

**IN THE COURT OF APPEALS
STATE OF GEORGIA**

Application Numbers

_____ & _____

RECEIVED IN OFFICE
2009 JUL 30 PM 2:07
John R. ...
CLERK/COURT ADMINISTRATOR
COURT OF APPEALS OF GA.

LONGLEAF ENERGY ASSOCIATES, LLC,

and

DR. CAROL COUCH, DIRECTOR, ENVIRONMENTAL PROTECTION
DIVISION, GEORGIA DEPARTMENT OF NATURAL RESOURCES

Applicants for Discretionary Appeal,

vs.

FRIENDS OF THE CHATTAHOOCHEE, INC.

and

SIERRA CLUB

Respondents.

**BRIEF OF AMICI CURIAE IN SUPPORT OF
APPLICATIONS FOR DISCRETIONARY APPEAL**

TABLE OF CONTENTS

INTEREST OF AMICI CURIAE	2
SUMMARY	7
ARGUMENT AND CITATION OF AUTHORITY	11
I. Carbon Dioxide Is Not Regulated Under the Act.....	11
A. Congress Did Not Make Carbon Dioxide “Subject to Regulation” Under the Act.....	13
B. In <u>Massachusetts</u> , The Supreme Court Did Not Hold That Carbon Dioxide Is “Subject to Regulation” Under the Act.....	16
C. For Decades, EPA and Georgia EPD Have Consistently Held That Carbon Dioxide Is Not Regulated Under the Act.....	18
II. If This Decision Stands, It Will Bring Economic Development to a Standstill In Georgia.....	18
CONCLUSION.....	21

INTEREST OF AMICI CURIAE

Amici Curiae in support of these applications for discretionary appeal are various Georgia businesses, industries, associations, public servants and chambers of commerce. All have an interest in how development projects are permitted in Georgia and in the economic well-being of the State. Additionally, all have a right to participate in the administrative rulemaking process. By unilaterally determining that carbon dioxide is regulated under the Clean Air Act, the Fulton County Superior Court has engaged in rulemaking by judicial fiat. In doing so, the Superior Court shuts Amici out of what should be a public process and denies them and the general public the opportunity to be heard.

The following individual Amici support the applications for discretionary appeal filed by the Georgia Department of Natural Resources, Environmental Protection Division (“EPD”) and Longleaf Energy Associates, LLC.

- AGL Resources Inc.
- Amicalola Electric Membership Corporation
- Albany Area Chamber of Commerce
- Atmos Energy Corporation
- Altamaha Electric Membership Corporation
- Barrow County Chamber of Commerce

- Blakely-Early County Chamber of Commerce
- Camden County Chamber of Commerce
- Canoochee Electric Membership Corporation
- Carroll County Chamber of Commerce
- Carroll Electric Membership Corporation
- Catossa County Electric Membership Corporation
- Cay Insurance Services
- Central Georgia Electric Membership Corporation
- Coastal Electric Cooperative
- Cobb Chamber of Commerce
- Cobb Electric Membership Corporation
- Cochran-Bleckley Chamber of Commerce
- Colquitt Electric Membership Corporation
- Computer Business Solutions, Inc.
- Cordele-Crisp Chamber of Commerce
- Cousins Properties Incorporated
- Coweta-Fayette Electric Membership Corporation
- CSX Transportation, Inc.
- Dalton Utilities
- Diverse Power Incorporated
- Douglas National Bank
- Dr. J. David Allen and Associates, Consultants to the Healthcare Industry
- Effingham County Chamber of Commerce
- Excelsior Electric Membership Corporation
- Flint Energies

- Genesee & Wyoming Inc.
- Georgia Agribusiness Council, Inc.
- Georgia Chamber of Commerce
- Georgia Dental Association
- Georgia Electric Membership Corporation
- Georgia Energy Cooperative
- Georgia Forestry Association
- Georgia Midland Railroad
- Georgia Mining Association
- Georgia Natural Gas Company
- Georgia Northeastern Railroad
- Georgia-Pacific Corporation
- Georgia Poultry Federation
- Georgia Power Company
- Georgia Pulp and Paper Association
- Georgia Railroad Association
- Georgia System Operations Corporation
- Georgia Transmission Corporation (An Electric Membership Corporation)
- GreyStone Power Corporation, An Electric Membership Corporation
- Group VI Corporation
- Habersham Electric Membership Corporation
- Harris County Chamber of Commerce
- Hart Electric Membership Corporation
- Heart of Georgia Railroad, Inc.
- Heavy Duty Distributors, Inc.
- Home Builders Association of Georgia, Inc.
- Independent Insurance Agents of Georgia, Inc.

- Irwin Electric Membership Corporation
- Jackson Electric Membership Corporation
- Jefferson Energy Cooperative, an Electric Membership Corporation
- John Bullock, State Senator Early County
- John W. Oxendine, Georgia Insurance & Safety Fire Commissioner
- Jones Construction Company
- Langdale Industries, Inc.
- Lee County Chamber of Commerce & Development Authority
- Liberty First Bank
- Little Ocmulgee Electric Membership Corporation
- Matt Ramsey, State Representative
- Metro Atlanta Chamber of Commerce
- Middle Georgia Electric Membership Corporation
- Mitch Seabaugh, State Senator
- Mitchell Electric Membership Corporation
- Municipal Electric Association of Georgia
- Norfolk Southern Corporation
- Oconee Electric Membership Corporation
- Oglethorpe Power Corporation
- Okefenokee Chamber of Commerce
- Packaging Corporation of America
- Pataula Electric Membership Corporation
- Paulding Chamber of Commerce

- Perlis Corporation
- Perlis Realty Company
- Perlis Truck Terminal, Inc.
- Planters Electric Membership Corporation
- Raymond Engineering
- Rollins, Inc.
- Sandy Springs/Perimeter Chamber of Commerce
- Savannah Area Chamber of Commerce
- Slash Pine Electric Membership Corporation
- Smarr EMC
- Snapping Shoals Electric Membership Corporation
- Southern Company
- Southern Rivers Energy, Inc., an Electric Membership Corporation
- Sumter Electric Membership Corporation
- The Satilla Rural Electric Membership Corporation
- The University of Phoenix, Inc. (Savannah Campus, Chatham County)
- Three Notch Electric Membership Corporation
- Tri-County Electric Membership Corporation
- Vidalia Naval Stores d/b/a Choo-Choo Supply
- Walton Electric Membership Corporation
- Washington County Chamber of Commerce
- Washington Electric Membership Corporation

SUMMARY

This application for appellate review presents an issue of national significance. Without this Court’s review, the practical consequences of the decision below will have a dramatic adverse impact on economic development in Georgia.

While Congress and the United States Environmental Protection Agency (“EPA”) debate whether and how carbon dioxide emissions and other greenhouse gases should be regulated to address global climate change, the Fulton County Superior Court has entered a judgment holding that carbon dioxide already is regulated under the Clean Air Act (“CAA” or the “Act”). Friends of the Chattahoochee v. Couch, No. 2008CV146398, at 7-9 (Fulton Cty. Sup. Ct. June 30, 2008) [hereinafter the “Order”]. This holding is premised on legal error. It ignores congressional intent. It misreads and misapplies the U.S. Supreme Court’s decision in Massachusetts v. U.S. Environmental Protection Agency, 549 U.S. 497, 127 S. Ct. 1438 (2007). It is squarely at odds with EPA’s and Georgia EPD’s long-standing interpretation of the Act. And – by judicial fiat and without an act of the Georgia legislature – it would make

Georgia the only jurisdiction in the nation to impose carbon dioxide emission controls under the Act.

This appeal involves EPD's issuance of a CAA permit to Longleaf Energy Associates, LLC ("Longleaf") for construction of a coal-fired power plant in Early County. Sierra Club and Friends of the Chattahoochee, Inc. (collectively "Sierra Club") challenged the permit before the Office of State Administrative Hearings ("OSAH"). After a 21-day hearing, OSAH upheld the permit in a 108-page opinion. In a 19-page order, the Superior Court set aside OSAH's decision on every issue raised on appeal, including the carbon dioxide issue. Essentially adopting verbatim all of Sierra Club's arguments (track changes and all), see Order at 3, 9, the Superior Court held that carbon dioxide already is subject to regulation under the CAA. Order at 7-9. Accordingly, it held that the permit issued to Longleaf should have included carbon dioxide emission limits. Order at 9.

The Superior Court has attributed to Congress and EPA a complex policy decision that neither yet has made. To reach its decision, the Superior Court seized upon a narrow and isolated statutory provision and imputed a meaning to

it that is wholly devoid of context. In fact, carbon dioxide controls are not mandated under the CAA. This fact should be clear from the U.S. Supreme Court's Massachusetts decision and EPA's and Georgia EPD's current and past interpretation of the Act. Ironically, on July 11, 2008, just eleven days after the Superior Court's decision, EPA underscored this point when it issued a public notice in which it took the long-awaited first step in the complex regulatory process of deciding whether or not carbon dioxide controls should be mandated under the CAA. See Regulating Greenhouse Gas Emissions under the Clean Air Act, EPA-HQ-OAR-2008-0318; FRL-8694-2 (proposed July 11, 2008), available at <http://www.epa.gov/climatechange/anpr.html> (commonly referred to as the "Advance Notice of Proposed Rulemaking" or "ANPR") [hereinafter "ANPR"]. Thus, the Superior Court assumes the outcome of a regulatory process that has only just begun.

If allowed to stand, this ruling will engraft new and unprecedented requirements on CAA permitting in Georgia that have never been required in any other state. While the decision involves a permit to construct a new coal-fired power plant, its impact is far broader. If carbon dioxide already is subject

to regulation under the CAA, then a myriad of run of the mill commercial, industrial, residential, and other construction projects automatically will become subject to the same complex CAA permitting scheme that historically has been reserved for the biggest emitters of traditional air pollutants (e.g., sulfur dioxide and particulate matter). Unlike traditional air pollutants, carbon dioxide emissions are so ubiquitous that, under the Superior Court's decision, even a relatively small dairy farm will be required to apply for a CAA permit.

Unless this Court accepts this appeal, literally thousands of buildings and facilities across Georgia that have never been subject to these regulations – including shopping centers, hotels, apartment buildings, office buildings, nursing homes, hospitals, churches, warehouses and many other types of buildings and facilities – will be pulled into this complex regulatory program and forced to undergo pre-construction CAA permitting. ANPR at 497. This will occur despite the fact that these buildings and facilities emit relatively minuscule amounts of carbon dioxide and despite the fact that neither the United States nor Georgia has made a legislative or regulatory decision to mandate carbon dioxide emission controls. EPD will be inundated with permit

applications, permitting gridlock will ensue, and significant construction activity in Georgia will grind to a halt. These impacts will dramatically retard economic development in Georgia.

While the Superior Court’s decision is flawed in many ways, this brief focuses exclusively on the Superior Court’s erroneous carbon dioxide holding. Given the expansive and severe implications of that holding, Amici urge the Court to take this appeal.

ARGUMENT AND CITATION OF AUTHORITY

I. Carbon Dioxide Is Not Regulated Under the Act.

In the face of the continuing national debate over whether and how to regulate carbon dioxide under the CAA, the Superior Court held that it already is regulated. As grounds for its holding, the Superior Court concluded that a long-standing statutory provision – § 821 of Public Law No. 101-549, which requires electric utilities to monitor their carbon dioxide emissions – makes carbon dioxide emissions “subject to regulation” under the Act. Accordingly, the court held that EPPD must establish emission limits for carbon dioxide based on the best available control technology (“BACT”). Essentially, the Superior Court

found that this monitoring provision amounts to a congressional policy decision to mandate carbon dioxide emission permitting and control requirements for numerous sources under the CAA. That holding is illogical and erroneous.

The court below properly framed the central issue – whether carbon dioxide is “subject to regulation” under the CAA within the meaning ascribed by Congress in CAA §§ 165 and 169, 42 U.S.C. §§ 7475, 7479.¹ Contrary to the court’s conclusion, it is not. Congress has not yet regulated carbon dioxide. The U.S. Supreme Court in Massachusetts did not hold that carbon dioxide is “subject to regulation” under the Act. And for decades, EPA and Georgia EPD have held that carbon dioxide is not regulated under the Act.

¹ Indicative of its national significance, this same issue has been raised by the Sierra Club in similar permit appeals across the country, including one currently before EPA’s Environmental Appeals Board. See In re: Deseret Power Electric Coop., PSD Permit No. PSD-OU-0002-04.00, PSD Appeal No. 07-03 (Envtl. Appeals Bd., U.S. EPA filed Oct. 1, 2007). The Fulton County Superior Court is the first court to rule on the issue.

A. Congress Did Not Make Carbon Dioxide “Subject to Regulation” Under the Act.

The idea that § 821’s limited emissions monitoring requirements make carbon dioxide “subject to regulation” under the Act for purposes of CAA §§ 165 and 169 is inconsistent with basic principles of statutory construction and express congressional intent.

The Supreme Court has repeatedly emphasized that statutory language cannot be read in isolation but must be interpreted in light of the language of the statute as a whole. “It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.” Owasso Independent School Dist. No.1-0111 v. Falvo, 523 U.S. 426, 434 (2002) (quoting Davis v. Michigan Dept. of Treasury, 489 U.S. 803, 809 (1989)). The Superior Court’s decision disregards this basic maxim; it takes § 821 out of context and completely ignores the structure of the CAA, which precludes the Superior Court’s interpretation. For example, the decision fails to acknowledge a fundamental statutory prerequisite to regulation of carbon dioxide. As the Supreme Court recently held, and as discussed further below, prior to regulating carbon dioxide, EPA must first determine that the

emissions endanger public health or welfare. Massachusetts 549 U.S. at ___, 127 S. Ct. at 1462.

The Superior Court’s decision also is inconsistent with express congressional intent. Congress did not intend § 821 to create new substantive CAA permitting or emission control requirements.² Section 821’s sponsors,

² In fact, Congress did not intend for § 821 to be part of the CAA. The CAA begins with § 101 and ends with § 618. 42 U.S.C. §§ 7401-7671q. There is no § 821. In 1990, when Congress amended the CAA with Public Law No. 101-549, it also passed miscellaneous provisions, like § 821, which were not intended to be part of the Act. As stated by Congressman John D. Dingell, “Public Law 101-549 . . . includes . . . provisions, such as [section 821], that were enacted as free-standing provisions separate from the [CAA].” Is CO₂ a Pollutant and Does EPA Have the Power to Regulate it?: J. Hearing Before Subcomm. on Nat’l Econ. Growth, Natural Res. and Reg. Affairs of H. Comm. on Gov’t Reform and Subcomm. on Energy and Env’t of H. Comm. on Sci., 105th Cong. 65 (1999); see also H. Comm. on Energy and Commerce, Compilation of Selected Acts within the Jurisdiction of Comm. on Energy and

Congressmen Jim Cooper and Carlos Moorhead, consistently stressed that the sole purpose of § 821 – the “Information Gathering on Greenhouse Gases Contributing to Global Climate Change” provision – was to gather information for scientific purposes to assist international negotiations and potential future regulation of carbon dioxide. H. Debate on H.R. 3030, 103d Cong., 1st Sess. (1990), reprinted in A Legislative History of the CAA Amendments of 1990, at 2652, 2985 (Cong. Info. Serv. 1993) (Section 821 “is a simple data collection amendment.”). The “amendment does not force CO₂ reductions.” Id. at 2985.

Thus, Congress never intended for this simple monitoring provision to expand CAA permitting requirements and trigger carbon dioxide emission limits. Moreover, the legislative history of Public Law No. 101-549 shows that Congress rejected proposals to regulate carbon emissions, further evidencing its intent not to require regulatory emission controls for carbon dioxide in the final law. Only by ignoring this history and established principles of statutory

Commerce 441, 457-58 (Comm. Print 2001) (listing § 821 under “Provisions of the CAA Amendments of 1990 (Public Law 101-549) That Did Not Amend the CAA”).

construction was the Superior Court able to hold that this monitoring provision triggers permitting and emission control requirements under the Act.

B. In Massachusetts, The Supreme Court Did Not Hold That Carbon Dioxide Is “Subject to Regulation” Under the Act.

The Superior Court suggests that the U.S. Supreme Court’s decision in Massachusetts supports its conclusion. See Order at 6-7. It does not. Quite the opposite, it provides the statutory context missing from the Superior Court’s decision. In the Massachusetts case, several parties petitioned EPA to regulate carbon dioxide emissions under the CAA. EPA argued that it lacked authority to do so. The U.S. Court of Appeals for the District of Columbia Circuit agreed. However, just last year the Supreme Court reversed that decision and concluded that EPA could regulate carbon dioxide under the CAA, if it first determined that carbon dioxide endangers the public health and welfare. Massachusetts, 549 U.S. at ___, 127 S. Ct. at 1462. Thus, the entire premise of Massachusetts was that carbon dioxide currently is not regulated.

Even more importantly, the Supreme Court made it clear that before EPA could regulate carbon dioxide under the CAA, it first must determine, in a formal rulemaking process with notice and public comment, that carbon dioxide

represents an endangerment to public health and welfare. That is, it must make a so-called “endangerment finding.” EPA has been grappling with that issue ever since and, on July 11, 2008, issued the first public notice, the ANPR, in response to the Massachusetts decision. In the ANPR, EPA seeks public comment on whether carbon dioxide should be regulated under the CAA and raises for public discussion the numerous policy questions involved. See ANPR at 2 (“The implications of a decision to regulate [greenhouse gases, such as carbon dioxide] under the Act are so far-reaching that a number of other federal agencies have offered critical comments and raised serious questions Rather than attempt to forge a consensus on matters of great complexity, controversy, and active legislative debate, the [EPA] has decided to . . . seek comment on the full range of issues [raised].”). Thus, far from supporting the Superior Court’s decision, the Massachusetts decision makes clear that carbon dioxide is not regulated under the CAA and that EPA has not yet taken the predicate steps for making carbon dioxide subject to regulation under the CAA.

C. For Decades, EPA and Georgia EPD Have Consistently Held That Carbon Dioxide Is Not Regulated Under the Act.

EPA and Georgia EPD both agree that a simple monitoring provision does not make carbon dioxide subject to regulation under the CAA. For three decades, these agencies have not required a BACT analysis or emission limits for carbon dioxide when permitting facilities under the CAA. Yet the Superior Court afforded these long-standing and consistent positions no deference. See Chevron v. NRDC, 467 U.S. 837, 844 (1984); Ga. Dept of Revenue v. Owens Corning, 283 Ga. 489, 490 (2008) (“The interpretation of a statute by an administrative agency which has the duty of enforcing or administering it is to be given great weight and deference.”).

II. If This Decision Stands, It Will Bring Economic Development to a Standstill In Georgia.

If this Court does not accept this appeal, the Superior Court’s decision will affect all types of development projects – not just power plants. This presents a significant and immediate threat to economic development in Georgia.

For traditional air pollutants (e.g., sulfur dioxide and particulate matter), the CAA sets appropriate thresholds for determining when a project will require a permit. With carbon dioxide, this framework breaks down. Carbon dioxide is so prevalent (e.g., a human exhales roughly 600 pounds a year and a car emits between six and seven tons per year) that even indisputably small combustion sources would trigger CAA permitting. For example, a natural gas furnace for a 100,000 square foot building would exceed the permitting threshold for carbon dioxide and require a permit. Such a project would never meet the statutory thresholds for traditional air pollutants.

Applying the statutory permitting thresholds to carbon dioxide emissions would pull literally thousands of previously unregulated, nontraditional sources into the permitting process. For example, new real estate development projects, such as hotels, office and apartment buildings, large retail stores, indoor shopping malls, and restaurants; even hospitals, assisted-living facilities and churches; product pipelines; food processing facilities; large heated agricultural facilities; soda manufacturers; bakers; breweries; wineries and many others emit more than the threshold quantity of carbon dioxide. Under the Superior Court's

decision, all of these projects and facilities will have to undergo complex, time-consuming and expensive CAA permitting before constructing a new facility.

As EPA states in its ANPR, “[o]ne point is clear: the potential regulation of greenhouse gases [including carbon dioxide] under any portion of the CAA could result in an unprecedented expansion of EPA authority that would have a profound effect on virtually every sector of the economy and touch every household in the land.” ANPR at 5, 67 (indicating that under a similar CAA permitting scheme dairy farms with more than twenty-five cows would exceed statutory permitting thresholds).

Currently, EPD receives approximately a dozen of these pre-construction permit applications each year. Each permit application typically takes a minimum of twelve to eighteen months to process. Under the Superior Court’s decision, those numbers would skyrocket. EPD does not have the resources to respond to this increase. This expansion of the permitting program would result in a backlog of unprecedented proportion and an effective moratorium on new construction.

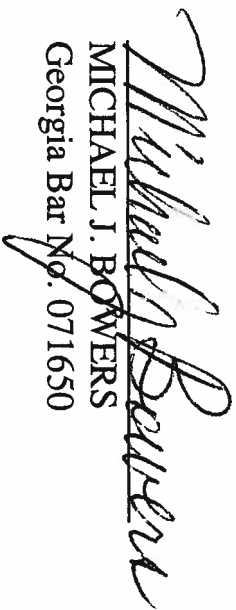
Furthermore, it is the hallmark of the administrative rulemaking process that interested parties have a right to voice their concerns and help shape the regulations with which they must ultimately comply. This is especially true in the case of the regulation of carbon dioxide with its broad economic impacts. The Superior Court's ruling would effectively shut the Armici – as well as the rest of the public – out of this rulemaking process.

CONCLUSION

For all of these reasons, this Court's prompt review is essential. The Superior Court's order, while deceptively simple, is a superficial and patently erroneous interpretation of the federal CAA. Yet it will govern and massive uncertainty will reign, absent this Court's intervention. There is a dire need for more reasoned precedent on this important issue.

Respectfully submitted,


SIGNATURES ON NEXT THREE PAGES


MICHAEL J. BOWERS
Georgia Bar No. 071650


BALCH & BINGHAM LLP
30 Ivan Allen, Jr. Blvd., NW
Suite 700
Atlanta, Georgia 30308
(404) 962-3535


HUGH B. MCNATT
Georgia Bar No. 498300


MCNATT & GREENE
P. O. Drawer 1168
Vidalia, Georgia 30474-1168
(912) 537-9343


ROBERT M. BRINSON
Georgia Bar No. 082900

BRINSON, ASKEW, BERRY,
SEIGLER, RICHARDSON &
DAVIS LLP
P.O. Box 5007
615 West First Street
Rome, Georgia 30162-5513
(706) 291-8853


STEVEN T. MINOR
Georgia Bar No. 051325

TISINGER VANCE, P.C.
100 Wagon Yard Plaza
P.O. Box 2069
Carrollton, GA 30117-7302
(770) 834-4467


MARGARET C. CAMPBELL
Georgia Bar No. 126340

TROUTMAN SANDERS LLP
5200 Bank of America Plaza
600 Peachtree Street
Atlanta, Georgia 30308-2216
(404) 885-3000


CHARLES A. PERRY
Georgia Bar No. 572504

JONES DAY
1420 Peachtree Street, N.E.
Suite 800
Atlanta, Georgia 30309-3053
(404) 521-3939



JOHN J. DALTON
Georgia Bar No. 203700

TROUTMAN SANDERS LLP
5200 Bank of America Plaza
600 Peachtree Street
Atlanta, Georgia 30308-2216
(404) 885-3000



DANIEL S. REINHARDT
Georgia Bar No. 600350

TROUTMAN SANDERS LLP
5200 Bank of America Plaza
600 Peachtree Street
Atlanta, Georgia 30308-2216
(404) 885-3000



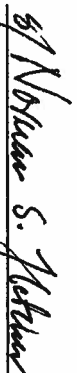
PETER M. DEGAN
Georgia Bar No. 216150

ALSTON & BIRD LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, GA 30309-3424
(404) 881-7743



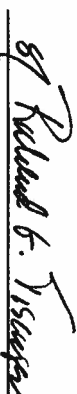
HERBERT J. SHORT, JR.
Georgia Bar No. 643910 *SR*

SUTHERLAND ASBILL &
BRENNAN LLP
999 Peachtree St., NE, Suite 2300
Atlanta, GA 30309-3996
(404) 853-8491



NORMAN S. FLETCHER *SR*
Georgia Bar No. 264100

BRINSON, ASKEW, BERRY,
SEIGLER, RICHARDSON &
DAVIS LLP
P.O. Box 5007
615 West First Street
Rome, Georgia 30162-5513
(706) 291-8853



RICHARD G. TISINGER, SR. *SR*
Georgia Bar No. 713100

TISINGER VANCE, P.C.
100 Wagon Yard Plaza
P.O. Box 2069
Carrollton, GA 30117-7302
(770) 214-5101



WALTER J. GORDON, SR.
Georgia Bar No. 302488 ~~8544~~

THE GORDON LAW FIRM
415 East Howell Street
P.O. Box 870
Hartwell, Georgia 30643-0870
(706) 376-5418



NORMAN L. UNDERWOOD
Georgia Bar No. 722300

TROUTMAN SANDERS LLP
5200 Bank of America Plaza
600 Peachtree Street
Atlanta, Georgia 30308-2216
(404) 885-3000



RANDALL D. QUINTRELL
Georgia Bar No. 591452

RANDALL D. QUINTRELL, P.C.
999 Peachtree Street, NE
Atlanta, Georgia 30309-3996
(404) 853-8000

ATTORNEYS FOR AMICI CURIAE

CERTIFICATE OF SERVICE

I hereby certify that this BRIEF OF AMICI CURIAE IN SUPPORT OF
APPLICATIONS FOR DISCRETIONARY APPEAL has been served in
accordance with O.C.G.A. § 5-6-35(d) by depositing copies in the United States

Mail addressed to the following parties:

Patricia T. Barmeyer
W. Ray Persons
Les A. Oakes
John C. Bottini
King & Spalding LLP
1180 Peachtree Street N.E.
Atlanta, GA 30309-3521

COUNSEL FOR LONGLEAF ENERGY ASSOCIATES, LLC,

Diane L. DeShazo
Margaret K. Eckrote
Georgia Department of Law
Office of the Attorney General
40 Capitol Square, S.W.
Atlanta, Georgia 30334-9003

COUNSEL FOR DR. CAROL COUCH, DIRECTOR, ENVIRONMENTAL
PROTECTION DIVISION, GEORGIA DEPARTMENT OF NATURAL
RESOURCES

Justine Thompson
Pamela Orenstein

Greenlaw

State Bar of Georgia Building
104 Marietta St. NW, Suite 430
Atlanta, Georgia 30303

George Hays

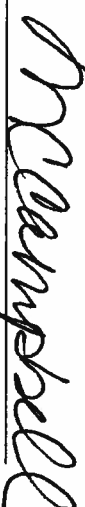
236 West Portal Avenue, #1110
San Francisco, California 94127

David Walbert

Parks, Chesin & Walbert, P.C.
75 Fourteenth Street, 26th Floor
Atlanta, Georgia 30309

COUNSEL FOR FRIENDS OF THE CHATTAHOOCHEE, INC. and
SIERRA CLUB

This 30th day of July, 2008.


MARGARET C. CAMPBELL
Georgia Bar No. 126340

