

**FIRST DIVISION
MILLER, C. J.,
ANDREWS, P. J., and BARNES, J.**

NOTICE: Motions for reconsideration must be
physically received in our clerk's office within ten
days of the date of decision to be deemed timely filed.
(Court of Appeals Rule 4 (b) and Rule 37 (b), February 21, 2008)
<http://www.gaappeals.us/rules/>

July 7, 2009

In the Court of Appeals of Georgia

A09A0387. LONGLEAF ENERGY ASSOCIATES, LLC v.
FRIENDS OF THE CHATTAHOOCHEE, INC. et al.

A09A0388. COUCH v. FRIENDS OF THE CHATTAHOOCHEE
INC. et al.

ANDREWS, Presiding Judge.

These appeals are from a Fulton County Superior Court judgment invalidating an air quality permit issued by the Environmental Protection Division (EPD) of the Georgia Department of Natural Resources to Longleaf Energy Associates, LLC, for the construction of a pulverized coal-fired electric power plant in Early County.¹ The Court upheld challenges to the permit brought by Friends of the Chattahoochee, Inc. and the Sierra Club (the Challengers), and ruled that the permit violated the Georgia

¹ The separate appeals brought by Longleaf and by the EPD in the name of its Director, Carol Couch, are consolidated for this opinion.

Air Quality Act (GAQA) (OCGA § 12-9-1 et seq.) and the federal Clean Air Act (CAA) (42 U.S.C. § 7401 et seq.) on various grounds. The Court also ruled that other errors occurred on administrative review. The most consequential ruling was the Superior Court's conclusion that the permit was invalid because it failed to include a limit on the power plant's carbon dioxide gas (CO₂) emissions. Because neither the CAA nor the GAQA contain regulations controlling CO₂ emissions, we reverse this ruling and hold that the permit was not required to include a CO₂ emission limitation. For the reasons which follow, we reverse the Superior Court judgment on this and other grounds, affirm in part, and remand the case with directions.

1. We begin with an overview of the statutes and regulations at issue and the procedural history of the case.

The CAA sets forth a regulatory scheme designed to protect and enhance the Nation's air quality through joint federal and state participation. *Sierra Club v. Georgia Power Co.*, 443 F3d 1346, 1348 (11th Cir. 2006). Pursuant to the CAA, the federal Environmental Protection Agency (EPA) sets national ambient air quality standards (NAAQS) for regulated pollutants, and each state submits for EPA approval a State Implementation Plan (SIP) designed to ensure that the state's air quality

achieves compliance with the federal standards. 42 U.S.C. §§ 7408 (a); 7409 (a); 7410 (a). To be approved by the EPA, a SIP must “include enforceable emission limitations and other control measures, means, or techniques . . . as may be necessary or appropriate to meet the applicable requirements of [the CAA.]” 42 U. S. C. § 7410 (a) (2) (A); 40 C.F.R. § 52.02 (a). Georgia’s EPA-approved SIP is administered by the Georgia EPD pursuant to provisions in the GAQA and the Georgia Rules and Regulations for Air Quality Control (Ga. Comp. R. and Regs. r. 391-3-1 et seq.) adopted under the authority of the GAQA. 40 C.F.R. §§ 52.570; 52.572. We collectively refer to these Georgia statutes, rules, and regulations as the Georgia SIP. The Georgia SIP implements CAA requirements that, prior to construction of a new major facility with the potential to emit certain defined levels of regulated air pollutants in an area where air quality is in attainment of the NAAQS, the facility must obtain an air quality permit under the prevention of significant deterioration (PSD) program. OCGA §§ 12-9-5 (b); 12-9-6 (b); Ga. Comp. R. & Regs. r. 391-3-1-.02 (1) (c), (7); 42 U.S.C. § 7470 et seq.; 40 C.F.R. § 52.21. The PSD program is part of the CAA’s new source review (NSR) program and is designed to prevent new pollution sources from degrading air quality in areas where the air meets the NAAQS. To accomplish this, the PSD program requires that the new facility be constructed

