia and across the U.S. South. In 2018, EIP published a report detailing how industrial wood pellet manufacturing plants were unlawfully evading applicability of major NSR requirements, primarily based on synthetic minor limits that failed to come anywhere close to restricting actual facility emissions below the major source threshold.

**Dogwood Alliance** is a nonprofit environmental organization based in the Southern U.S. For more than 20 years, Dogwood Alliance has worked with diverse communities, partner organizations and decision-makers to protect Southern forests across 14 states. Dogwood Alliance's Our Forests Aren't Fuel campaign is part of an international coalition opposing the industrial-scale burning of trees to produce energy.

**Dr. Treva Gear** is an Army veteran, educator, and community organizer who is a native of Adel, Georgia. She grew up in Adel and received her K-12 schooling there. Dr. Gear has many family members and friends who reside in the Adel-Cook County area. She has been an educator for 16 years and she currently is an instructional coach at Lowndes High School in Valdosta, Georgia. Dr. Gear is concerned about the immediate and long-term negative impact that the

wood pellet plant will have on air quality and the health and wellness of the residents, especially in combination with other active environmental issues that exist in the area. Dr. Gear is a co-founder of Concerned Citizens of Cook County. A statement from Dr. Gear concerning the facility is attached as Attachment A.

**Dr Victoria Meredith** is a practicing physician, local Cook county farmer, Air Force veteran, and health as well as environmental advocate. Growing up in a traveling job situation, she lived around the country and later the world experiencing firsthand a variety of sociopolitical and economic situations, and witnessing the environmental, community and health impacts resulting. Settling in Cook county Georgia in 2005 was a conscious decision based on climate, soil, population, and land use research of the southeast U.S. She is currently the acting director of the EdenArk project—a long term scientific and educational study focused on the correlation between local ecosystems and human health and wellbeing on several levels. Dr Meredith has serious medical and scientifically based concerns about the short term (1-100 yrs) human health implications, ecosystem destruction and local community disintegration as well as the long term (generational >100yrs) health consequences and environmental damage that will result from a wood pellet plant as well as other unchecked heavy industry development. Public outcry against this development has been largely ignored by city officials, who instead appear to be focused on annexing county land to circumvent community protections and pollution restrictions/ordinances that exist for the area.

**Forest Keeper** is focused on protecting national forests, public lands, and other forests in the Eastern U.S. Forest Keeper works as watchdogs and advocates for national forests and the rare species, watersheds, and biological diversity they protect.

**Georgia Interfaith Power and Light** is a non-profit organization headquartered in Decatur, Georgia. GIPL represents the interests of communities of faith in promoting energy conservation, energy efficiency, renewable energy, and related sustainable practices. GIPL inspires and equips faith communities to engage in faithful environmental action and environmental justice initiatives. GIPL is growing with more than 300 member congregations representing a variety of faiths across the state of Georgia.

**Mothers & Others for Clean Air** is a nonprofit organization dedicated to protecting children's health by reducing the impacts of air pollution and climate change throughout the Southeast. It creates partnerships between scientists, healthcare providers, parents, teachers, youth, and organizations to facilitate collective learning and action across a 10-state region: Virginia, North Carolina, Tennessee, Arkansas, Louisiana, Mississippi, Alabama, Georgia, South Carolina, and Florida.

**Sierra Club** is a national grassroots environmental organization dedicated to exploring, enjoying, and protecting the wild places of the earth; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Sierra Club's Georgia Chapter, with 75,000 members and supporters, is the largest grassroots environmental organization in the state of Georgia. The chapter has active committees working on forest and coastal protection, transportation, and clean energy.

## II. LEGAL AND FACTUAL BACKGROUND

### A. Synthetic Minor Permitting Under the Clean Air Act

The Clean Air Act requires new “major” stationary sources of air pollution to comply with stringent air pollution control requirements. Whether a proposed new facility qualifies as a “major” source depends on whether it actually emits, or has the potential to emit, certain air pollutants in an amount that equals or exceeds a specified emission threshold (the “major source threshold”). A facility’s potential to emit is measured at the facility’s full capacity, unless the facility accepts an enforceable limit that restricts its emissions to below the major source threshold. A source that avoids major source requirements by accepting an enforceable limit on its emissions is referred to as a “synthetic minor” source.

There are several Clean Air Act programs that apply to facilities that qualify as “major” sources, and each program has its own major source thresholds. For a new wood pellet manufacturing plant like the one proposed by RBG, Georgia EPD must evaluate the applicability of three different sets of requirements: hazardous air pollutant (“HAP”) requirements under Clean Air Act section 112, the Title V operating permit program, and the major New Source Review (“major NSR”) preconstruction permitting program.

HAPs, also known as air toxics, are those substances which are known or suspected to cause cancer, or other serious health problems such as birth defects. Specifically, HAPs are pollutants that the U.S. Congress has listed as toxic or carcinogenic even in small quantities.<sup>5</sup> HAPs emitted from wood pellet processing facilities include acetaldehyde, acrolein, formaldehyde, hydrochloric acid, methanol, phenol, and propionaldehyde. Under Clean Air Act section 112, major sources of HAP must reduce their HAP emissions to the maximum degree achievable.<sup>6</sup> A source is considered a major source of HAP if it emits or has the potential to emit 10 tons per year or more of any individual HAP, or 25 tons per year or more of all HAP.<sup>7</sup> If a source’s “potential to emit” HAPs falls below these threshold, the source is considered an “area” source and may be subject to an area source standard if EPA has established one for that source category.<sup>8</sup> EPA has not established an area source standard for the wood pellet manufacturing industry, so sources in that category that became “area” sources based on their agreement to restrict their emissions to below the major source threshold for HAPs are not subject to any section 112 HAP limits. Thus, because the RBG plant’s air permit contains HAP limits intended to restrict the plant’s HAP emissions below the major source threshold, the final RBG air permit does not contain any section 112 HAP control requirements applicable to its wood pellet manufacturing operations.<sup>9</sup>

Under the Title V program, all major sources (and some smaller sources) must obtain an operating permit that identifies all of the Clean Air Act requirements that apply to the source along with monitoring, recordkeeping, reporting, and compliance certification requirements

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<sup>5</sup> HAPs regulated under Clean Air Act § 112 are listed at Clean Air Act § 112(b), 42 U.S.C. § 7412(b).

<sup>6</sup> Clean Air Act § 112(d)(2), 42 U.S.C. § 7412(d)(2).

<sup>7</sup> Clean Air Act § 112(a)(1), 42 U.S.C. § 7412(a)(1).

<sup>8</sup> Clean Air Act § 112(a)(2), 42 U.S.C. § 7412(a)(2) (defining “area source”); <sup>8</sup> Clean Air Act § 112(d)(3), 42 U.S.C. § 7412(d)(3) (alternative control standard for listed categories of area sources).

<sup>9</sup> The RBG permit does contain HAP requirements for its reciprocating internal combustion engines. *See* Final RBG Permit at 3, Permit Condition 2.15.

sufficient to assure the source's compliance. The Title V major source threshold varies depending upon the pollutant emitted and whether the area in which the source is located is attaining the federal ambient air quality standards. A source that is considered "minor" or "area" for other Clean Air Act programs may still be considered "major" for Title V purposes. Most industrial-scale wood pellet manufacturing facilities are large enough to be required to obtain a Title V permit. However, in most cases, a source is not required to apply for a Title V permit until after it is already constructed and operating. Thus, while Title V provides extensive public participation opportunities, these opportunities typically do not enable members of the public to engage prior to a facility's construction to ensure that the limits taken to allow the facility to avoid otherwise applicable major source control requirements are accurate and enforceable. This is the case for the proposed RBG plant; though it is classified as "major" for Title V purposes, RBG is not required to apply for a Title V permit until after the plant is constructed and operating.

Finally, under the major New Source Review ("major NSR") preconstruction permitting program, a proposed new major source of NSR-regulated air pollutants, including criteria pollutants like PM, NO<sub>x</sub>, VOCs, sulfur dioxide and carbon monoxide, cannot be constructed without a permit requiring the facility to utilize up-to-date air pollution controls and ensuring that the facility will not adversely impact ambient air quality. Major NSR actually consists of two different sets of pre-construction permitting requirements: "Nonattainment New Source Review" requirements set forth in Part D of Clean Air Act Title I apply to a source's emission of air pollutants for which an area is not meeting federal ambient standards, whereas "Prevention of Significant Deterioration" ("PSD") requirements set forth in Part C of Clean Air Act Title I apply to a source's emission of air pollutants for which the area is meeting federal ambient standards. For the wood pellet manufacturing industry, the NSR major source threshold is 250 tons per year of any NSR-regulated air pollutant. A proposed new source with potential emissions that are below this threshold (either based on its total capacity or based on a synthetic minor limit) is instead subject to "minor NSR." The term "minor NSR" does not appear in the Clean Air Act, but minor NSR requirements are based on the requirement in Clean Air Act § 110(a)(2)(C) that state implementation plans "include a program to provide for ... regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved."<sup>10</sup> EPA's regulatory requirements for state minor NSR programs at 40 C.F.R. §§ 51.160-51.164 are likewise sparse, providing states with "broad discretion to determine the scope of their minor NSR programs as needed to attain and maintain the [national ambient air quality standards]."<sup>11</sup>

As EIP documented in a 2018 report, many industrial-scale wood pellet manufacturing facilities like the proposed RBG plant have been constructed as "minor" sources based on their agreement to comply with synthetic minor emission limits, but subsequently were found to be emitting nearly four times the agreed-upon amount.<sup>12</sup> In most cases, these violations were revealed only after persistent advocacy efforts by EIP and its partners. For example, EIP and others informed the State of Mississippi in 2017 that the Drax Amite BioEnergy Plant was emitting air pollutants at a rate that far exceeded its synthetic minor permit limits and the major

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<sup>10</sup> 42 U.S.C. § 7410(a)(2)(C).

<sup>11</sup> 78 Fed. Reg. 35,184, 35,187 (June 12, 2013).

<sup>12</sup> Dirty Deception: How the Wood Biomass Industry Skirts the Clean Air Act, Environmental Integrity Project (Apr. 26, 2018), <https://environmentalintegrity.org/wp-content/uploads/2017/02/Biomass-Report.pdf>

NSR threshold. EIP subsequently filed two additional sets of comments explaining why Drax's emission calculations were flawed. Finally, in November 2020, Mississippi issued a final order requiring Drax Amite to install a new regenerative catalytic oxidizer to reduce its emissions and fining Drax \$2.5 million for its Clean Air Act violations.<sup>13</sup> Similar synthetic minor permit violations have been discovered and addressed at wood pellet facilities across the U.S. South.<sup>14</sup>

**B. Georgia EPD's Refusal to Provide Public Comment on the Draft Synthetic Minor Permit Authorizing RBG to Construct and Operate its Proposed Wood Pellet Manufacturing Plant.**

RBG's proposed Adel, Georgia wood pellet manufacturing plant would process more than a million tons of trees and wood into nearly 500,000 tons of wood pellets per year, making it one of the largest pellet plants in Georgia.<sup>15</sup> It would be capable of operating 24 hours per day, 365 days per year, producing wood pellets for export overseas to be burned for electricity. As shown in RBG's permit application, the plant would emit nearly 800 tons of regulated air pollutants per year, including nearly 100 tons of fine particulates (linked to premature death, heart disease, aggravated asthma, and other health issues, nearly 250 tons of NO<sub>x</sub> (which causes smog and acid rain), 216 tons of VOCs (which causes smog), and thousands of pounds of HAPs, which are especially toxic or carcinogenic even in low quantities.<sup>16</sup>

The air pollution, truck traffic, and noise generated by industrial-scale wood pellet plants have plagued communities across the U.S. South ever since the biomass industry began expanding about a decade ago to meet European demand for supposedly "clean" biomass energy.<sup>17</sup> There is no reason to believe that the proposed RBG plant would be any different from existing facilities. In addition to the air pollution described above, the RBG plant will inevitably generate large amounts of truck traffic, further degrading air quality and worsening the quality of life of nearby residents. While RBG has not provided detailed information regarding anticipated truck traffic, based on similar existing pellet plants, the facility will likely receive around 250 trucks per day, or nearly 100,000 trucks per year.<sup>18</sup> That equates to a truck trip once every six minutes, 24 hours per day, seven days per week. Likewise, neighboring residents of similar

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<sup>13</sup> Mississippi Commission on Environmental Quality v. Amite BioEnergy, Agreed Order dated Nov. 4, 2020 (Att. F).

<sup>14</sup> Another example is the Drax Morehouse BioEnergy plant in Bastrop, Louisiana. EIP and other advocacy organizations successfully demonstrated in 2018 that though the plant had been operating as a synthetic minor source since its construction in 2012, its VOC emissions far exceeded the PSD major source threshold. See LDEQ Response to Comments on draft Morehouse BioEnergy Title V permit (Att. G). After subsequent testing revealed that the facility's VOC emissions at permitted operating levels was 1,150 tons per year, and Drax agreed to install new controls designed to reduce VOCs and HAPs by 95% or more. Morehouse BioEnergy, BACT Analysis for VOC Emissions PSD Application, May 1, 2019) (Att. H).

<sup>15</sup> Renewable Biomass Group, Adel, GA, Air Construction Permit Application, Greenfield Wood Pellet Manufacturing Facility (July 2020) (Att. E), at 2-1.

<sup>16</sup> *Id.* at 3-5.

<sup>17</sup> See, e.g., Rachel Carson Council, "Clear Cut: Wood Pellet Production, the Destruction of Forests, and the Case for Environmental Justice," available at <https://www.sec.gov/rules/petitions/2019/ptn4-741-exb.pdf> and <https://rachelcarsoncouncil.org/clear-cut/>.

<sup>18</sup> For example, the Enviva Southampton wood pellet plant in Virginia calculated it receives 405 truck trips per day while producing 781,255 tons of pellets per year. See Application for Modification of a Stationary Source Permit for Increased Softwood Utilization and Installation of Emission Controls, Enviva Pellets Southampton, LLC, dated Sept. 28, 2018, Appendix C, Table C-30 (p. 45) (relevant excerpts in Att. I).

plants located elsewhere have used noise monitors to document noise levels above 80 decibels far beyond the facility’s fence line, equivalent to standing next to a lawnmower.

Understandably, individuals residing near the site of the proposed plant are concerned about how the plant would impact public health and welfare in their communities. As explained in the attached statement by Dr. Treva Gear, Co-Founder of Concerned Citizens of Cook County, people residing near the site of the proposed RBG plant already face an array of environmental hazards.<sup>19</sup> In fact, the downwind community of Adel is a particularly vulnerable environmental justice community. The census block within Adel closest to the facility, 2.2 miles downwind and with a total population of 798 individuals, is 91% minority and 80% low income; Adel as a whole is 59% minority population and 53% low income according to EPA’s EJ Screen.<sup>20</sup> Further, Cook County ranks 107<sup>th</sup> out of the state’s 159 counties in health outcomes.<sup>21</sup> Due to their concern regarding the additional environmental burden that RBG’s proposed wood pellet manufacturing plant would place on the local community, Dr. Gear and others sought to persuade the Adel City Council not to annex and rezone (to heavy industrial use) the property on which RBG wished to build its plant.<sup>22</sup> In addition to testifying at the City Council hearing<sup>23</sup>, they publicly protested the action beforehand. Despite their efforts, the City Council voted 3-2 in favor of the annexation and rezoning.



*Adel residents protesting outside Adel City Council hearing prior to the Council’s consideration of whether to annex and rezone property on which RBG proposes to construct a wood pellet manufacturing plant. (Image from WALB News 10).*

<sup>19</sup> Statement from Dr. Gear attached as Att. A.

<sup>20</sup> EPA, EJ Screen Demographic Index for Blockgroup No. 130759604003 (Accessed Mar. 17, 2021) (Att. J); EPA, EJ Screen Report for approximate Adel city limits (Accessed Mar. 17, 2021) (Att. K)

<sup>21</sup> Robert Wood Johnson Foundation, County Health Rankings & Roadmaps, available at:

<https://www.countyhealthrankings.org/app/georgia/2020/rankings/cook/county/outcomes/overall/snapshot>.

<sup>22</sup> WALB News 10, “Concerns raised over plant possibly coming to Adel,” reported by Jim Wallace, Sept. 21, 2020,

<https://www.walb.com/2020/09/21/concerns-raised-over-plant-possibly-coming-adel/>

<sup>23</sup> A video of Dr. Gear’s presentation to the Adel City Council is available at

<https://www.youtube.com/watch?v=G5TpTvhoTuM>



On July 20, 2020, Georgia EPD issued a notice announcing that it would accept public comment on RBG's *application* for a synthetic minor permit authorizing it to construct its proposed Adel wood pellet manufacturing plant.<sup>24</sup> RBG's permit application revealed that RBG was requesting synthetic minor limits to enable the facility to avoid major source control requirements, including the requirement to control NO<sub>x</sub>, PM, and VOCs using the best available control technology, and the requirement to utilize maximum achievable control technology to reduce hazardous air pollutants. Even with the proposed limits, however, the facility would still emit 773 tons of criteria pollutants per year and thousands of pounds of hazardous air pollutants. Moreover, RBG's application indicated that even with the proposed operating limits, RBG calculated that its potential to emit NO<sub>x</sub> would be just 0.52 tons per year shy of the 250 ton per year major NSR applicability threshold.<sup>25</sup>

Especially given how close the RBG plant's potential emissions would be to the NSR major source threshold, it is essential that the synthetic minor limits designed to ensure that the RBG plant's emissions do not exceed that threshold be extremely accurate and enforceable, both legally and as a practical matter. Unfortunately, the opportunity to comment on RBG's permit application did not include an opportunity to scrutinize the actual permit conditions that RBG would need to comply with to ensure that its emissions remain below the threshold. Nor did the comment opportunity include an opportunity to comment on Georgia EPD's evaluation of RBG's application and the facility's anticipated impact on ambient air quality, or even on Georgia EPD's proposed action in response to RBG's application. Rather, the only material available for public comment was RBG's application.

A coalition of Adel residents and environmental advocacy organizations did file comments on the RBG permit application, but their ability to provide effective comments on whether the proposed facility would legitimately qualify as a synthetic minor source was severely limited by the fact that they did not have the opportunity to comment on the proposed synthetic minor limits.<sup>26</sup> Thus, in their comments, they called upon Georgia EPD to provide them with an opportunity to comment on the draft permit prior to final permit issuance. They explained that Georgia EPD's apparent intention not to provide for public comment on the draft permit was "problematic because RBG calculates that its potential to emit ("PTE") nitrogen oxides ("NO<sub>x</sub>) is 249.48 tpy [tons per year], which is just shy of the 250 tpy prevention of significant deterioration ("PSD") program's applicability threshold."<sup>27</sup> The comments further explained that "[g]iven the extremely narrow margin between estimated emissions and the PSD major-source threshold, it is vital that the facility's permit be written in a way that is enforceable and that requires adequate monitoring, recordkeeping, and reporting sufficient to document the facility's ongoing compliance with these PTE limits."<sup>28</sup> Finally, the commenters informed Georgia EPD that while their comments on the permit application identified compliance assurance requirements that should be included in RBG's permit, "EPA should not consider these comments to be a substitute for an opportunity to comment on a draft permit."<sup>29</sup> The

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<sup>24</sup> EPD Public Advisory for the Week of July 20, 2020 (PA0720-4) (Att. L).

<sup>25</sup> Renewable Biomass Group, Adel, GA, Air Construction Permit Application, Greenfield Wood Pellet Manufacturing Facility, at Appendix C, Table C-1 (July 2020) (Att. E).

<sup>26</sup> Public Comments on Air Permit Application No. 27595 for Renewable Biomass Group dated Aug. 21, 2020 (Att. B).

<sup>27</sup> *Id.* at 1.

<sup>28</sup> *Id.* at 2.

<sup>29</sup> *Id.*

commenters noted that if Georgia EPD gave them an opportunity to comment on the draft permit, they would be able to submit much more detailed and precise comments on Georgia EPD's selected compliance assurance approach.<sup>30</sup>

On January 28, 2021, Georgia EPD denied the coalition's request, declaring that under Georgia's air quality rules, a public comment opportunity is available only with respect to "major" source permits, i.e., a Clean Air Act Title V operating permit or a major New Source Review ("NSR") permit.<sup>31</sup> Thus, Georgia EPD issued RBG's final permit without providing an opportunity for public comment on the adequacy of the synthetic minor emission limitations set forth therein.<sup>32</sup>

If Georgia EPD had granted the request for a public comment period on RBG's draft synthetic minor permit, Petitioners would have raised concerns that they could not have raised in their comments on RBG's permit application. For example, based on our review of the final permit ultimately issued by Georgia EPD, Petitioners would have, among other things, pressed Georgia EPD to investigate whether the planned facility will utilize bypass stacks. Though the final permit does not mention the presence of such stacks at the planned RBG facility, in our experience, we have found that most, if not all, wood pellet plants utilize bypass stacks. In fact, Sierra Club is currently pursuing a citizen suit against a similar wood pellet plant in Woodville Texas that regularly bypasses its controls, emitting large amounts of PM, VOCs, HAPs, NO<sub>x</sub>, CO, SO<sub>2</sub>, smoke and soot directly into the atmosphere.<sup>33</sup> Use of such bypass stacks could cause RBG's facility to exceed its synthetic minor limits. Another example of an issue that Petitioners would have raised pertains to the final permit conditions designed to ensure RBG's compliance with its NO<sub>x</sub> emission limit. Although the final permit requires RBG to monitor NO<sub>x</sub> emissions via an equation, this equation is deficient in that it is based on the amount of wood processed in the dryer (a process that does not directly emit NO<sub>x</sub>) rather than the heat input or fuel consumption of the furnaces. Because NO<sub>x</sub> emissions are a result of combustion in the furnace, monitoring the wood throughput of the dryer may underestimate NO<sub>x</sub> emissions. For instance, the facility may combust fuel in the furnace at times when no wood is processed in the dryer, thereby emitting NO<sub>x</sub> that is not accounted for in the equation. The NO<sub>x</sub> limit is therefore insufficient to restrict the facility's potential emissions to below the 250 ton-per-year major source threshold.

**C. Georgia EPD's History of Issuing Synthetic Minor Construction and Operating Permits Without Providing an Opportunity for Public Comment on Draft Permits, Even When Members of the Public Specifically Request Such Opportunity.**

Georgia EPD's refusal to provide for public comment on the draft RBG permit is not unique to that permitting action. Rather, Georgia EPD systematically issues all of its synthetic minor permits without allowing for public comment on draft permits, even under circumstances where members of the public request that a draft permit be released for public comment. For example, in 2017, several of the groups that are now involved in this Petition requested that

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<sup>30</sup> *Id.*

<sup>31</sup> Georgia EPD, Permit Narrative for Renewable Biomass Group—Adel Plant, dated Jan. 19, 2021, at 14.

<sup>32</sup> Georgia EPD, Air Quality Permit No. 2499-075-0027-E-01-0 issued to Renewable Biomass Group – Adel Facility on Jan. 28, 2021.

<sup>33</sup> First Amended Complaint in *Sierra Club v. Woodville Pellets*, Civ. Act. No. 9:20-cv-00178, E.D. Tex. (Att. P).

Georgia EPD give them an opportunity to comment on a draft permit for the Bord na Mona wood pellet manufacturing facility, proposed to be located in Washington, Georgia.<sup>34</sup> Like the RBG permit, the Bord na Mona permit included an array of permit conditions designed to restrict the facility's potential to emit such that the facility would qualify as a "synthetic minor" source and avoid PSD and Section 112 requirements. And, as with respect to the RBG permit, Georgia EPD rejected the groups' request for a public comment opportunity, declaring: "Georgia Air Quality Rules do not require public review of the draft permits for non Title V and non PSD sources. The air quality permit proposed to be issued by EPD is a SIP permit and not a Title V permit. Hence, EIP's request to comment on draft permit is not granted."<sup>35</sup>

A review of Georgia EPD's website reveals numerous synthetic minor permits issued without an opportunity for public comment on a draft permit. The public notices for these permits clearly state that public comment is solicited only with respect to the permit *application* and that comments received "will be considered by the Division in making its final decision to issue the permit." Recent examples of such permits include:

**Dean Baldwin Painting, LLC:** Construction and operation of a new aerospace/aircraft surface coating/painting facility in Macon, GA. Permit contained synthetic minor permit limits for VOC and HAP.<sup>36</sup>

**Enchem America, LLC:** Construction and operation of a facility for mixing and purification of chemicals related to electronic vehicle batteries to be located in Commerce, GA. Synthetic minor limit on VOC emissions to avoid Title V and PSD.<sup>37</sup>

**Metro Green 3:** Construction and operation of a construction and demolition waste recycling facility. Synthetic minor limit for PM.<sup>38</sup>

**Novalis US LLC:** construction of a vinyl tile manufacturing facility in Dalton, GA. Title V synthetic minor limits for VOC and PM.<sup>39</sup>

**C.W. Matthews Contracting Company, Inc. – Plant 48 Macon:** construction and operation of a new 400 ton per hour drum mix asphalt plant capable of firing natural gas,

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<sup>34</sup> Environmental Integrity Project, et al., Comments on the Notice of Permit Application for the Bord na Mona Wood Pellet Manufacturing Plant (June 1, 2017) (Att. M).

<sup>35</sup> Georgia EPD, Permit Narrative for Bord na Mona Permit dated June 15, 2017, at 7 (Att. N).

<sup>36</sup> Permit narrative at <https://permitsearch.gaepd.org/permit.aspx?id=PDF-ON-27732>. Final permit at <https://permitsearch.gaepd.org/permit.aspx?id=PDF-OP-27732>. Public advisory at <https://epd.georgia.gov/document/document/pa1120-1/download>. Comments were due on permit application by December 4, 2020.

<sup>37</sup> Permit narrative at <https://permitsearch.gaepd.org/permit.aspx?id=PDF-ON-27599>. Final permit at <https://permitsearch.gaepd.org/permit.aspx?id=PDF-OP-27599>. Public notice at <https://epd.georgia.gov/document/document/pa0820-2/download>. Comments were due on permit application by September 11, 2020.

<sup>38</sup> Permit narrative at <https://permitsearch.gaepd.org/permit.aspx?id=PDF-ON-27589>. Final permit at <https://permitsearch.gaepd.org/permit.aspx?id=PDF-OP-27589>. Public Advisory at <https://epd.georgia.gov/document/document/pa0720-3/download>. Comments due on permit application by August 14, 2020.

<sup>39</sup> Permit narrative at <https://permitsearch.gaepd.org/permit.aspx?id=PDF-ON-27525>. Final permit at <https://permitsearch.gaepd.org/permit.aspx?id=PDF-OP-27525>. Public notice at <https://epd.georgia.gov/document/document/pa0520-3/download>. Public comments were due on permit application by June 19, 2020.

fuel oil, or recycled fuel oil to be located in Juliette, GA. Synthetic minor for CO and SO<sub>2</sub>.<sup>40</sup>

**Ecolab Savannah – Gulfstream Road Fumigation Facility:** Construction and operation of a commodity fumigation facility in Savannah, GA that will use methyl bromide, phosphine. Synthetic minor for HAP.<sup>41</sup>

**MAS ASB Cogen, LLC CHP Facility:** application to remove pollution controls from an Atlanta cogeneration facility and increase the facility’s NOx synthetic minor limit from 24.9 tons per year to 99 tons per year, based on a new synthetic minor limit (and a determination that the facility is no longer considered part of the co-located Coca-Cola production facility).<sup>42</sup>

In light of the above examples and Georgia EPD’s prior refusal to provide an opportunity for public comment on the draft Bord na Mona synthetic minor permit, Georgia EPD’s refusal to provide for public comment on the RBG permit is obviously not an isolated incident. Rather, Georgia’s EPD’s failure to provide for public comment on the draft RBG permit reflects the state’s widespread failure to provide an opportunity for public comment on draft synthetic minor permits.

### **III. GEORGIA’S FAILURE TO PROVIDE FOR PUBLIC COMMENT ON DRAFT PERMITS VIOLATES CLEAN AIR ACT REQUIREMENTS GOVERNING MINOR SOURCE PERMITTING.**

#### **A. Georgia EPD’s Refusal to Provide an Opportunity for Public Comment on Draft Synthetic Minor Permits Violates its Federally Approved SIP and its Hazardous Air Pollutant Program Approved under Clean Air Act Section 112(l).**

Georgia’s refusal to provide an opportunity for public comment on draft synthetic minor permits, including the recently issued RBG permit, violates public participation requirements set forth in state regulations that EPA has approved as part of Georgia’s SIP and also pursuant to its authority under Clean Air Act section 112(l). Specifically, under Georgia’s EPA-approved regulations, a limit taken by a source to reduce its potential to emit to below a major source threshold (thereby making the facility a “synthetic minor” source) will only be effective if “the limitation or effect it would have on emissions is federally enforceable.” Georgia SIP Rule 391-

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<sup>40</sup> Final permit at <https://permitsearch.gaepd.org/permit.aspx?id=PDF-OP-27494>. Permit narrative at <https://permitsearch.gaepd.org/permit.aspx?id=PDF-ON-27494>. Public advisory at <https://epd.georgia.gov/document/document/pa0420-3/download>. Comments were due on permit application by May 15, 2020.

<sup>41</sup> Permit Narrative at <https://permitsearch.gaepd.org/permit.aspx?id=PDF-ON-27447>. Final permit at <https://permitsearch.gaepd.org/permit.aspx?id=PDF-OP-27447>. Public advisory at <https://epd.georgia.gov/document/document/pa0320-1/download>. Comments were due on permit application by April 3, 2020.

<sup>42</sup> Permit Narrative at <https://permitsearch.gaepd.org/permit.aspx?id=PDF-ON-27398>. Final permit at <https://permitsearch.gaepd.org/permit.aspx?id=PDF-OP-27398>. Public advisory at <https://epd.georgia.gov/document/document/pa0120-5/download>. Comments were due on permit application by February 28, 2020.

3-1-.01(ddd) (approved at 60 Fed. Reg. 12,688, Mar. 8, 1995) (defining “potential to emit”).<sup>43</sup> Likewise, Georgia’s SIP defines “Synthetic Minor Permit” to mean a permit “which imposes federally enforceable limits to restrict potential emissions.” *Id.* (cccc). In accordance with Georgia SIP Rule 391-3-1-.03, subsections (2)(i) and (12)(c), prior to the issuance of any Federally enforceable operating permit, EPA and the public will be notified and given a chance for public comment on the draft permit.

The above-referenced provisions are all part of Georgia’s Federally Enforceable State Operating Permits (“FESOP”) Program, which EPA approved in 1995.<sup>44</sup> In the notice announcing EPA’s approval, EPA explained that Georgia’s rules were approved both as a revision to Georgia’s federally enforceable SIP (governing criteria pollutants) and under Clean Air Act section 112(l) (governing hazardous air pollutants (“HAPs”)).<sup>45</sup> EPA further explained that its approval of the FESOP program enabled Georgia to establish Federally enforceable limits on a source’s potential to emit, which “can affect a source’s applicability to Federal regulations such as title V operating permits, New Source Review (NSR) preconstruction permits, Prevention of Significant Deterioration (PSD) preconstruction permits for criterial pollutants and Federal air toxics requirements mandated under section 112 of the [Clean Air Act].”<sup>46</sup> In granting its approval, EPA observed: “Rule 391-3-1-.03, subsections (2)(i) and (12)(c), states that prior to the issuance of any Federally enforceable operating permit, EPA and the public will be notified and given a *chance for comment on the draft permit.*”<sup>47</sup> EPA declared that “any permit which has not gone through an opportunity for public comment and EPA review under the Georgia FESOP program will not be Federally enforceable.”<sup>48</sup> This is consistent with the definition of “federally enforceable” in federal regulations at 40 C.F.R. § 63.2, which provides that limitations and conditions that are part of an operating permit are federally enforceable if, among other things, “[t]he permit in question was issued only after adequate and timely notice and opportunity for comment for EPA and the public.”

The final air quality permit issued by Georgia EPD for RGB’s planned Adel facility establishes synthetic minor limits intended to restrict the facility’s potential to emit to below the applicability thresholds for the Clean Air Act’s PSD and Section 112 major source requirements and is therefore subject to the regulatory requirements described above. The cover page to the final permit declares that Georgia EPD issued the permit pursuant to “Chapter 391-3-1” of Georgia’s air quality rules, and the permit authorizes both the construction and the “operation” of RGB’s proposed Adel wood pellet manufacturing facility. Permit Condition 2.1, labeled “Avoidance of 40 CFR 52.21” (the federal Prevention of Significant Deterioration requirements for major sources), declares that the permittee may not allow the facility to emit PM, VOC, CO, or NOx “in an amount exceeding 249 tons during any twelve consecutive months.” Likewise, Permit Condition 2.2, labeled “Title V Avoidance for Single and Combined HAP,” restricts the permittee from allowing the facility to emit “any single hazardous air pollutant (HAP) in an amount equal to or exceeding 10 tons during any twelve consecutive months, or any combination

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<sup>43</sup> The federally approved version of Georgia Rule 391-3-1-.01 is available on EPA’s website at <https://www.epa.gov/sites/production/files/2017-12/documents/391-3-1.01-2017.pdf> (last visited 1/26/21)

<sup>44</sup> 60 Fed. Reg. 45,048 (August 30, 1995).

<sup>45</sup> *Id.* at 45,048.

<sup>46</sup> *Id.* at 45,049.

<sup>47</sup> *Id.* (emphasis added).

<sup>48</sup> *Id.*

of such listed HAP in an amount equal to or exceeding 25 tons during any twelve consecutive months.”<sup>49</sup> The permit contains various other conditions designed to ensure that the facility’s emissions remain below these thresholds.

In denying the recent request for an opportunity for public comment on the draft RBG synthetic minor permit, Georgia EPD does not appear to have been applying the EPA-approved synthetic minor permitting requirements described above. Instead, Georgia EPD was applying revised state regulations which have not been approved by EPA as a revision to Georgia’s SIP. Specifically, Georgia’s current, unapproved regulations now define “potential to emit” in a way that eliminates the requirement that a synthetic minor limit be “federally enforceable” and instead allows such limits to be merely “legally and practically enforceable.”<sup>50</sup> Likewise, the state’s current regulatory definition of “synthetic minor permit” allows a synthetic minor limit to be either “federally enforceable or enforceable as a practical matter.”<sup>51</sup> Thus, while the current EPA-approved Georgia rules still require that the public be provided an opportunity to comment on a draft of a “federally enforceable operating permit,”<sup>52</sup> Georgia EPD apparently believes that it need not offer an opportunity for public comment on a draft of a synthetic minor permit because such permits (and limits) no longer need to be federally enforceable under Georgia’s current rules.

To the extent that Georgia EPD believes that it no longer needs to apply the version of the state’s regulations that have been approved by EPA as part of Georgia’s SIP, EPD is mistaken. Until such time as EPA approves a revision to Georgia’s SIP, Georgia’s SIP rules remain enforceable and continue to govern the state’s administration of Clean Air Act requirements.<sup>53</sup> Furthermore, in accordance with Georgia’s EPA-approved synthetic minor permitting requirements described above, Georgia EPD’s failure to provide the public with an opportunity to comment on RBG’s draft permit prevents RBG from relying on its final permit limits to avoid otherwise applicable PSD and Section 112 major source requirements.

**B. Georgia SIP is Deficient Because it Fails to Provide an Opportunity for Public Comment on Draft Minor NSR Permits as Required by Federal Regulations Establishing the Minimum Requirements for State Minor NSR Programs.**

While Georgia’s SIP requires that the public be given an opportunity to comment on draft permits establishing synthetic minor limits, the SIP does not appear to require public comment on draft permits for sources that do not need federally enforceable emission limits to qualify as minor (“natural minors”). Specifically, Georgia’s SIP provisions governing the issuance of a

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<sup>49</sup> This limit is designed to restrict the facility’s HAP emissions below the major source threshold under Clean Air Act § 112, thereby exempting the source from the requirement to reduce HAP using maximum achievable control technology. The permit likely refers to the limit as a “Title V Avoidance” limit because a facility that is a major source under Clean Air Act section 112 is also considered a major source under Title V. However, this plant is already considered a major source for Title V due to its emissions of other pollutants.

<sup>50</sup> Ga. Rules and Regulations, Rule 391-3-1-.01(ddd) (defining “potential to emit”).

<sup>51</sup> Ga. Rules and Regulations, Rule 391-3-1-.01(cccc) (defining “synthetic minor permit”).

<sup>52</sup> Ga. Rules and Regulations, Rule 391-3-1-.03 subsections (2)(i) and (12)(c)

<sup>53</sup> 40 CFR 51.105 (“Revisions of a plan, or any portion thereof, will not be considered part of an applicable plan until such revisions have been approved by the Administrator in accordance with this part.”). *See also, e.g., General Motors v. US*, 496 U.S. 530, 540 (1990) (“There can be little or no doubt that the existing SIP remains the “applicable implementation plan” even after the State has submitted a proposed revision.”).

“construction” permit for a minor source omits any mention of public-notice-and-comment requirements.<sup>54</sup> Georgia’s failure to provide for public comment on all draft minor source “construction” permits contravenes the federal regulations at 40 CFR § 51.160-66., which establish the minimum for state “minor NSR” programs. Pursuant to 40 CFR § 51.161(a), these minimum requirements include an opportunity for public comment on “the agency’s analysis of the effect of construction or modification on ambient air quality, including the agency’s proposed approval or disapproval.”<sup>55</sup> The regulation goes on to specify that the “opportunity for public comment shall include, as a minimum ... A 30-day period for submittal of comment.” 40 C.F.R. § 51.161(b)(2). Where a state implements minor NSR requirements by issuing individual permits authorizing a source’s construction or modification, EPA has long interpreted 40 CFR § 51.161’s language to mean that the public must be provided an opportunity to comment on a draft minor NSR permit before it is issued as final.<sup>56</sup>

**1. *The Opportunity for Public Comment on Permit Applications Does Not Satisfy Federal Minor NSR Public Participation Requirements.***

Although Georgia EPD offers the public an opportunity to comment on minor NSR permit *applications*, this is insufficient to satisfy 40 CFR § 51.161’s public participation requirements. An opportunity to comment on application materials submitted by the permit applicant does not constitute an opportunity to comment on “the agency’s analysis of the effect of construction or modification on ambient air quality, including the agency’s proposed approval or disapproval” as is required by § 51.161(a).

**2. *The Requirement in Georgia’s SIP for a Public Comment Opportunity on Draft Synthetic Minor Operating Permits Does Not Satisfy Federal Minor NSR Public Participation Requirements Because It Does Not Cover All Minor NSR Permits, Is No Longer in Georgia’s Current Rules, and Is Not Being Implemented by Georgia EPD.***

Likewise, the requirement in Georgia’s SIP that the public be given an opportunity to comment on draft synthetic minor permits is insufficient to satisfy 40 CFR § 51.161. At the outset, it must be acknowledged that even if comment on only those preconstruction permits that establish synthetic minor limits was sufficient to satisfy § 51.161, Georgia’s current rules do not require comment on synthetic minor permits and despite the SIP requirement to do so, Georgia EPD has not provided an opportunity for public comment on draft synthetic minor permits for years. Thus, insofar as EPA has been relying on Georgia to provide for public comment on

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<sup>54</sup> Georgia SIP Rule 391-3-1.03(1) (available at <https://www.epa.gov/sites/production/files/2017-12/documents/391-3-1.03-2017.pdf>).

<sup>55</sup> In full, 40 CFR § 51.161(a) states:

The legally enforceable procedures in § 51.160 must also require the State or local agency to provide opportunity for public comment on information submitted by owners and operators. The public information must include the agency's analysis of the effect of construction or modification on ambient air quality, including the agency's proposed approval or disapproval.

<sup>56</sup> See, e.g., Response Brief filed by U.S. EPA on Nov. 7, 2019 in *Sierra Club v. EPA*, Case No. 18-9507 (10<sup>th</sup> Cir.), at 8 (citing § 51.161 for the proposition that “Each SIP must also provide for public notice and an opportunity for comment on proposed preconstruction permits in its preconstruction permit program.”), at 45 (contending that under § 51.161, “EPA’s implementing regulations require notice-and-comment proceedings on preconstruction permits”) (relevant excerpts in Att. O).

synthetic minor permits as a way to comply with § 51.161, such reliance is obviously unwarranted. Furthermore, even if Georgia EPD did comply with the SIP and provide for public comment on synthetic minor permits, EPA has never found that Georgia’s procedures for commenting on synthetic minor permits are, by themselves, sufficient to satisfy § 51.161. Nor is such finding warranted.

Certainly, it is especially important for the public to have an opportunity to comment on those construction permits that establish synthetic minor limits. By accepting a synthetic minor limit, a source that would otherwise be required to utilize the most up-to-date pollution controls available may not have to install any air pollution controls whatsoever. Moreover—and sometimes more importantly—synthetic minor limits allowing a permit applicant to avoid major NSR enables the applicant to escape having to model the impact of their proposed facility’s air pollution on ambient air quality. Thus, ensuring that synthetic minor limits are both accurate and enforceable is critical to ensuring that the public receives the full health and environmental protections promised by the Clean Air Act.<sup>57</sup>

But even under circumstances where a new or modified source is not relying on a synthetic minor limit to avoid major source requirements, the public should have an opportunity to scrutinize the permitting authority’s evaluation of the proposed facility and its proposed permitting decision. First, especially under circumstances where minor sources are clustered together in the same area, a minor source may in fact have a deleterious impact on local air quality. That is particularly true under circumstances where the source in question would emit HAPs, for which the major source threshold is very high considering the highly toxic nature of many HAP. As EPA acknowledges, many communities suffer from an unfair burden of polluting facilities. The principles of environmental justice require that at a minimum, that these communities be granted an opportunity to comment on permit applications for new sources and modifications claiming to be “minor.”

Furthermore, just as a source may incorrectly calculate its emissions and conclude that it can operate as a “synthetic minor,” the same miscalculation can result in a “major” source being misclassified as a “natural minor”—meaning that it is classified as minor without any enforceable emission limitations. This has occurred on several occasions with respect to wood pellet manufacturing facilities. For example, Drax’s Morehouse BioEnergy plant in Louisiana was initially permitted on the basis that the plant would emit just 33 tons of VOCs per year, and therefore the initial construction permit did not contain any enforceable VOC limits for PSD avoidance. Testing at the plant later showed the facility emitted around 1,100 tpy of VOCs. Likewise, when Georgia permitted the Georgia Biomass pellet mill, the initial permit lacked a facility-wide PTE limit for VOCs for PSD avoidance, and again testing later showed the plant had a PTE exceeding 1,000 tpy. Finally, MRE Crossville in Alabama attempted to be permitted

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<sup>57</sup> See, e.g., 59 Fed. Reg. 44,460 (Aug. 29, 1994) (EPA explaining, “in light of the role of minor NSR in creating synthetic minors, the integrity of minor NSR programs is linked to the integrity of the major NSR program. Underscoring the importance of both programs is EPA’s regulatory requirement that State or local permitting authorities provide an opportunity for public participation in major and minor NSR permitting (40 CFR 51.160, 161, 165, and 166”).



as a true minor for both Title V and PSD purposes, but testing showed VOC emissions were well over 200 tpy, necessitating both a Title V permit and synthetic minor limits for PSD avoidance.

**3. EPA Must Take Quick Action to Require Georgia to Correct its Deficient SIP Provisions to Provide the Public with An Opportunity to Comment on Draft Minor NSR Permits.**

In sum, the Georgia's SIP's failure to provide for public comment on draft minor NSR permits means that the state's minor NSR program does not satisfy the minimum federal criteria set forth at Georgia's SIP at 40 CFR § 51.160-66. While EPA previously approved Georgia's request to incorporate these defective state regulations into Georgia's SIP, it does not appear that EPA ever specifically approved of Georgia's failure to provide for public comment on draft minor NSR permits. Georgia's revision of its state rules to also eliminate public comment on synthetic minor permits has exacerbated the situation by eliminating public comment on *all* draft permits for non-major sources. Petitioners urge EPA to take quick action to require Georgia EPD to correct this SIP deficiency and ensure that Georgia residents (and affected residents of adjacent states) have a fair opportunity to participate in government decision-making regarding the permitting of new and modified "minor" sources that may in fact have a big impact on air quality and public health.

**IV. REQUESTED RELIEF**

**A. EPA Should Issue an Order Directing Georgia EPD to Revoke the RBG Permit and to Only Issue a New Permit After Following Required Public-Notice-and-Comment Procedures.**

Under 42 U.S.C. § 7413(a)(1)(A), EPA may issue orders to comply with a SIP "[w]henever, on the basis available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan." The Clean Air Act defines "person" to include states. 42 U.S.C. § 7602(c). As explained above, Georgia EPD's issuance of RBG's air construction permit (No. 2499-075-0027-E-01-0) on January 28, 2021 without any opportunity for the public to comment on a draft permit and the effectiveness of the limits on the facility's "potential to emit" set forth therein violated the Georgia SIP requirements found at Georgia SIP Rules 391-3-1-.01(ddd) and (cccc) and SIP Rule 391-3-1-.03, subsections (2)(i) and (12)(c). Pursuant to its authority under 42 U.S.C. § 7413(a)(1)(A), EPA should issue an order instructing Georgia EPD to revoke RBG's air permit and not to issue another permit to RBG without first providing an opportunity for public comment on a draft permit.

**B. EPA Should Issue an Order Prohibiting RBG from Constructing its Adel Facility Without Complying with the Act's NSR Requirements.**

Under 42 U.S.C. § 7413(a)(5), EPA has authority to address NSR violations "[w]henever the Administrator . . . finds that a State is not acting in compliance with any requirement or prohibition . . . relating to the construction of new sources." In accordance with Georgia's SIP, a synthetic minor limit does not restrict a facility's potential to emit unless it is federally enforceable, which it can only be if, among other things, the public is provided with an opportunity to comment on a draft permit. Because Georgia EPD issued RBG's synthetic minor

permit without providing an opportunity for public comment, RBG cannot rely on those limits for purposes of calculating its potential to emit. Without those limits, RBG’s planned Adel wood pellet manufacturing plant is a major source for purposes of the Act’s NSR requirements.<sup>58</sup> Accordingly, RBG’s construction of the plant without first obtaining a major NSR permit would violate the Act.<sup>59</sup>

Pursuant to 42 U.S.C. § 7413(a)(5), EPA should issue an order prohibiting RBG from constructing its Adel wood pellet manufacturing plant without either (1) complying with the Prevention of Significant Deterioration NSR requirements set forth in Georgia’s SIP at Rule 391-3-1.02(7), or (2) obtaining federally enforceable synthetic minor limits as required by Georgia’s SIP, which can be issued only after an opportunity for public comment on the draft synthetic minor permit.

**C. EPA Should Order Georgia EPD to Cease Issuing Synthetic Minor Permits Without Providing for Public Comment.**

Whereas 42 U.S.C. § 7413(a)(1) primarily addresses individual instances of SIP noncompliance, Section (a)(2) addresses SIP violations that “are so widespread that such violations appear to result from a failure of the State in which the plan ... applies to enforce the plan ... effectively.” 42 U.S.C. § 7413(a)(2). Such is the case here with respect to Georgia’s failure to provide an opportunity for public comment on draft synthetic minor permits. As shown above, Georgia systematically ignores the plain terms of its Georgia SIP Rules 391-3-1-.01(ddd) and (cccc) and SIP Rule 391-3-1-.03, subsections (2)(i) and (12)(c), and issues synthetic minor permits without providing an opportunity for comment on draft permits.

Pursuant to 42 U.S.C. § 7413(a)(2)(A), EPA should issue an order directing Georgia EPD to cease issuing synthetic minor permits that establish “potential to emit” limits designed to enable new sources to avoid applicability of federal air pollution control requirements for major sources without providing for an opportunity for public comment on draft versions of such permits in accordance with Georgia’s SIP.

**D. Require Georgia to Correct its Deficient Minor NSR Permitting Requirements.**

Finally, under 42 U.S.C. § 7410(k)(5), whenever the EPA administrator finds that a SIP fails to “comply with any requirement” of the Act, “the Administrator shall require the State to revise the plan as necessary to correct such inadequacies.” As shown above, Georgia’s SIP does not meet the minimum requirements for approvability of state minor NSR permit programs at 40 C.F.R. §§ 51.161 due to the lack of an opportunity for public comment on draft “construction” permits.<sup>60</sup> EPA should use its § 7410(k)(5) authority to require Georgia to correct this SIP

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<sup>58</sup> This is especially evident with respect to NO<sub>x</sub>. At the plant’s proposed production rate of 497,000 tons per year, RBG calculates that the facility emits 249.48 tpy of NO<sub>x</sub>. This means that at a production rate of 498,035—just 0.2% higher than nameplate capacity—the facility’s NO<sub>x</sub> emissions will exceed the major source PSD threshold. Further, nothing in RBG’s permit record suggests the facility is not capable of producing the extra 0.2% of pellets per year. Renewable Biomass Group, Adel, GA, Air Construction Permit Application, Greenfield Wood Pellet Manufacturing Facility, at Appendix C, Table C-1 (July 2020) (Att. E)

<sup>59</sup> 42 U.S.C. § 7475(a).

<sup>60</sup> Georgia SIP Rule 391-3-1.03(1), <https://www.epa.gov/sites/production/files/2017-12/documents/391-3-1.03-2017.pdf>.

deficiency. This correction is especially urgent due to Georgia's apparent decision to cease offering an opportunity for public comment on synthetic minor permits, possibly making Georgia the only state in the nation to exclude all draft minor NSR permits from public-notice-and-comment requirements.

## CONCLUSION

Under Georgia's federally approved SIP and EPA's minor NSR regulations, members of the public have the right to an opportunity for public comment on air permits for proposed new and modified air pollution sources in their communities, even if such sources are classified as "minor." Especially when considered together with other environmental hazards present in already overburdened communities, minor sources can have a significant adverse impact on public health and welfare. When a minor source permit is used to establish synthetic minor limits that enable the source to avoid stringent Clean Air Act requirements that would otherwise be applicable, it is especially important for the public to have an opportunity to scrutinize such limits to ensure that they are accurate and enforceable as a legal and practical matter.

In refusing to provide an opportunity for public comment on the draft permit for RBG's proposed Adel, Georgia wood pellet manufacturing plant, Georgia EPD violated Georgia's SIP and denied impacted members of the public the right to ensure that the permit conditions are sufficient to protect their health and that of their families. Petitioners urge EPA to take prompt action to correct Georgia EPD's failure to follow the law when issuing RBG's air permit and to prevent RBG from constructing its plant in violation of NSR requirements. In addition, Petitioners ask EPA to correct Georgia's longstanding and widespread failure to comply with the public participation requirements of its SIP statewide, and to order Georgia to revise its SIP to bring it into compliance with the minimum criteria for approvability of state minor NSR programs set forth at 40 C.F.R. § 51.161.

Please note that because Georgia EPD issued RBG's final air permit on January 28, 2021, time is of the essence in responding to this petition. If you have any questions about this petition or would like to schedule a meeting to discuss it, please contact Keri Powell by telephone at (678) 902-4450 or by email at [kpowell@powellenvironmentallaw.com](mailto:kpowell@powellenvironmentallaw.com).

Respectfully submitted,

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