

May 4, 2011



Via E-Mail and Certified U.S. Mail

David Yaussy, Counsel
TransGas Development Systems, LLC
Robinson McElwee PLLC
700 Virginia Street, East
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Charleston, WV 25301
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Dear Mr. Yaussy:

I understand from recent news reports that your client, TransGas Development Systems, LLC, is planning a ceremonial groundbreaking on May 9, 2011. As you know, TransGas is not in possession of a final air permit due to the West Virginia Air Quality Board's March 28, 2011 Order. The Board explicitly found that more work was needed to justify a minor source permit. It also held that the plant currently has potential to emit more than 100 tons of carbon monoxide per year. In other words, without further permit revisions, the plant's pollution will exceed the thresholds for a "major source" of air pollution. Pursuant to West Virginia and federal law, the company cannot construct a major source of air pollution without a Prevention of Significant Deterioration permit. *See* 45 C.S.R. §14-1.1b; 40 C.F.R. §52.21(a)(2)(iii). Nor can the company move forward with construction of a minor source without a final minor source permit. 45 C.S.R. §13-1.1.

While a mere "groundbreaking" does not meet the definition of "construction" under the Act, 42 U.S.C. §7479(2)(A); 40 C.F.R. §§52.21(b)(9), (11), TransGas faces significant risk if it moves forward with constructing the source itself. Doing so without the proper permit could subject your client to both federal and citizen enforcement actions, even if the state permitting authority has condoned the project. *See* 42 U.S.C. §§7604(a)(3); 7413.

Thank you for your attention to this serious compliance issue. If you have any questions regarding our position, please feel free to contact my colleague Patrick Gallagher at 415-977-5709.

Sincerely,

A handwritten signature in cursive script that reads "Elena Saxonhouse".

Elena Saxonhouse
Staff Attorney
Sierra Club