BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF	)
OPERATING PERMIT	)
PORT HUDSON OPERATIONS	)
GEORGIA PACIFIC	)
ZACHARY	)
EAST BATON ROUGE PARISH	)
LOUISIANA	)
	)
PERMITS:	)
PSD-LA-544(M-1)	)
PSD-LA-581(M-2)	)
Part 70 Operating Permit 0840-00010-VO	)
(Also designated aa 0840-0010)	)

PETITION FOR OBJECTION TO PERMIT

The Louisiana Environmental Action Network ("LEAN") and Juanita Stewart (together, "Commentors") bring this Petition for Objection to Permits pursuant to Clean Air Act (the "Act") section 505(b) and 40 CFR 70.8(d). LEAN objects to the decision by the Louisiana Department of Environmental Quality (LDEQ) to issue PSD-LA-544(M-1), PSD-LA-581(M-2), Part 70 (Title V) Operating Permit 0840-00010-VO and emission reduction credits to Georgia Pacific for its Port Hudson Operations in Zachary, Louisiana. By issuing these permits and emission reduction credits, LDEQ is violating Section 173(c) of the Act and rewarding Georgia Pacific for its long history of Clean Air Act violations by illegally allowing Georgia Pacific to use emission reductions generated under a settlement agreement as offsets. In fact, an official at EPA has already notified LDEQ that the credits contained in the Part 70 permit are illegal. (See Attachment 1). The permits also contain legally insufficient means for ensuring compliance with permit conditions and allow banking of credits in a gravely mismanaged and inadequate "bank." Taken together, these permits will interfere with the attainment of the National Ambient

Air Quality Standards ("NAAQS") for ozone in the Baton Rouge area and will not Prevent Significant Deterioration in levels of total reduced sulfur and particulate matter.

LEAN is an incorporated, non-profit organization with members living, working and recreating in the Zachary area. Its members participated in the permit proceedings by submitting written comments and attending and speaking at the public hearing. Juanita Stewart is a member of LEAN and a resident of East Baton Rouge Parish. Ms. Stewart also submitted written comments and spoke at the public hearing. The Commentors request that the U.S. Environmental Protection Agency object to the issuance of permits and emission reduction credits to Georgia Pacific because the permits and credits are not in compliance with all applicable requirements including the Clean Air Act and federal regulations, Louisiana Air Quality regulations, and substantive and procedural requirements of Louisiana's Nonattainment New Source Review program and Prevention of Significant Deterioration program.

The substance of the Commentors petition is contained in its comments to LDEQ, which are attached as Attachment 2 (with exhibits that were part of the original comments) and incorporated by reference.

Respectfully submitted,

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Ms. Carolyn Laney
LDEQ-OES
Environmental Assistance Division
P. O. Box 82135
Baton Rouge, LA 70884-2135

December 17, 2001

Dear Ms. Laney,

These comments are submitted on behalf of the members and member groups of the Louisiana Environmental Action Network, and are in regards to Review No. 17973, 27801, 30487, 31035, Agency Interest No. 2617.

The scope of the problems associated with this permit is staggering. DEQ found Georgia-Pacific to be violating their air permit by over 2,000 tons per year. That's over four million pounds per year, which is one tenth of the total VOC (volatile organic compound) emissions in the five parish ozone nonattainent area. Instead of fining Georgia-Pacific for these permit violations DEQ agreed to a settlement for PSD (prevention of significant deterioration) violations and now is trying to turn around and reward Georgia-Pacific by allowing them to use what were permit violations as emission offsets.

1. These emission reductions are not allowable under federal law and regulations.

Georgia-Pacific's emission reductions at its plant are not creditable as offsets because they are required by the Clean Air Act, including but not limited to NESHAP Subpart S (Cluster Rules). CAA §173(c)(2) states that "[e]mission reductions otherwise required by this chapter shall not be creditable as emissions reductions for purposes of any such offset requirement."

Prior to the Settlement Agreement dated March 17, 2000, Georgia-Pacific was operating in violation of its permit and was required to reduce emissions. The proposed Georgia-Pacific modification is not an allowable offset because did not have actual emissions consistent with the permit limit from which the offsets are calculated. The plant originally received a permit (permit 0840-00010-00) that allows the emissions of Volatile Organic Compounds (VOCs) in 1989. However, Georgia-Pacific later admitted illegally emitting over 2000 tpy of VOCs in a nonattainment area. Georgia-Pacific agreed to reduce its emissions as a result of LDEQ's enforcement action.

2. Nonattainment New Source Review applies to the Georgia-Pacific plant because Georgia-Pacific emission reductions were not surplus under Louisiana Regulations. The ERCs with which Georgia-Pacific proposes to "net out" its emissions are not valid.

Georgia-Pacific must demonstrate that it has valid ERCs to offset the increase in VOC emissions. Contrary to LDEQ's basis for decision to issue this operating permit, Georgia-Pacific cannot net out with the proposed emission reductions because they are not surplus.

The Settlement Agreement dated March 17, 2000, resulted from Georgia-Pacific's admission to LDEQ that it had been violating its permitted limit of VOC emissions and had actual emissions far exceeding its permitted emissions. Despite this clear violation of a permit condition, LDEQ did not seek penalties from Georgia-Pacific.

Chapter 6 of LDEQ's air quality regulations details the procedural and substantive rules for ERC use. In order to be approved for use as ERCs, emission reductions must be "surplus." "Surplus Emission Reductions" are those that are voluntarily created for an emissions unit and have not been required by any state or federal law, regulation, order or requirement and are in excess of reductions used to demonstrate attainment of federal and state ambient air quality standards. Louisiana Administrative Code (LAC) 605.

Georgia-Pacific has no surplus emission reductions for use as ERCs. The reduction of VOC emissions proposed for use as offsets by Georgia-Pacific result from the fact that it was in violation of its permit and needed to make reductions. The reductions were not created voluntarily. The reductions occurred because of a state issued order.

3. Georgia-Pacific should not be rewarded for violating the Clean Air Act. This modification is contrary to EPA policy and the intent of the Clean Air Act.

Georgia-Pacific was violating the terms of its permit limit from as early as 1989 until August 20, 2001 by over 2000 tons per year of VOCs. Over the nine year period from 1989 to 1999, when Louisiana was attempting to reach attainment of the ozone standard, Georgia-Pacific was emitting thousands of tons of unreported VOCs. Allowing Georgia-Pacific to claim emission reductions due to its failure to accurately report emissions is contrary to the law and policy of the Clean Air Act. Under CAA §502(a), it is unlawful for any person to violate any requirement of a permit or to operate an affected source except in compliance with a permit issued by a permitting authority. For as much as ten years, Georgia-Pacific was operating in violation of its permit by emitting more pollutants than it was permitted to emit.

EPA's policy, as outlined in the New Source Review Workshop Manual at A.41, is that "[a] source cannot receive emission reduction credit for reducing any portion of actual emissions which resulted because the source was operating out of compliance." Clearly, Georgia-Pacific's plant was operating out of compliance. When Georgia-Pacific agreed to reduce its VOC emissions the Settlement Agreement dated March 17, 2000, its actions resulted because it was operating out of compliance for many years.

4. DEQ'S "BANK" OF EMISSION OFFSET CREDITS VIOLATES FEDERAL LAW.

DEQ has acknowledged that its regulations do not meet the standard announced by EPA. Letter from Bliss Higgins, Assistant Secretary of DEQ, to Carl Edlund, EPA Region VI (10/5/00), at 2. DEQ admits that its Emission Reduction Banking System establishes definitions and procedures for calculating credits that set forth a "surplus when generated" approach and further provides for the protection of credits once approved (LAC 33:III.605, 607.G and 621). Such an interpretation harms public health by permitting emissions to exceed the maximum allowed under federal law. Clearly, DEQ's "bank" is illegal and DEQ may not use the bank until its Emission Reduction Banking System is revised to meet minimum federal standards

5. UNTIL LEGALLY REQUIRED CONTINGENCY MEASURES ARE IMPLEMENTED, NO TRANSACTIONS SHOULD BE ALLOWED THAT AFFECT THE EMISSION REDUCTION CREDIT BANK.

Under the Louisiana Administrative Code § 621(B)(1), when a "milestone" has been missed, the state shall confiscate the amount of credits needed to satisfy the missed milestone. Therefore, if Louisiana fails to attain the national standard for ozone or if it fails to make reasonable further progress, the Bank must be used to offset such failure. Furthermore, EPA approved the Emission Reduction Bank as Louisiana's contingency measure for its State Implementation Plan. 63 Fed. Reg. 44192. Under the Clean Air Act, sections 172(c)(9) and 182(c)(9), contingency measures must take effect without further action by EPA or DEQ. 42 U.S.C. 7502(c)(9), 7511a(c)(9).

In a letter dated May 10, 2000, Governor Murphy J. Foster stated that "the Baton Rouge nonattainment area failed to attain the 1-hour ozone standard by the required date of November 1999." Yet, despite the contingency measure being required to take effect immediately upon failure to attain the standard under federal law, the credits have not been confiscated and the Bank has not been reduced. Until DEQ performs its legal duty to confiscate credits, DEQ must not allow any new transactions that affect the bank.

Because of the contingency requirements, there are no surplus emission reductions available for netting or offsetting because under the Baton Rouge State Implementation Plan (SIP), the reductions have been confiscated as part of the contingency measure for failure to attain the ozone standard in 1999. Because Baton Rouge is a nonattainment area, the Act requires that Louisiana's SIP provide for "the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or the Administrator." CAA §172(c)(9).

The contingency measure, contained in Chapter 6 of the Air Quality Regulations, provides for confiscation of 5.7 tons per day of ERCs from the bank in the event of the failure of Baton Rouge to attain the National Ambient Air Quality Standard for ozone by November 15, 1999. Baton Rouge failed to meet this deadline and the contingency measure goes into effect immediately, resulting in the confiscation of most, if not all, ERCs. CAA §172(c)(9). EPA approved this portion of the SIP on July 2, 1999 and the contingency measure is still in effect.

6. Georgia-Pacific must come up with valid offsets before a Title V permit can be issued.

Since Georgia-Pacific is in an ozone nonattainment zone and because it has no valid offsets, they must come up with valid offsets before this Title V permit can be approved.

Sincerely,

Marylee Orr
Executive Director