



CLEAN AIR. HEALTHY COMMUNITIES.

August 2, 2016

**VIA HAND DELIVERY**

Dr. Corey Masuca  
Principal Air Pollution Control Engineer  
Environmental Health Services  
Air & Radiation Protection Division  
Jefferson County Department of Health  
P.O. Box 2648  
Birmingham, AL 35202-2648

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ENV. HEALTH SERVICES  
2016 AUG 2 AM 11 26

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**Re: Permit No. 4-07-0011-04 Draft for Public Comment**

Dr. Masuca,

Please find attached to this letter Gasp's comments on the draft permit number 4-07-0011-04 for Alabama Power Company, J.H. Miller, Jr. Steam Electric Generating Plant.

Additionally, Gasp would like to formally request to be notified on the final decision regarding the issuance of Alabama Power Company, J.H. Miller, Jr. Steam Electric Generating Plant's permit.

Gasp would also like to formally request copies of all of the comments received during the public notice period regarding the draft permit for Alabama Power Company, J.H. Miller, Jr. Steam Electric Generating Plant as soon as possible.

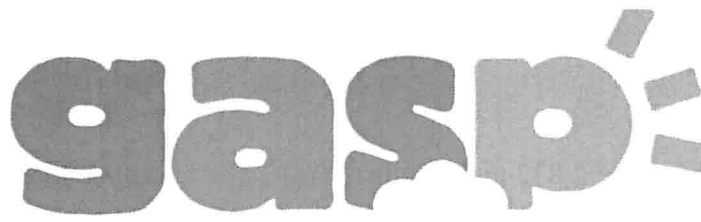
We appreciate the opportunity to comment.

Sincerely,

Haley Colson Lewis  
Staff Attorney

Michael Hansen  
Executive Director





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**Re: Permit No. 4-07-0011-04 Draft for Public Comment**

Dear Dr. Masuca,

Gasp<sup>1</sup> respectfully submits the following comment on the Draft Permit number 4-07-0011-04. We appreciate the opportunity to make these public comments. Gasp hopes that you will take into consideration our comments and recommendations.

**I. Purpose**

Gasp is a health advocacy organization focused on air quality issues in the Greater Birmingham Area. We work with residents, community leaders and resource partners to find solutions to ongoing air pollution. We maintain that every Alabama citizen has the right to breathe healthy air and that health should be the first priority when regulatory agencies analyze Title V permits. Accordingly, Gasp submits the following comments on Alabama Power Company, J.H. Miller, Jr. Steam Electric Generating Plant (Miller Plant) Draft Permit number 4-07-0011-04. We look forward to the Jefferson County Department of Health (JCDH) considering our comments and making changes to the Draft Permit that better protect the health of residents and air quality in Jefferson County.

**II. Background**

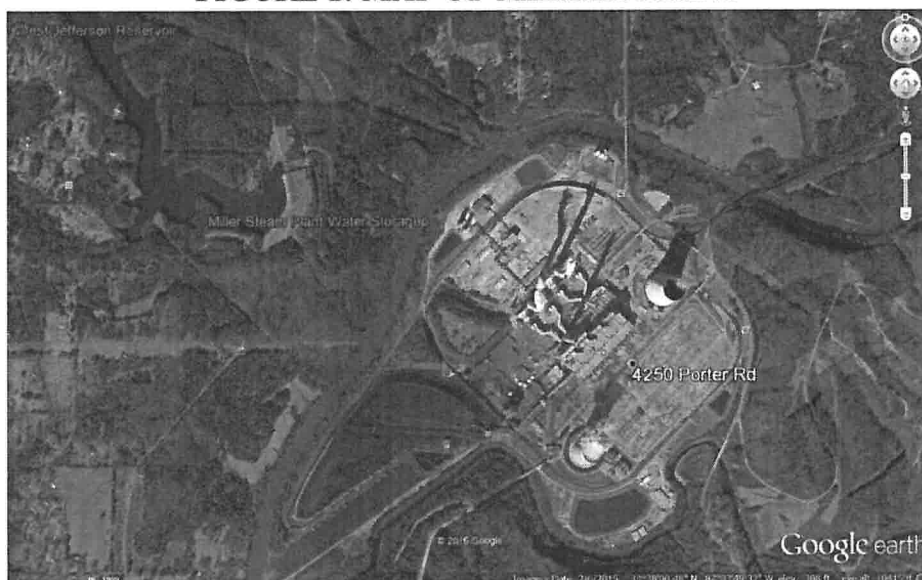
The Miller Plant is a steam electric generating plant owned by Alabama Power Company. The Miller plant has four coal-fired electricity generating units. Although not provided in the Draft Permit, in the Permit Application or in an otherwise publicly available document, the

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<sup>1</sup>Gasp is a non-profit health advocacy organization fighting for healthy air in Alabama. We strive to reduce air pollution through education and advocacy — because Alabamians deserve clean, healthy air.  
<http://www.gaspgroup.org>

nameplate capacity appears to be 2,822 megawatts (MW)<sup>2</sup>. The facility is located at 4250 Porter Road, Quinton, Alabama 35130 as seen in FIGURE 1 below:

**FIGURE 1: MAP OF MILLER PLANT**



As seen in FIGURE 1 above, the Miller Plant is located in West Jefferson County. The demographic profile of the surrounding area within five miles of the facility is highlighted in TABLES 1, 2, 3 and 4 below:

**TABLE 1: HOUSEHOLD INFORMATION<sup>3</sup>**

Households in Area	Housing Units in Area	Households on Public Assistance	Persons below poverty level	Total persons
1,978	2,243	18	1,707	5,046

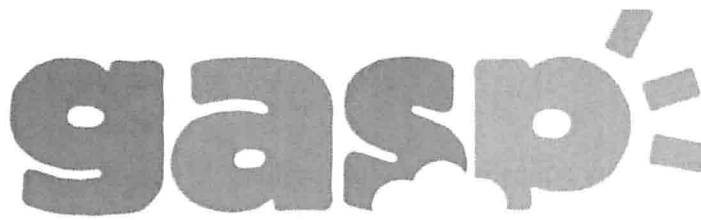
**TABLE 2: RACIAL DEMOGRAPHICS<sup>4</sup>**

White	African-American	Hispanic-Origin	Asian/Pacific Islander	[Native American]	Other	Percent Minority
4,427	484	66	13	39	84	13%

<sup>2</sup> Surely, information as critical as the nameplate capacity of the facility applying for a Title V permit is highly relevant and should be disclosed as part of the public participation process. Gasp obtained from SourceWatch that the Miller Plant has a nameplate capacity of 2,822 MW. "Miller Steam Plant," SourceWatch, available at [http://www.sourcewatch.org/index.php/Miller\\_Steam\\_Plant](http://www.sourcewatch.org/index.php/Miller_Steam_Plant). The nameplate capacity of the Miller Plant provided by Alabama Power Company should appear on the Permit Application and on the Draft Permit in order for the public to be able to meaningfully weigh in on the Draft Permit.

<sup>3</sup> EPA, ECHO, available at <https://echo.epa.gov/detailed-facility-report?fid=110043792651> (last updated Sept. 2, 2014).

<sup>4</sup> Id.



CLEAN AIR. HEALTHY COMMUNITIES.

**TABLE 3: EDUCATION LEVEL (PERSONS 25 AND OLDER)<sup>5</sup>**

Less than 9 <sup>th</sup> grade	9 <sup>th</sup> -12 <sup>th</sup> grade	High School Diploma	Some college/2 year	B.S./B.A. or more
187	519	1,662	1,027	317

**TABLE 4: INCOME BREAKDOWN<sup>6</sup>**

Less than \$15k	\$15k-\$25k	\$25k-\$50k	\$50k-\$75k	Greater than \$75k
223	287	557	485	463

Gasp is a membership organization with members across Jefferson County, including members within five to ten miles of the Miller Plant. Accordingly, Gasp represents the air quality and public health concerns of our members living within close proximity to the Miller Plant.

### **III. Carbon emissions and climate change**

Fossil fuel consumption is the leading contributor to climate change. Coal has the highest carbon content of any fossil fuel per unit of energy. Accordingly, burning coal for electricity produces more carbon per kilowatt-hour generated than does burning oil or natural gas. “Coal emits 27 percent more CO<sub>2</sub>, the main pollutant that fuels global warming, per unit of energy than oil and 75 percent more than natural gas<sup>7</sup>.” Power plants released 72 percent of the greenhouse gases reported to the EPA for 2010<sup>8</sup>.

Over the past decade, Alabama coal-fired power plants produced an average of 76,300,000 tons of carbon pollution each year. Power plants in Alabama contributed to 58% of statewide CO<sub>2</sub> emissions<sup>9</sup>. Southern Company, the parent company of Alabama Power, ranked third in a list of contributors to greenhouse gases<sup>10</sup>. The Miller Plant is listed as the number one

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<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Environment America, “America’s biggest polluters: Carbon dioxide emissions from power plants in 2007,” 8 (Nov. 2009) *available at* [http://www.environmentamerica.org/sites/environment/files/reports/EA\\_web\\_biggestpolluters.pdf](http://www.environmentamerica.org/sites/environment/files/reports/EA_web_biggestpolluters.pdf).

<sup>8</sup> Ibata, D., “Study: Southern Company plants are 3 biggest greenhouse gas emitters,” Atlanta Journal Constitution (Jan. 11, 2012) *available at* <http://www.ajc.com/news/news/local/study-southern-company-plants-are-3-biggest-greenh/nQQJn/>.

<sup>9</sup> Environment America, “America’s biggest polluters: Carbon dioxide emissions from power plants in 2007,” 26 (Nov. 2009) *available at* [http://www.environmentamerica.org/sites/environment/files/reports/EA\\_web\\_biggestpolluters.pdf](http://www.environmentamerica.org/sites/environment/files/reports/EA_web_biggestpolluters.pdf).

<sup>10</sup> Southern Company released 108,671,229 metric tons of CO<sub>2</sub> equivalent emissions for 2014 and accounts for 3.392% of national total GHGRP large, fixed source emissions and accounts for 1.629% of all U.S. greenhouse gas emissions. Political Economy Research Institute (PERI), Greenhouse 100 Index, (Jan. 18, 2016) *available at* <http://www.peri.umass.edu/greenhouse100>.

facility within Southern Company contributing to this ranking<sup>11</sup>. The second largest carbon emitting coal-fired power plant in the country is the Miller Plant<sup>12</sup>.

Reducing carbon pollution from power plants is a means to combat climate change. Cutting carbon pollution will also cut direct emissions of dangerous pollutants, including sulfur dioxide, nitrogen oxides, fine particulate matter and mercury.<sup>13</sup> Reducing those direct emissions will translate into reduced overall particulate matter and ozone pollution, which will immediately improve human health.

Although the Supreme Court of the United States stayed the Clean Power Plan<sup>14</sup> (CPP) on February 9, 2016, the D.C. Circuit Court of Appeals ordered that oral arguments be rescheduled for September 27, 2016 and will be heard by the full en banc D.C. Circuit Court of Appeals. Accordingly, the State of Alabama's "wait and see"<sup>15</sup> approach for compliance could be imprudent. Where the Miller Plant contributes significantly to the amount of CO<sub>2</sub> in the atmosphere, the Miller Plant will be subject to the standards of the CPP, likely during the five year term of this Title V permit. Accordingly, JCDH, along with co-regulators such as ADEM should consider seriously Gasp's comments addressing the Miller Plant's CO<sub>2</sub> emissions. Once

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<sup>11</sup> The Miller plant's CO<sub>2</sub> equivalent emissions for 2014 were 19,902,660 metric tons. The Miller plant accounts for 18.31% of Southern Company's emissions (compared with the second and third ranked plants, Bowen at 14.39% and Barry at 7.59%). *Id.* However, based off 2013 emissions, EPA ranks the Scherer plant in Georgia as the largest carbon emitter. Light, J. "How Does Your State Rank on Greenhouse Gas Emissions?" *Moyers & Company*, (Oct. 8, 2014) *available at* <http://billmoyers.com/content/epa-ghg-emissions/>.

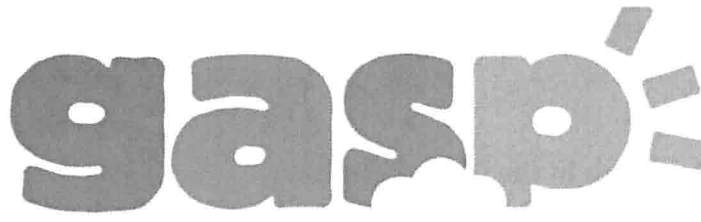
<sup>12</sup> Light, J. "How Does Your State Rank on Greenhouse Gas Emissions?" *Moyers & Company*, (Oct. 8, 2014) *available at* <http://billmoyers.com/content/epa-ghg-emissions/>. In 2012, The Miller Plant was ranked third in the nation in terms of largest carbon dioxide emissions. Ibata, D., "Study: Southern Company plants are 3 biggest greenhouse gas emitters," *Atlanta Journal Constitution* (Jan. 11, 2012) *available at* <http://www.ajc.com/news/news/local/study-southern-company-plants-are-3-biggest-greenh/nQQJn/>.

<sup>13</sup> See EPA, "Regulatory Impact Analysis for the Clean Power Plan Final Rule," (Oct. 23, 2015) *available at* <https://www.epa.gov/sites/production/files/2015-08/documents/cpp-final-rule-ria.pdf>.

<sup>14</sup> The Clean Power Plan sets the first-ever national standards that address carbon pollution from power plants. In 2009, EPA determined that greenhouse gas pollution threatens Americans' health and welfare by leading to long-lasting changes in our climate that can have a range of negative effects on human health and the environment. Carbon dioxide (CO<sub>2</sub>) is the most prevalent greenhouse gas pollutant, accounting for nearly three-quarters of global greenhouse gas emissions and 82% of U.S. greenhouse gas emissions. The Clean Power Plan will reduce carbon pollution from power plants. The Clean Power Plan cuts significant amounts of power plant carbon pollution and the pollutants that cause the soot and smog that harm health, while advancing clean energy innovation, development and deployment, and laying the foundation for the long-term strategy needed to tackle the threat of climate change. See EPA, "Overview of the Clean Power Plan" *available at* <https://www.epa.gov/cleanpowerplan/fact-sheet-overview-clean-power-plan> (last updated June 27, 2016).

<sup>15</sup> In January of this year, Ron Gore, the Air Division chief for the Alabama Department of Environmental Management (ADEM) asserted that ADEM is postponing work toward drafting a plan until mid- to late spring. Gore has said, "'We're optimistic about a stay [of the Clean Power Plan]. We don't see any sense in working on it now until there's a ruling [by the D.C. Circuit] on that,' adding that ADEM staff members have met for early discussions with three of the largest utilities in the state that would be affected by the carbon limits." Marr, C., "Alabama Delays Clean Power Plan Work, Hoping for Stay", *Bloomberg BNA*, (Jan. 11, 2016) *available at* <http://www.bna.com/alabama-delays-clean-n57982065985/>.





CLEAN AIR. HEALTHY COMMUNITIES.

the legal fate of the CPP is determined, and if it is upheld, Alabama must develop and implement plans that ensure that the power plants in this state--either individually, together or in combination with other measures--achieve the interim CO<sub>2</sub> emissions performance rates over the period of 2022 to 2029 and the final CO<sub>2</sub> emission performance rates, rate-based goals or mass-based goals. Although JCDH cannot implement compliance with the stayed CPP into this Draft Permit, the CO<sub>2</sub> emissions of the Miller Plant are extremely relevant if the CPP does, in fact, move forward during the five year term of this permit.

**IV. The Draft Permit should either directly reference the Permit Application or incorporate information from the Permit Application in the Draft Permit.**

As previously stated, crucial information is missing from the Draft Permit<sup>16</sup>. The Draft Permit is the document JCDH posts on their website alongside a public notice, which references the availability of only the Draft permit. The Draft permit does not provide enough relevant information about the Miller Plant for anyone to properly understand the facility itself and its emissions.

However, the Permit Application provides details and otherwise significant information that is neither present nor referenced in the publicly available Draft Permit. Gasp obtained the Permit Application pursuant to formally requesting a file review<sup>17</sup>, going to JCDH to review the file and requesting<sup>18</sup> and paying for a copy<sup>19</sup> of the Permit Application. Accordingly, Gasp benefits from the more detailed information contained in the Permit Application, which is not generally available to the public. In order for the Draft Permit to convey anything of meaning about the Miller Plant, the Draft Permit must be compared directly to the more coherent and complete Permit Application. The goal of the Title V permit is to provide relevant information about all of the air emissions sources and activities at a major source of air pollution. As such, the Draft Permit should make the information provided in the Permit Application subject to the terms of the Draft Permit. JCDH should either directly reference the Permit Application in the Draft Permit or incorporate information from the Permit Application into the Draft Permit.

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<sup>16</sup> See *supra* note 2.

<sup>17</sup> Letter from Kirsten Bryant, Outreach Director, Gasp to Jonathan Stanton, Director, Environmental Health Services, JCDH (Apr. 12, 2016) (on file with author) (requesting to review the file for Alabama Power Company's Miller Plant). Gasp completed the file review on May 13, 2016.

<sup>18</sup> E-mail from Kirsten Bryant, Outreach Director, Gasp to Jason Howanitz, Senior Air Pollution Control Engineer, Air Pollution Control & Radiation Division, JCDH (May 13, 2016, 02:22 PM CST) (on file with author) (requesting to receive permit application files electronically).

<sup>19</sup> Gasp paid \$88.36 for electronic copies of both Alabama Power Company's Permit Application for the Miller Plant and CMC Steel, LLC d/b/a SMI Steel's Permit Application. E-mail from to Jason Howanitz, Senior Air Pollution Control Engineer, Air Pollution Control & Radiation Division, JCDH to Kirsten Bryant, Outreach Director, Gasp (May 24, 2016, 08:43 AM CST) (on file with author).

## V. Emergency Provision in the Draft Permit

The Draft Permit in No. 33 under “General Conditions” sets forth an Emergency Provision<sup>20</sup>. This section also provides a “director’s discretion” provision. This provision states that “[t]he Health Officer shall be the *sole determiner* of whether an emergency has occurred<sup>21</sup>.”

On May 22, 2015, in response to a ruling by the United States Court of Appeals for the District of Columbia in NRDC v. EPA<sup>22</sup>, The United States Environmental Protection Agency (EPA) found that certain State Implementation Plan (SIP) provisions in 36 states, including Alabama, were substantially inadequate to meet Clean Air Act (CAA) requirements<sup>23</sup>. Specifically, EPA found that two generally applicable provisions in Alabama’s SIP, allowing discretionary exemptions during startup, shutdown or load change (Ala. Admin Code Rule 335-3-14-.03(1)(h)(1)<sup>24</sup>) and during emergencies (Ala. Admin Code Rule 335-3-14-.03(1)(h)(2)<sup>25</sup>)

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<sup>20</sup> “An ‘emergency’ means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emissions limitation under the Operating Permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.” JCDH, Draft Major Source Operating Permit No. 4-07-0011-04, 13 (July 5, 2016), *available at* <http://www.jcdh.org/eh/anr/anr12.aspx?NoticeId=117&Type=2>. *See also* Jefferson County Board of Health Air Pollution Control Rules and Regulations 18.11.2, *available at* <http://www.jcdh.org/misc/ViewBLOB.aspx?BLOBId=287>.

<sup>21</sup> JCDH, Draft Major Source Operating Permit No. 4-07-0011-04, 13 (July 5, 2016), *available at* <http://www.jcdh.org/eh/anr/anr12.aspx?NoticeId=117&Type=2> (emphasis added). *See also* Jefferson County Board of Health Air Pollution Control Rules and Regulations 18.11.2(c), *available at* <http://www.jcdh.org/misc/ViewBLOB.aspx?BLOBId=287>.

<sup>22</sup> *See generally* Natural Resources Defense Council v. EPA, 749 F.3d 1055 (D.C. Cir. 2014).

<sup>23</sup> *See* 80 Fed. Reg. at 33962.

<sup>24</sup> Jefferson County Board of Health Air Pollution Control Rules and Regulations track almost verbatim the SIP provision at issue:

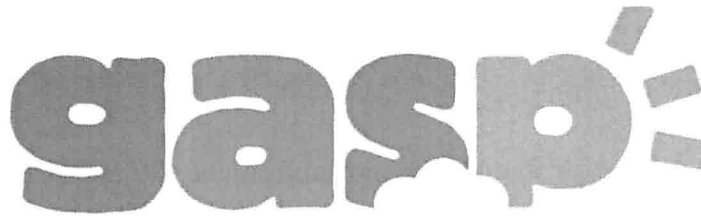
“The Health Officer may, in the operating permit, exempt on a case-by-case basis exceedances of emission limits which cannot reasonably be avoided, such as during periods of start-up, shut-down or load change. For emission Chapter 18 - 18 limits established by federal rules (e.g., NSPS, NESHAP, and MACT), exemptions may be granted only where provisions for such exemptions are contained in the applicable rule or its general provisions.” 18.11.1.

“The Director may, in the Air Permit, exempt on a case by case basis any exceedances of emission limits which cannot reasonably be avoided, such as during periods of start-up, shut-down or load change.” Ala. Admin Code r. 335-3-14-.03(1)(h)(1).

<sup>25</sup> Jefferson County Board of Health Air Pollution Control Rules and Regulations track almost verbatim the SIP provision at issue:

“An ‘emergency’ means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emissions limitation under the Operating Permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.” 18.11.2(a).





CLEAN AIR. HEALTHY COMMUNITIES.

were substantially inadequate to meet CAA requirements and thus issued a SIP call with respect to these provisions<sup>26</sup>. On June 15, 2016, EPA also proposed a rule that would require states, including Alabama, to remove the affirmative defense provisions<sup>27</sup> for emergencies in Title V programs<sup>28</sup>.

Accordingly, JCDH should remove the Health Officer discretion provision where the EPA found that such provision is substantially inadequate to meet CAA requirements. Specifically, Paragraph D in No. 33 under “General Conditions,” that reads “[t]he Health Officer shall be the sole determiner of whether an emergency has occurred<sup>29</sup>” should be removed. As reasoned by EPA, “directors discretion” provisions such as this “have the potential to undermine fundamental statutory objectives such as the attainment and maintenance of the NAAQS and to undermine effective enforcement of the SIP<sup>30</sup>.” Such provision would allow the Health Officer to exempt the Miller Plant from compliance, which the CAA does not allow, and could prevent enforcement by the EPA or through a citizen suit under the CAA.

Although not referenced in the Draft Permit, it is also worth noting that JCDH Rules and Regulations contain the provision allowing discretionary exemptions during startup, shutdown or load change<sup>31</sup>. As previously stated, EPA found that this provision is substantially inadequate to

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“Any situation arising from sudden and reasonably unforeseeable events beyond the control of the facility, including acts of God, which situation requires more immediate corrective action to restore normal operation, and that causes the facility to exceed a technology based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.” Ala. Admin Code r. 335-3-14-.03(1)(h)(2).

<sup>26</sup> 80 Fed. Reg. at 33962.

<sup>27</sup> “EPA proposed to issue a SIP call to a state to rectify a problem with an affirmative defense provision only if the provision included an affirmative defense that was applicable to excess emissions during startup and shutdown or included an affirmative defense that was applicable to excess emissions during malfunctions but was inconsistent with the criteria recommended in the EPA’s SSM Policy.” 80 Fed Reg at 33958. “<sup>27</sup> Jefferson County Board of Health Air Pollution Control Rules and Regulations contains such a provision: “[a]n emergency constitutes an affirmative defense.” 18.11.2(e), which is incorporated by reference to 18.11.2 in the Draft Permit. JCDH, Draft Major Source Operating Permit No. 4-07-0011-04, 13 (July 5, 2016), *available at* <http://www.jcdh.org/eh/anr/anr12.aspx?NoticeId=117&Type=2>.

<sup>28</sup> See Removal of Title V Emergency Affirmative Defense Provisions from State Operating Permit Programs and Federal Operating Permit Program, 81 Fed. Reg. at 38645 (to be codified at 40 CFR Parts 70 and 71).

<sup>29</sup> JCDH, Draft Major Source Operating Permit No. 4-07-0011-04, 13 (July 5, 2016), *available at* <http://www.jcdh.org/eh/anr/anr12.aspx?NoticeId=117&Type=2>. See also Jefferson County Board of Health Air Pollution Control Rules and Regulations 18.11.2, *available at* <http://www.jcdh.org/misc/ViewBLOB.aspx?BLOBId=287>

<sup>30</sup> 80 Fed. Reg. at 33962

<sup>31</sup> See *supra* note 24.

meet CAA requirements. As such, it should be removed from the SIP and JCDH Rules and Regulations. If this provision is retained, it must be corrected to stipulate that all emissions constitute violations.

Finally, JCDH Rules and Regulations currently provide that “[a]n emergency constitutes an affirmative defense<sup>32</sup>.” This provision is incorporated by reference to 18.11.2 in the Draft Permit alongside No. 33 under “General Conditions<sup>33</sup>.” “EPA also encourages states to exercise their discretion to *cease including emergency affirmative defense provisions as early as practicable*. In many cases, there will be no reason for states to wait for the EPA to take final action on this proposal to begin implementing this suggestion<sup>34</sup>.” Accordingly, where EPA has found that such provisions are inadequate to meet CAA requirements and should no longer be present in operating permits, JCDH should remove this provision. If JCDH chooses to retain this provision, it should stipulate that an emergency does not constitute an affirmative defense.

## **VI. Fugitive Dust provision in the Draft Permit**

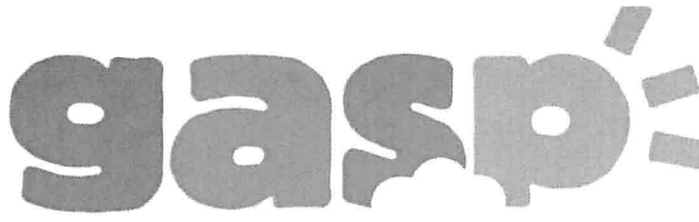
The Draft Permit under No. 41 under “Facility-Specific General Conditions” sets forth a

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<sup>32</sup> 18.11.2(e).

<sup>33</sup> JCDH, Draft Major Source Operating Permit No. 4-07-0011-04, 13 (July 5, 2016), *available at* <http://www.jcdh.org/eh/anr/anr12.aspx?NoticeId=117&Type=2>.

<sup>34</sup> 80 Fed. Reg at 38653 (emphasis added).



CLEAN AIR. HEALTHY COMMUNITIES.

fugitive dust provision<sup>35</sup>. The fugitive dust provision references JCDH Rules and Regulations 6.2.1<sup>36</sup>, 6.2.2<sup>37</sup> and 18.2.4<sup>38</sup>. “Fugitive emissions” are defined as “those emissions from a

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<sup>35</sup> “The permittee shall take reasonable precautions to prevent dust from any operation, process, handling, storage, or transportation activity, including dust from paved and unpaved roads, at the facility from becoming airborne. The permittee shall not cause or allow the discharge of visible emissions which travel beyond the property line of the facility. Airborne fugitive dust emissions shall be prevented and addressed as needed and as appropriate to weather conditions using the following measures:

- A. Fugitive dust from plant roads may be controlled by the application of water and/or mechanical cleaning (vacuuming, washing or sweeping);
- B. Fugitive dust from coal piles may be controlled by following good work practices to minimize fugitive dust resulting from the disturbance of the coal piles, including but not limited to minimizing the active working areas of the piles and taking wind speed and direction into account when actively working the coal piles, and by utilizing active control measures, including but not limited to compaction, wet suppression using mobile or stationary equipment and/or the application of chemical dust suppressant or dust-control binders;
- C. Fugitive dust from coal storage and handling operations may be controlled by wet suppression, chemical dust suppressant, wet scrubbers, fabric filters, building enclosures and/or conveyor enclosures.
- D. Fugitive dust from other material handling operations may be controlled by wet suppression, saturation, fabric filters and/or building enclosures.

Wet suppression may be accomplished by the application of water with or without the addition of surfactants, wetting agents or other additives to increase the effectiveness of wet suppression. Manufacturer’s documentation of the contents of any chemical, surfactant, wetting agent, or other additive used for dust suppression shall be maintained and readily made available upon request by the Department. Other dust control methods not listed above may be used subject to Department approval.” JCDH, Draft Major Source Operating Permit No. 4-07-0011-04, 15 (July 5, 2016), *available at* <http://www.jcdh.org/eh/anr/anr12.aspx?NoticeId=117&Type=2>.

<sup>36</sup> Jefferson County Board of Health Air Pollution Control Rules and Regulations track the Alabama SIP provision “No person shall cause, suffer, allow, or permit any materials to be handled, transported, or stored; or a building, its appurtenances, or a road to be used, constructed, altered, repaired or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne. Such reasonable precautions shall include, but not be limited to, the following:

- (a) Use, where possible, of water or chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading of roads or the clearing of land;
- (b) Application of asphalt, oil, water, or suitable chemicals on dirt roads, materials stock piles, and other surfaces which create airborne dust problems; and
- (c) Installation and use of hoods, fans, and fabric filters (or other suitable control devices) to enclose and vent the handling of dust materials. Adequate containment methods shall be employed during sandblasting or other similar operations.” 6.2.2

Alabama’s SIP provides that “No person shall cause, suffer, allow, or permit any materials to be handled, transported, or stored; or a building, its appurtenances, or a road to be used, constructed, altered, repaired, or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne. Such reasonable precautions shall include, but not be limited to, the following:

- (a) Use, where possible, of water or chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading of roads, or the clearing of land;

stationary source that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening<sup>39</sup>.”

In 2014, when EPA was petitioned to object to certain Title V permits’ vague terms relating to fugitive dust control requirements<sup>40</sup>, EPA granted such request for an objection. EPA agreed with the Petitioners that the condition in each permit requiring “reasonable precautions” is vague and unenforceable. “While the SIP regulation identifies various fugitive dust control methods that may constitute ‘reasonable precautions’ *it does not mandate the use of any of those methods*. For a title V permit to assure a particular source’s compliance with this requirement, consistent with 40 C.F.R. § 70.6(a)(1) [...] the permit terms must specify the emissions limitations and standards, including those operational requirements and limitations that assure compliance with the applicable requirement in Georgia[‘s] SIP<sup>41</sup>.” EPA then directed Georgia Environmental Protection Division (Georgia EPD) to include in Title V permits emissions limitations and standards, including operational requirements and limitations to assure

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- (b) Application of asphalt, oil, water, or suitable chemicals on dirt roads, materials stock piles, and other surfaces which create airborne dust problems;
  - (c) Installation and use of hoods, fans, and fabric filters (or other suitable control devices) to enclose and vent the handling of dusty materials. Adequate containment methods shall be employed during sandblasting or other similar operations.” Ala. Admin Code r. 335-3-14-.02(1)(a)-(c).

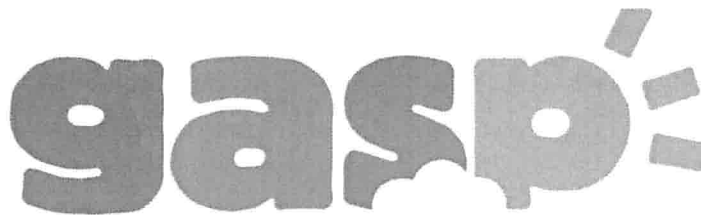
<sup>37</sup> Jefferson County Board of Health Air Pollution Control Rules and Regulations track the Alabama SIP provision “No person shall cause or permit the discharge of visible fugitive dust emissions beyond the lot line of the property on which the emissions originate.” 6.2.2. Alabama’s SIP reads, “no person shall cause or permit the discharge of visible fugitive dust emissions beyond the lot line of the property on which the emissions originate.” Ala. Admin Code r. 335-3-14-.02(2).

<sup>38</sup> “The Health Officer may issue an Operating Permit subject to conditions which will bring the operation of any article, machine, equipment, or other contrivance within the standards of Paragraph 18.2.8(a) of this Part in which case the conditions shall be specified in writing. Commencing construction or operation under such an Operating Permit shall be deemed acceptance of all the conditions specified. The Health Officer may issue an Operating Permit with revised conditions upon receipt of a new application, if the applicant demonstrates that the article, machine, equipment, or other contrivance can operate within the standards of Paragraph 18.2.8(a) of this Part under the revised conditions.” 18.2.4.

<sup>39</sup> JCDH, Draft Major Source Operating Permit No. 4-07-0011-04, 5 (July 5, 2016), *available at* <http://www.jcdh.org/eh/anr/anr12.aspx?NoticeId=117&Type=2>

<sup>40</sup> In 2012, GreenLaw on behalf of Sierra Club and other environmental organizations raised issues in five related petitions. The petitions sought the EPA’s objection to operating permits issued by Georgia EDF to Georgia Power/Southern Company for five existing coal-fired power plants. Specifically, EPA granted the Petitioners’ request for an objection to the permits based on deficiencies in the permit conditions implementing the fugitive dust control requirements of Georgia SIP Rule 391-3-1-.02(2)(n). Order Granting in Part and Denying in Part Five Petitions for Objections to Permits, Petitions Nos. IV-2012-1-IV-2012-2, IV-2012-3, IV-2012-4 and IV-2012-5 (Apr. 14, 2014) *available at* [https://www.epa.gov/sites/production/files/2015-08/documents/ga\\_power\\_plants\\_response2012.pdf](https://www.epa.gov/sites/production/files/2015-08/documents/ga_power_plants_response2012.pdf).

<sup>41</sup> *Id.* (emphasis added).



CLEAN AIR. HEALTHY COMMUNITIES.

compliance with Georgia's SIP<sup>42</sup> for fugitive dust emissions. EPA also ordered that Georgia EPD must provide a rationale in the permit record explaining why the permit conditions are sufficient to assure compliance with Georgia's SIP<sup>43</sup>.

The Draft Permit for the Miller Plant contains similar, vague and unenforceable terms. For example, "reasonable precautions," and the six instances in which "may be"<sup>44</sup> appears render this provision discretionary to Alabama Power. Specifically, all measures enumerated in subsections A. through D. in the Draft Permit<sup>45</sup> contain the "may be" clause, which are not contained in the enumerated list of "reasonable precautions" that a permit shall include<sup>46</sup>. To remedy this error, JCDH should significantly expand this provision of the Draft Permit. Specifically, the Draft Permit must be revised to include more details, specific and enforceable measures to control fugitive dust emissions, including recordkeeping and reporting requirements that assure compliance with Alabama's SIP.

## **VII. Federally Enforceable Conditions for Coal-Fired Boilers**

Under this section, the Draft Permit sets out emissions unit descriptions and relevant regulations. This section of the Draft Permit essentially contains only a reference to 40 C.F.R. 63, Subpart UUUUU<sup>47</sup>. Nothing in this section of the Draft Permit contains information specific to the Miller Plant.

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *See supra* notes 35 and 36.

<sup>45</sup> *See supra* note 35.

<sup>46</sup> *See supra* note 36.

<sup>47</sup> "The 4 coal-fired electric utility steam generating units (EGUs) designed to combust coal with a heating value greater than or equal to 8,300 Btu/lb are an existing affected source (not constructed or reconstructed after May 3, 2011) under 40 CFR 63, Subpart UUUUU. The permittee is subject to the General Provisions of 40 CFR 63, Subpart A as listed in Table 9 of Subpart UUUUU. The compliance date for Plant Miller will be April 16, 2016, as allowed by 40 CFR §63.6(i). Where two emissions limits are specified for a particular pollutant (e.g., a heat input-based limit in lb/ MMBtu and a gross output-based limit in lb/MWh), the permittee may demonstrate compliance with either emission limit consistent with the notification provisions of §63.10030(e)(7)(iii).

- A. At all times the permittee shall operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The emission limits and operating limits of Subpart UUUUU apply at all times, except during periods of startup and shutdown, during which the work practice requirements, items 3 and 4, in Table 3 and clean fuel requirements of §63.10011(f) must be met. Emission rates determined during startup periods and shutdown periods (as defined in §63.10042) are not to be included in the compliance determinations, except as otherwise provided in §§63.10000(c)(1)(vi)(B) and 63.10005(a)(2)(iii) and Table 3 of Subpart UUUUU



As previously mentioned in Section IV of this comment, the Draft Permit is incomplete. Where the goal of the Title V permit is to provide all of the relevant information about all of the air emissions sources and activities at a major source of air pollution, the public's ability to participate is hindered by this Draft Permit. In this section, the Draft Permit should be applying 40 C.F.R. 63, Subpart UUUUU to the Miller Plant, not simply citing and quoting the regulation. This section of the current Draft Permit lacks clarity and specificity as to which available options for compliance under 40 C.F.R. 63, Subpart UUUUU apply to a specific unit or the entire Miller Plant.

Specifically, this section contains no information whatsoever that is relevant to the size of each of the four coal-fired boilers in the Miller Plant. The Permit Application contains customary and essential parameters of unit size<sup>48</sup>, i.e. gross dependable capacity (MW) and maximum hourly heat input rate (MMBtu/hr). However, this information is not included in the Draft Permit, the only document referenced in JCDH's Public Notice and made readily publicly available. This bare bones approach to the Draft Permit quite possibly renders the Draft Permit unenforceable. Therefore, JCDH should incorporate actual information about the Miller Plant to this section, while also revisiting the contradictory information present in the Permit Application.

#### **VIII. References to plans not outlined in the Draft Permit or otherwise publicly available.**

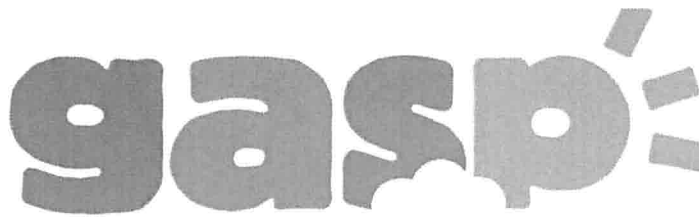
Throughout the Draft Permit there are either references to Plans that are not described

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- B. The emission limits and operating limits of Subpart UUUUU apply at all times, except during periods of startup and shutdown, during which the work practice requirements, items 3 and 4, in Table 3 and clean fuel requirements of §63.10011(f) must be met. Emission rates determined during startup periods and shutdown periods (as defined in §63.10042) are not to be included in the compliance determinations, except as otherwise provided in §§63.10000(c)(1)(vi)(B) and 63.10005(a)(2)(iii) and Table 3 of Subpart UUUUU.
  - C. If the general eligibility requirements of §63.10009(a) are met, the permittee may comply with the averaging provisions of §§63.10009, 63.10022, 63.10006(g), 63.10005(a)(2), 63.10010(g), 63.10011(c), 63.10021(b), 63.10023(b)(2)(ii), 63.10030(e), 63.10031(f) and 63.10032(e) for filterable PM, SO<sub>2</sub>, HCl, non-Hg HAP metals, or Hg on an EGU-specific basis.
  - D. Unless prohibited pursuant to §63.10000(c)(1)(i), the permittee may pursue the low-emitting EGU (LEE) compliance option status for Hg, HCl, filterable PM, total non-Hg HAP metals, or individual non-Hg HAP metals as provided by §§ 63.10005(h), 63.10000(c)(1)(i)-(iii), 63.10006(b),(f)&(h), 63.10007(b)&(d), 63.10009(a), 63.10011(d), 63.10031(c)(6)&(7), 63.10032(d)(3) and Tables 2 and 5."

JCDH, Draft Major Source Operating Permit No. 4-07-0011-04, 23 (July 5, 2016), *available at* <http://www.jcdh.org/eh/anr/anr12.aspx?NoticeId=117&Type=2>

<sup>48</sup> However, certain information in the Permit Application is contradictory. For example, on page 83 of the Permit Application, the stated nameplate capacity of all four units is 660 MW. *See* Alabama Power Company J.H. Miller, Jr. Steam Electric Generating Plant, Title V Permit Renewal Application (Aug. 1, 2014) at 83. However, on pages 400, 406, 412 and 418 of the Permit Application, the "normal full load" values for the units are stated to be 720 MW. *Id.* at 400, 406, 412 and 418.





CLEAN AIR. HEALTHY COMMUNITIES.

or are not otherwise publicly available. Specifically, No. 5 under section “Federally Enforceable Conditions for Coal-Fired Boilers” requires a “site-specific monitoring plan for each CMS used to demonstrate compliance with [40 C.F.R. 63] Subpart UUUUU and shall install, certify, operate and maintain each CMS according to the site-specific monitoring plan as required by §63.10030(e)<sup>49</sup>.” Gasp would like to request that JCDH inform Gasp in response to these comments the status of this site-specific plan. Furthermore, Gasp would also like information on where this plan is available for public review, as it is referenced in the Draft Permit but not otherwise publicly available at present.

## **IX. Conclusion**

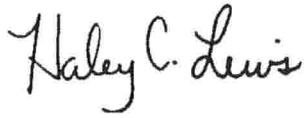
According to the National Climate Assessment, temperatures across the Southeast are expected to increase, resulting in significant increases in the number of hot days and decreases in freezing events. Higher air temperatures contribute to the formation of harmful air pollutants and allergens. Our health depends on mitigating the effects of climate change on our already poor air quality in Jefferson County. The Miller Plant is the third most significant contributor to global greenhouse gasses in the United States. Accordingly, regardless of whether the CPP moves forward during the five year duration of this permit, JCDH should consider Gasp’s comments. Furthermore, JCDH should remove the provisions in the Draft Permit that EPA has found to be inadequate to meet CAA requirements and correct discrepancies and/or lack of information found presently in the Draft Permit.

We appreciate the opportunity to submit these comments. We look forward to receiving JCDH’s comments and notice of JCDH’s final permit decisions. We hope these decisions will reflect the changes we have mentioned and thus create a Title V permit that is more protective of public health and air quality.

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<sup>49</sup> JCDH, Draft Major Source Operating Permit No. 4-07-0011-04, 24 (July 5, 2016), *available at* <http://www.jcdh.org/eh/anr/anr12.aspx?NoticeId=117&Type=2>

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