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August 14, 2019

Via U.S. Certified Mail No. 7018 3090 0000 6208 1452

Mr. Andrew R. Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: Notice of Intent to File Citizen Enforcement Suit Pursuant to Clean Air Act §
304(b)(2), 42 U.S.C. § 7604(b)(2)

Dear Administrator Wheeler:

This letter provides notice under Clean Air Act § 304(b)(2), 42 U.S.C. § 7604, and 40 C.F.R. § 54.3(a) that the Clean, Healthy, Educated, Safe and Sustainable Community, Inc., (“the CHESS Community”), a community-based organization in Mobile, Alabama, intends to file a citizen suit against the EPA under 42 U.S.C. § 7604(a)(2) for failure to grant or deny the petition it submitted on May 30, 2019. Said petition requested that the EPA object to the two Title V air permits, Nos. 503-5007-X001 and 503-5007-X022 (“Kemira permits”), issued to Kemira Chemicals, Inc. (“Kemira”) by the Alabama Department of Environmental Management (“ADEM”).

ADEM issued the Kemira permits on December 14, 2018. In response to inquiries by and on behalf of the CHESS Community, the EPA emailed notice on February 14, 2019, a copy of which is enclosed herein, of its decision to commence the review of the Kemira permits following the delay caused by the 35-day government shutdown. Section 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2) allows anyone to petition the Administrator of the EPA to object to an air permit issued pursuant to Title V of the Clean Air Act if the EPA did not object to such permit within its 45-day period of review. See also 40 C.F.R. § 70.8(d). The petitioner must also file the petition within 60 days after the expiration of EPA’s 45-day review period. 42 U.S.C. § 7661d(b)(2). The EPA’s review period with the unavoidable delay of the government shut-down ended on March 31, 2019. The EPA did not object to the permits. The CHESS

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Community timely filed its Petition to Object on May 30, 2019, within the 60 days after the EPA review period interrupted by the government shut-down, and is thus timely.

The Clean Air Act states: “The Administrator shall grant or deny such petition within 60 days after the petition is filed.” 42 U.S.C. § 7661d(b)(2). Since the CHESS Community filed its petition on May 30, 2018, the EPA had until July 29, 2019 to grant or deny the petition. The EPA’s failure to grant or deny the petition within the 60-day period that 42 U.S.C. § 7661d(b)(2) provides constitutes a failure to perform a non-discretionary act, which is actionable under the Clean Air Act citizen suit provision. *See* 42 U.S.C. § 7604(a)(2) (“any person may commence a civil action on his own behalf . . . (2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary”).

The CHESS Community intends to file a suit in the U.S. District Court for the Southern District of Alabama 60 days from the postmark date on this notice letter to enforce EPA’s duty to respond to its petition. *See* 40 C.F.R. § 54.2(d) (“Notice served in accordance with the provisions of this part shall be deemed given on the postmark date, if served by mail.”).

The full name and address of the party giving this notice are as follows:

Clean, Healthy, Educated, Safe and Sustainable Community, Inc.
Post Office Box 2322
Mobile, Alabama 36652

All communications, however, should be through counsel:

Christine Clolinger
Davis & Fields, P.C.
27180 Pollard Road
Daphne, Alabama 36526
251-621-1555, ex. 134
251-621-1520, fax
cclolinger@davis-fields.com

If you believe that any portion of this notice is in error or if you wish to discuss any portion of this notice, please contact Christine Clolinger via the information listed above.

Sincerely,



Christine Clolinger, Esq.
Ala. Bar No. 1392L29K



Monique Harden <moniqueh@dscej.org>

Following up...RE: ADEM draft air permit for Kemira Chemicals, Inc. (Africatown Community)

2 messages

Thomas-Burton, Tami <Thomas-Burton.Tami@epa.gov>

Thu, Feb 14, 2019 at 12:54 PM

To: Monique Harden <moniqueh@dscej.org>

Cc: Joe Womack <jnwomack1@yahoo.com>, "Dr. Beverly Wright" <beverlyw@dscej.org>, Robert Bullard <drrobertbullard@gmail.com>, "Terry, Randy" <Terry.Randy@epa.gov>, "Jones-Johnson, Shea" <Jones-Johnson.Shea@epa.gov>

Good Afternoon Ms. Harden,

I am following-up with you on your December email and would like to have a conference call with you and Mr. Womack on next steps.

Now that we have gotten through the winter Holiday schedule and then the "35-day" Government Shut-down, I'd like to pick up with you on addressing your concerns.

Please send me your availability for a 1 hour conference call during next week (02/19/19 to 02/22/19) or the week of 02/25/19. I will have our Air Program staff expert, Randy Terry on the call to explain all parts of the hearing & public comment process and the next steps your organization may take after participating in the public hearing process.

I look forward to hearing from you. Thanks, Tami Thomas-Burton

From: Monique Harden <moniqueh@dscej.org>

Sent: Tuesday, December 4, 2018 9:42 AM

To: Tennessee, Denise <Tennessee.Denise@epa.gov>; Thomas-Burton, Tami <Thomas-Burton.Tami@epa.gov>; Terry, Randy <Terry.Randy@epa.gov>

Cc: Joe Womack <jnwomack1@yahoo.com>; Dr. Beverly Wright <beverlyw@dscej.org>; Robert Bullard <drrobertbullard@gmail.com>

Subject: ADEM draft air permit for Kemira Chemicals, Inc.

Hello, Denise, Tami, and Randy

Thank you for your assistance in facilitating communications with ADEM regarding our request for a public hearing on the draft air permit to Kemira Chemicals, Inc. Although we requested the public hearing be held in the Africatown community in Mobile, ADEM held the hearing in Chickasaw on November 27, 2018. Most of the people who attended and gave comments on the record are Africatown residents, and included their state representative, Ms. Adline Clark, and Ms. Ray Richardson, Environmental Manager of the City of Mobile, who has worked with residents on environmental issues. Of the commenters who had an opinion on the draft air permit, all but three stated their opposition to ADEM issuing the permit to Kemira Chemicals, Inc. ADEM extended the period for written comments to November 30, 2018.

Please see the attached comment letter by the Deep South Center for Environmental Justice that was timely submitted to ADEM. We are concerned that the draft permit would exacerbate racially disproportionate pollution burdens already suffered by Africatown residents. Furthermore, the draft air permit omits necessary information to ensure environmental compliance. See the attached ADEM draft Synthetic Minor Operating Permit and Engineering Analysis for Kemira Chemicals, Inc. We would appreciate the opportunity to discuss this matter with you at your earliest convenience.

Best regards,

Monique

Monique Harden

Assistant Director of Law and Policy

Community Engagement Program Manager

Deep South Center for Environmental Justice

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