



**STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL**

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ATTORNEY GENERAL

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MONTGOMERY, AL

December 9, 2022

**VIA EMAIL AND U.S. CERTIFIED MAIL
CERTIFIED MAIL NO.: 70210350000130357658**

Hon. Michael Regan
Environmental Protection Agency
Office of the Administrator 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: Notice of Endangerment and Intent to Sue under Section 7002(a)(1)(A) and (1)(B) of the Resource Conservation and Recovery Act.

Dear Administrator Regan:

I write on behalf of the State of Alabama and Alabama Department of Environmental Management (ADEM) to provide notice of the States' intent to sue the U.S. Environmental Protection Agency (EPA) and you in your official capacity as Administrator of EPA for failure to perform nondiscretionary duties required by the Resource Conservation and Recovery Act (RCRA). Pursuant to Section 7002(a)(2) of RCRA, citizens may bring suit against EPA "where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator." 42 U.S.C. § 6972(a)(2). Citizens must give such notice at least sixty days prior to commencing suit. 42 U.S.C. § 6972(c).

This letter serves as notice of the State of Alabama and ADEM's intent to file suit against EPA and you in your official capacity as Administrator of EPA under RCRA for failure to perform nondiscretionary duties as described herein. Parties may commence suit at any time after sixty days from your receipt of this notice.

I. EPA HAS FAILED TO PERFORM NONDISCRETIONARY DUTIES

The ADEM submitted for approval its proposed Alabama Permitting Program for the Control of Coal Combustion Residuals for approval with EPA on December 29, 2021. Pursuant to Section 4005(d)(1)(B) of the Solid Waste Disposal Act (*See also* 42 U.S.C.A. §6945(d)(1)(B)), the Administrator, after public notice and an opportunity for public comment *shall* approve, in whole or in part, a State Program no later than 180 days after the date on which a State submits its proposed program application. The required 180 days has long since elapsed, therefore, ADEM's application for approval of the Alabama CCR Permitting Program should have been approved in accordance with the Solid Waste Disposal Act. The EPA has had ample opportunities to identify

deficiencies during the past four years of ADEM's program development, including opportunities during public comment. As of today, 345 days have passed, and EPA has failed to note programmatic deficiencies.

RCRA Claim

In the RCRA claim, the State will pursue injunctive relief, future cost as allowed, and legal fees. The State of Alabama will bring claims under U.S.C. § 6972(a)(1)(A) and (1)(B) against the EPA because the EPA has failed to approve or otherwise "act" on the application for Alabama's Permitting Program for the Control of Coal Combustion Residuals. The EPA in its response to comments on other state program approvals, stated that the Agency's review of a state CCR program application focuses primarily on the legal and regulatory framework. EPA's review of the state's application is based on the four corners of the application and does not attempt to speculate on the subsequent implementation of the states CCR permit program, due to this being addressed in future State program reviews. The "four corners" being: public participation, guidelines for compliance, guidelines for enforcement authority, and intervention in civil enforcement proceedings. The ADEM application has made this demonstration and is due to be approved by the EPA.

II. CONCLUSION

Pursuant to Section 4005(d)(1)(B) of the Solid Waste Disposal Act (*See also* 42 U.S.C.A. §6945(d)(1)(B)), the Administrator, after public notice and an opportunity for public comment *shall* approve, in whole or in part, a State Program no later than 180 days after the date on which a State submits its proposed program application. The EPA and the Administrator have failed to take action within the 180 days statutory requirement.

If EPA or the Administrator fails to cure its noncompliance with these statutory mandates under RCRA, the State intends to file suit in federal court seeking declaratory relief, injunctive relief, and litigation costs, as appropriate.

We look forward to a receiving response and working with the EPA so that it will not be necessary to take further formal action.

Sincerely,



Steve Marshall
Attorney General

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cc: Daniel Blackman, Administrator, Region 4, EPA
Carolyn Hoskinson, Director, Office of Resource Conservation and Recovery,
EPA
Lance R. LeFleur, Director, ADEM
Stephen Cobb, Chief, Land Division
Shawn Sibley, General Counsel, ADEM