



# *Office of the Attorney General*

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August 10, 2023

***By Email and Certified Mail Return Receipt Requested***

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

RE: Notice of Endangerment and Intent to Sue under Section 7002(a)(1)(A) through (a)(2) of the Resource Conservation and Recovery Act

Dear Administrator Regan:

I write on behalf of the State of Wyoming and the Wyoming Department of Environmental Protection (DEQ) to provide notice of the State's 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 the EPA "where there is alleged a failure of the Administrator to perform any act or duty under this chapter 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. *Id.* § 6972(c).

This letter serves as notice of the State of Wyoming and DEQ's intent to file suit against the 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 DEQ submitted for approval its proposed Wyoming Permitting Program for the Control of Coal Combustion Residuals (CCR) for approval with the EPA on February 6, 2023. Pursuant to Section 4005(d)(1)(B) of the Solid Waste Disposal Act, 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 elapsed on August 7, 2023. Therefore, the Solid Waste Disposal Act required EPA to approve DEQ's application for the Wyoming CCR Permitting Program.

### RCRA Claim

In the RCRA claim, the State will pursue injunctive relief, future costs as allowed, and legal fees. The State of Wyoming will bring claims under 42 U.S.C. § 6972(a)(1)(A) through (a)(2) against the EPA because the EPA has failed to approve or otherwise "act" on the application for Wyoming's Permitting Program for the Control of CCR. 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. The 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 DEQ application has made this demonstration. Therefore, the EPA's approval of this application is due.

## II. CONCLUSION

Pursuant to Section 4005(d)(1)(B) of the Solid Waste Disposal Act, 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 the 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.

Notice of Intent to Sue  
August 10, 2023  
Page 3 of 3

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

FOR THE STATE OF WYOMING



Bridget Hill

Wyoming Attorney General

cc: KC Becker, Administrator, Region 8, EPA  
Carolyn Hoskinson, Director, Office of Resource Conservation and Recovery, EPA  
David DeWald, Deputy Attorney General, Wyoming Attorney General's Office  
Shannon Leininger, Assistant Attorney General, Wyoming Attorney General's Office