



Giving Georgia's Environment Its Day In Court

February 8, 2012

**VIA US Mail and  
E-MAIL (EPDcomments@dnr.state.ga.us)**

Georgia Environmental Protection Division  
Water Protection Branch  
4220 International Parkway  
Suite 101  
Atlanta, Ga. 30354

**Re: NPDES Permit Reissuance -- King American Finishing Inc.  
(Dover-Screven County) Permit No. GA0003280**

Dear Sir or Madam:

Please accept these comments on the draft NPDES Permit No. GA0003280 for the King American Finishing facility ("King America" or the "Facility") in Screven County. These comments are submitted on behalf of the Ogeechee Riverkeeper ("ORK" or the "Riverkeeper"). ORK is a not-for-profit corporation organized and existing under the laws of the State of Georgia. The Riverkeeper's principal place of doing business is in Bulloch County, Georgia. From its establishment in 2005, the Riverkeeper's mission has been to protect and preserve the Ogeechee, Canoochee and coastal rivers. The Riverkeeper's 1400 members use, enjoy, recreate, work and reside near, as well as derive aesthetic enjoyment from, the waters, adjacent habitat, and dependent aquatic life and wildlife that are and will be affected by the Director's decisions challenged in this action. The Riverkeeper and its members have recreational, aesthetic and economic interests in the Ogeechee River and its fish and other wildlife, which are and will be directly and irreparably injured by the degradation of these areas as authorized by the Director's decision challenged in this action.

#### **GENERAL COMMENT**

It is impossible to evaluate the current proposed permit without consideration of the recent history of this facility and its disastrous incident that occurred in May of 2011. This history includes a number of unlawful discharges that indicate that stringent limitations and monitoring must be set for discharges from the Facility in order to ensure full compliance with applicable laws.

In April of 2006, without requesting or obtaining any sort of NPDES permit or NPDES permit amendment, and without notifying EPD as is required by the Georgia Water Quality Control Act, King America began operating two flame retardant fabric finishing lines and discharging its wastewater into the facility's wastewater treatment system. As a result, King



America has had an un-permitted production line illegally discharging wastewater into the Ogeechee River for approximately five years.

In addition to this illegal discharge of wastewater, King America has violated other provisions of its previous permit numerous times. King America had effluent exceedances for pH in February, May, and December of 2003, April and August of 2004, January and May of 2005, June of 2006, and June and July of 2007 as a result of King America's failure to provide proper operation and maintenance to its wastewater treatment system.<sup>1</sup> In May of 2010, the facility exceeded effluent limitations for Total Phenols in violation of the Permit. In June of 2010, the facility exceeded effluent limitations for Total Suspended Solids and pH in violation of the Permit. In December of 2010, the facility exceeded effluent limitations for Biochemical Oxygen Demand in violation of the Permit. In January of 2011, the facility exceeded effluent limitations for Biochemical Oxygen Demand and pH in violation of the Permit. The facility exceeded effluent limitations for pH in violation of the Permit again in February and June of 2011. These effluent violations have resulted in 18 known instances of violations of King America's current permit's conditions, eight of which have occurred during the past two years. *See also* EPA's Echo Database on King America, <http://www.epa-echo.gov/cgi-bin/get1cReport.cgi?tool=echo&IDNumber=GA0003280> (showing that King America has been out of compliance for its water permit 7 out of the last 12 quarters).

On May 20, 2011, EPD was notified of a fish kill in the Ogeechee River and Michelle Cortes of EPD twice attempted to contact King America's emergency contact telephone but received no answer. Following EPD's notification, on May 21, 2011, the Wildlife Resources Division investigated the fish kill and saw dead fish of a wide variety of species and sizes beginning 50 yards below King America's effluent pipe.

On May 22, 2011 and May 23, 2011, the Environmental Protection Agency took sediment, surface water, and fish tissue samples for testing, all of which showed the presence of formaldehyde and ammonia in the surface water and formaldehyde in the sediment. On May 24, 2011, EPD announced that testing had shown that the fish died from severe bacterial infections induced by environmental stress. As discussed in a subsequent EPA memo dated June 3, 2011, due to the chemical concentrations at the time of testing, the precise cause of the fish kill could not be conclusively determined, but a number of factors including exposure to a mixture of chemicals, unseasonably warm temperatures, and low flow may have contributed to the fish kill. On June 16, 2011, following further monitoring and inspections, EPD required that King America conduct additional sampling of the effluent and submit a new permit application by August 12, 2011. Given this, coupled with the fact that all the dead fish were found downstream of the Facility but none upstream, it would require a complete suspension of disbelief to conclude anything other than that King America's discharge was directly responsible for the fish kill.

As a result of this unique and unprecedented history, ORK and many citizens in the affected areas believe that EPD should impose conditions and restrictions in this new permit that reflect the past history and guard against future recurrences. Some of the specific comments

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<sup>1</sup> The pH exceedances between February of 2003 and July of 2007 resulted in Consent Order EPD-WS-2710 between EPD and King America, dated April 13, 2009.

below would not be asserted if this facility had a history of compliance and trustworthiness. Unfortunately, King America's actions warrant the extra scrutiny which ORK requests EPD impose here.

### SPECIFIC COMMENTS

In addition to the prior history of King America's unlawful discharges, the applicable laws require that any NPDES permit issued to King America contain more stringent requirements than are currently provided in the draft permit. First, the draft permit fails to fulfill the statutory mandate that standards adopted by EPD "shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of [the Clean Water Act]." 33 U.S.C. § 1313(c)(2)(a). Second, EPD is required either to regulate or establish more stringent limits on certain parameters of the Facility's permit under Georgia's Water Quality Regulations. Ga. Comp. R. & Reg. r. 391-3-6-.03 (requiring EPD to protect existing uses of water, guard against toxic pollutants, and ensure that waters are free from certain known pollutants or concentrations of pollutants). Third, the designated use of the Ogeechee is to support fishing activities in the river, which is impaired due to high levels of certain pollutants that are discharged by the Facility. As a result, TMDLs have been established for various pollutants in the Ogeechee, and pursuant to case law and regulations, King America's discharges should be lowered to support the designated use. *See Sierra Club v. Meiburg*, 296 F.3d 1021, 1025 (11th Cir. 2002); 40 C.F.R. § 122.44(d)(1)(i). Finally, King America's draft permit includes a number of pollutants that will contribute to further degradation of the Ogeechee River without a proper antidegradation analysis having been performed.

The following comments relate to specific permit conditions encompassed in the draft permit:

1. Mercury. As a result of a 2005 TMDL finding that the Ogeechee was water quality limited for mercury, the permit for the King America must incorporate limits for mercury in accordance with available loading capacity, if any exists, and specific wasteload allocation in a TMDL consistent with federal regulations. Specifically, because of the threat of accumulation of mercury in the Ogeechee, the TMDL states that "point sources known to discharge mercury at levels above the amount present in their source water should reduce their loadings using appropriate, cost-effective mercury minimization measures." The draft permit does not provide that the Facility must immediately work to reduce its loadings; rather, it allows King America to "monitor" its discharges for a period of six months, and then leaves potential mercury minimization to the discretion of the EPD. Without provisions that adjust the Facility's output, King America will continue to discharge mercury without any required reductions. In addition, the draft permit's current limits are not appropriate given the applicable case law and federal regulations governing TMDLs, which anticipate point source permits to be lowered in order to achieve designated uses. Thus, the mercury limits should be revised and adjusted.
2. Sulfates. The permit issued to King America should have limits for sulfates, but currently there are no limits for sulfates in the proposed permit. Given the sulfate concentrations that were found in the river during the fish kill, it is evident that King America is discharging considerable sulfates into the river and causing degradation with

regard to this pollutant as compared to ambient conditions. Limitations on sulfates should also be included in the Facility's permit because increased amounts of sulfates aggravate the mercury problem in the Ogeechee River. Due to the increased degradation of the river by sulfates, and its role in impaired fishing use of the Ogeechee River by compounding issues surrounding mercury, King America's permit should contain limits for sulfate discharges.

3. Dissolved oxygen ("DO"). The permit should include real time monitoring for DO with automated readings at an appropriate location away from the discharge location because BOD, COD, and ammonia exert their demand for oxygen as the waste flows down the river and decomposes.
4. Total suspended solids ("TSS"). The permit allowance of over a ton a day of TSS is too high. To prevent violation of the antidegradation rules, limits should be lowered and based on the river's upstream conditions.
5. Ammonia. The ammonia concentration limits are too high and should be lowered significantly. The limits proposed are not supported by any rationale.
6. Formaldehyde. Formaldehyde is a significant area of concern given the fish kill last year. We believe that the facility should be prevented from discharging formaldehyde. Alternatively, the limits should be significantly lowered based on the river's capacity and ambient conditions as per antidegradation provisions.
7. Chromium. Chromium is listed as a toxic priority pollutant by the EPA and within Georgia regulations, and as such, a draft permit should contain concentration limits on chromium. These concentration limits should be set at levels protective of the river with considerations of antidegradation and an appropriate margin of safety. Further, the concentration limits should ensure that any discharge from the Facility does not violate Georgia regulations controlling the amount of chromium concentration allowable.
8. Nitrogen, phosphorous, and connectivity. The permit should include limits for nitrogen, phosphorous, and connectivity based upon their presence in the waste and the need for stream protection.
9. Color. A permit issued to King America must contain limits for color to ensure compliance with applicable law. However, while the Fact Sheet to the Permit Application notes that significant color has been associated with the Facility's discharges, it does not limit the discharges made by the Facility. As such, the permit must impose limits in accordance with the applicable standards, and EPD should further consider the effects of color with respect to antidegradation provisions.
10. Toxicity limits. Toxicity limits must be included in King America's permit in order to ensure that waters are free from toxic substances. Also, the compliance schedule for toxicity should be shortened in order to ensure that the Ogeechee remains free of such discharges.

11. Biological oxygen demand. The limits for BOD are too high and should be reconsidered in keeping with the river's capacity and TMDL issues discussed above.
12. Monitoring in lieu of limits. A number of pollutants do not receive permit limits in this draft permit but merely require monitoring (eg., flow, total Kjeldahl Nitrogen, total Nitrogen, total phosphorus, temperature, color, specific conductance, sodium peroxide, THPC, whole effluent toxicity, mercury). There should be enforceable limits for these pollutants.

In addition, there are several procedural and administrative steps that would enhance EPD's and the public's ability to ensure that King America is complying with the law:

1. Discharge monitoring reports. Given the history of this facility and the importance of public awareness of its operations, discharge monitoring reports should be made available online in an easily accessible format and in a timely manner.
2. Third party monitoring. Given the history of this facility, which includes an apparent intentional failure to alert EPD to the new lines, the public should be protected by requiring that independent, third party monitoring be performed by a qualified entity.
3. Effective date of limits. In some cases, the limits imposed in the permit are not made applicable for some delayed period of time. There is no reason, nor any legal justification, for the proposed delay. All final limits must be imposed at the time of issuance, with any compliance schedule and alternate pollutant targets kept separate and distinct from required protective limits.
4. Request for public hearing. EPD is required under Georgia Water Quality Control Regulation 391-3-6-.01(4)(a)(7) and 33 U.S.C. 1342(3) to "provide an opportunity for a public hearing before a ruling" on the permit. Further, given the nature and history of this particular facility, this opportunity is especially important to "determine whether or not an alleged pollution is contrary to the public interest." Ga. Comp. R. & Reg. 391-3-6-.01(4)(a)(1).

Thank you for your attention to these comments. Please call me if you have any questions.

Sincerely,



Hutton Brown  
Senior Attorney

cc.: Dianna Wedincamp