

BRADLEY MURCHISON KELLY & SHEA LLC

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September 11, 2015

**VIA CERTIFIED MAIL,
RETURN RECEIPT REQUESTED** 7014 1200 0002 0921 6568

Ms. Gina McCarthy, Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Third Notice of Intent to File Citizen Suit Against Administrator McCarthy regarding Nucor permit nos. PSD-LA-740(M-1), Title V permit 2560-00281-V1, PSD-LA-751(M-2) and Title V permit 3086-V3.

Dear Administrator McCarthy:

Pursuant to the Clean Air Act ("CAA" or the "Act") § 304(b), 42 U.S.C. § 7604(b), this correspondence provides 60 days' notice that Nucor Steel Louisiana LLC and Consolidated Environmental Management, Inc., a fully-owned subsidiary of Nucor Corporation (collectively, "Nucor"), intend to file a citizen suit against Administrator McCarthy and the Environmental Protection Agency (collectively referred to herein as "EPA") for EPA's failure to take, after determining to object to Nucor's state-issued permits, a non-discretionary action required by § 505(b)(3) of the Act, 42 U.S.C. § 7661d(b)(3). This citizen suit arises out of Administrator McCarthy's failure to take non-discretionary action under the CAA § 304(a)(2), 42 U.S.C. § 7604(a)(2), out of violations of the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551-706, arising from her course of conduct, and seeks an order under the Declaratory Judgment Act ("DJA"), 28 U.S.C. §§ 2201-2202, declaring her purported objections to Nucor's permits to be void *ab initio* and of no continuing force or effect.

Persons Giving Notice:

Nucor Steel Louisiana LLC
9101 Highway 3125
Convent, LA 70723

Consolidated Environmental Management, Inc.
1915 Rexford Road
Charlotte, North Carolina 28211

AX-15-001-4134

2015 SEP 21 PM 2:04
ELECTRONIC MAIL

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Nucor Corporation
1915 Rexford Road
Charlotte, North Carolina 28211

Nucor's Counsel:

Mr. David R. Taggart
Bradley Murchison Kelly & Shea LLC
401 Edwards Street, Suite 1000
Shreveport, Louisiana 71101
Phone: (318) 227-1131
Fax: (318) 227-1141

Summary of Violations:

EPA issued orders on March 23, 2012 and January 30, 2014 related to Louisiana state-issued permits held by Nucor. These two orders violated the CAA and constituted arbitrary and capricious agency action in the following ways:

1. In both orders, EPA determined to “object” in writing to Nucor’s already-issued permits, under § 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), yet EPA did not in either order “modify, terminate, or revoke” such permits, in violation of § 505(b)(3) of the Act, 42 U.S.C. § 7661d(b)(3), which states that:

If the permitting authority has issued a permit prior to receipt of an objection by the Administrator under paragraph (2) of this subsection, the Administrator shall modify, terminate, or revoke such permit and the permitting authority may thereafter only issue a revised permit in accordance with subsection (c) of this section.

2. By deliberately declining to modify, terminate, or revoke the permits, actions explicitly required as a result of EPA’s objections under § 505(b)(3) of the Act, 42 U.S.C. § 7661d(b)(3), EPA was able to, and did, take other untimely and unauthorized actions in violation of the Act. EPA later avoided judicial review of its unlawful course of conduct by invoking the shield of § 505(c) of the Act, 42 U.S.C. § 7661d(c), which provides that “[n]o objection shall be subject to judicial review until the Administrator takes final action to issue or deny a permit under this subsection.”
3. By deliberately declining to modify, terminate or revoke the permits, actions explicitly required by § 505(b)(3) of the Act, 42 U.S.C. § 7661d(b)(3), which give rise to judicial review, EPA intentionally sought, and subsequently did, evade judicial

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review by wrongfully invoking the shield provided in § 505(c), 42 U.S.C. § 7661d(c), which provides that “[n]o objection shall be subject to judicial review until the Administrator takes final action to issue or deny a permit under this subsection.” By failing to take the mandatory, non-discretionary action of “modifying, terminating, or revoking” the permits, EPA thus avoided judicial review of its illegal conduct while obstructing Nucor’s permits, all in violation of §§ 505(b) and (c) of the Act and of congressional intent that objections be quickly resolved.

4. When the Louisiana Department of Environmental Quality (“LDEQ”) responded to EPA’s request for further justification for LDEQ’s permitting decisions, EPA illegally declared LDEQ’s response to be a “new permit” subject to additional petitions to object.
5. EPA’s illegal course of conduct unlawfully required the permitting authority to defend the validity of Nucor’s permits without EPA’s observance of the procedure explicitly required by law, while at the same time EPA denied Nucor and the permitting authority the right to prompt judicial review of EPA’s objection, all in violation of the CAA and the APA.
6. EPA’s deliberate disregard of the requirements of §§ 505(b)(3) and 505(c), 42 U.S.C. §§ 7661d(b)(3) and 7661d(c), has allowed EPA to assert irrelevant, untimely and procedurally defective objections to Nucor’s state-issued permits while at the same time avoiding judicial review of its actions; and
7. If EPA contends that the CAA allows it to object in writing to state-issued permits without complying with 42 U.S.C. § 7661d(b)(3)’s requirement to “modify, terminate, or revoke” the permits, and without complying with 42 U.S.C. § 7661d(c)’s requirement to take final action to issue or deny such permits when the permitting authority does not submit a permit revised to meet EPA’s objections, then EPA’s actions are unconstitutional, as they have deprived Nucor of its validly-issued state permits without even the pretense of due process.

Jurisdiction and Venue

The district court has jurisdiction of this action by virtue of the CAA § 304(a)(2), 42 U.S.C. § 7604(a)(2), because EPA has failed to comply with its nondiscretionary duties under the CAA when objecting to Nucor’s permits.

Further, the district court has jurisdiction over this action by virtue of the APA, 5 U.S.C. §§ 551 *et seq.*, because unlawful EPA final agency action is involved for which there is no other

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adequate remedy in court. This action will also invoke 28 U.S.C. §§ 2201-2202 (DJA), by virtue of the declaratory relief necessitated by EPA's unlawful actions.

APA § 706(1), 5 U.S.C. § 706(1), provides that the court may compel agency action unlawfully withheld or unreasonably delayed. APA § 706(2)(A), 5 U.S.C. § 706(2)(A), provides relief for the action addressed herein in that EPA has issued orders which are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. APA § 706(2)(C), 5 U.S.C. § 706(2)(C), provides relief for the action addressed herein in that EPA has issued orders in excess of its legal authority. APA § 706(2)(D), 5 U.S.C. § 706(2)(D), provides relief for the action addressed herein in that EPA has issued orders without observance of procedures required by law.

In addition to the jurisdiction granted by the CAA and APA, judicial review in the district court is favored in this case because EPA has acted beyond its authority. Even where Congress is understood generally to have precluded review, the Supreme Court permits review in the district court under the *Leedom* exception. The exception applies when, as here, an agency has acted beyond its delegable powers by denying a statutorily created right and, without review by the district court, plaintiffs have no other means to protect and enforce that right. *See Leedom v. Kyne*, 358 U.S. 184, 190-91 (1958); *see also Friends of Crystal River v. EPA*, 794 F. Supp. 674 (W.D. Mich. 1992), *aff'd*, 35 F.3d 1073 (6th Cir. 1994) (holding that EPA's action constituted a clear statutory violation, and, therefore, was reviewable by district court, even if Clean Water Act precluded judicial review; without review by district court, plaintiffs would have no other means to directly challenge EPA's alleged *ultra vires* conduct); *see also Clean Water Action Council of Ne. Wis., Inc. v. EPA*, No. 12-3388, 2014 WL 4257843 (7th Cir. Aug. 29, 2014) (the venue and filing provisions of § 7607(b) are not jurisdictional and thus do not preclude review on the merits).

Further, sovereign immunity does not bar a suit challenging such *ultra vires* acts, because as Nucor alleges below, a federal officer, Administrator McCarthy, acted in excess of her legal authority. *See Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 689-690 (1949); *see also Dugan v. Rank*, 372 U.S. 609, 621-22 (1963).

Finally, EPA is judicially estopped from challenging the district court's jurisdiction over this matter in light of EPA's earlier representations to the United States Court of Appeals for the Fifth Circuit, in which EPA argued that Nucor's requested relief was available only in the district court, as more fully set forth below.

Venue in the Eastern District of Louisiana is proper under 28 U.S.C. § 1391(e), as that is the district where a substantial part of the actions giving rise to this Notice have occurred.

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Statement of Facts

Nucor is the holder of a Louisiana Prevention of Significant Deterioration (“PSD”) permit No. PSD-LA-740(M-1), and a Louisiana Title V permit 2560-00281-V1 (“Pig Iron permits”). Nucor is also the holder of a Louisiana PSD permit No. PSD-LA-751(M-2) and a Louisiana Title V permit No. 3086-V3 (“DRI permits”).

Nucor was issued PSD-LA-740 and Title V permit No. 2560-00281-V0 on May 24, 2010. Nucor was issued Title V permit No. 2560-00281-V1, which amended 2560-00281-V0, on January 27, 2011. Nucor was issued PSD permit No. PSD-LA-740(M-1), which amended PSD-LA-740, on July 9, 2013. These state-issued permits are for the construction of a Pig Iron manufacturing facility located near the town of Convent, St. James Parish, Louisiana.

Nucor was issued PSD permit No. PSD-LA-751 and Title V permit No. 3086-V0, on January 27, 2011, for the construction and operation of a “direct reduced iron” or DRI manufacturing facility, also located near the town of Convent, St. James Parish, Louisiana. The DRI PSD permit was modified on November 16, 2012, and again on November 26, 2013, and now bears the number PSD-LA-751(M-2). The DRI Title V permit was modified on March 8, 2012, May 29, 2014, and July 1, 2015, and now is numbered 3086-V3.

The process of obtaining these permits began on May 12, 2008, when Nucor submitted to LDEQ, with required copies to EPA, applications for PSD and Title V permits for the construction and operation of a Pig Iron facility to be located near the town of Convent, St. James Parish, Louisiana. The application process included two public hearings and two public comment periods, during which EPA submitted numerous comments. LDEQ considered all comments and issued the Pig Iron PSD permit and Title V permit on May 24, 2010. LDEQ provided EPA with a copy of the Pig Iron Title V permit, as required by the CAA. 42 U.S.C. § 7661d(a); 40 C.F.R. § 70.8(a). EPA did not object to the Pig Iron permits.

On June 25, 2010, Zen-Noh Grain Corporation (“Zen-Noh”), the owner and operator of a grain elevator located adjacent to Nucor’s property in St. James Parish, submitted a petition to EPA pursuant to 42 U.S.C. § 7661, requesting that EPA object to the Pig Iron PSD and Title V permits issued by LDEQ. The Louisiana Environmental Action Network (“LEAN”) and the Sierra Club also filed separate petitions for EPA to object to the Pig Iron Title V permit on June 25, 2010. Although § 505(b)(2) of the CAA, 42 U.S.C. § 7661d(b)(2), provides that “[t]he Administrator shall grant or deny” petitions to object within 60 days, EPA took no action on these petitions. On November 19, 2010, Zen-Noh filed a citizen suit in the Eastern District of Louisiana to compel EPA action on its petition. *See Zen-Noh Grain Corp. v. Lisa Jackson*, No. 10-4367 (E.D. La. 2010). EPA settled this action with a promise to respond to Zen-Noh’s petition by March 16, 2012.

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The start of construction on the Pig Iron facility was delayed by numerous objections and permit appeals. In the intervening time, natural gas market conditions changed substantially and a DRI facility became desirable. On August 20, 2010, Nucor submitted PSD and Title V applications to LDEQ, again with copies to EPA, to construct a DRI facility as part of the Convent facility. The DRI facility would replace roughly half of the permitted Pig Iron facility's iron making capacity with the DRI process, with corresponding reductions in emissions. After public notice and comment, including comments from EPA, LDEQ issued the PSD and Title V permits for the DRI facility on January 27, 2011.

On May 3, 2011, Zen-Noh filed a petition with EPA seeking an objection to the DRI permits. LEAN and Sierra Club also filed separate petitions with EPA on May 3, 2011. EPA did not take action on these petitions within 60 days, as is required by 42 U.S.C. § 7661d(b)(2).

On March 23, 2012, EPA issued an untimely order which addressed only some of the objections contained in the Zen-Noh petitions and which did not address the petitions filed by LEAN and Sierra Club at all. See "Order Granting Petitions for Objection to Permits," responding to Petition Number VI-2010-02 & Petition Number VI-2011-03, *In the Matter of: Consolidated Environmental Management, Inc.–Nucor Steel Louisiana, Pig Iron and DRI Manufacturing in St. James Parish, Louisiana* (the "2012 Order"). EPA issued the 2012 Order 637 days after Zen-Noh, LEAN, and Sierra Club filed their petitions to object to the Pig Iron permits, and 325 days after they filed their petitions to object to the DRI permits, despite the CAA's mandate that EPA "grant or deny" such petitions within 60 days of receipt. 42 U.S.C. § 7661d(b)(2).

In responding to the Zen-Noh and LEAN petitions to object with the 2012 Order, EPA was required to "grant or deny" both petitions, and, if it determined in its discretion to grant either or both petitions, it was explicitly required to "modify, terminate, or revoke" Nucor's permits. Indeed, those were the only actions authorized by the CAA under the facts of this case; any other action would violate the express mandates of the CAA. See 42 U.S.C. § 7661d(b)(3) ("[i]f the permitting authority has issued a permit prior to receipt of an objection by the Administrator under paragraph (2) of this subsection, the Administrator **shall modify, terminate, or revoke such permit** and the permitting authority may thereafter only issue a revised permit in accordance with subsection (c) of this section.") (emphasis added).

Despite the clear language of 42 U.S.C. § 7661d(b)(3) requiring that it "grant or deny" the Zen-Noh and LEAN petitions, in the 2012 Order, EPA deferred action on the majority of issues in the petitions by "grant[ing]" the petitions on two "threshold" issues. In relevant part, the 2012 Order, at pp. 10-11, stated:

LDEQ has not adequately justified its decision to permit the DRI and pig iron processes as two separate projects for purposes of PSD analysis, and (2) LDEQ

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has not provided permit records from which the full scope of applicable requirements for the pig iron and DRI title V permits can be determined and, in particular, has not adequately explained the basis for its transfer of emissions units between the pig iron and DRI processes via the title V permits, and its incorporation by reference of permit requirements established in a title V permit into a PSD permit.

Although EPA purported to grant, in part, one of the pending petitions to object to Nucor's permits, EPA failed to "modify, terminate, or revoke" the already-issued permits, in violation of 42 U.S.C. § 7661d(b)(3).

EPA's request for more information from LDEQ by means of an "objection" was clearly *ultra vires* in the circumstances. Given that the petitions to object at issue did not satisfy the petitioners' burden of proof, the appropriate response was for EPA to deny the petitions in full, not to ask LDEQ for further clarification so as to give the petitioners a second attempt to satisfy their burden of proof. Nevertheless, on June 21, 2012, LDEQ responded to the inquiries posed to it by EPA in the 2012 Order. However, LDEQ specifically stated in its response to EPA's "objection" that it disagreed with EPA and was not revising the permits to which EPA had objected.

EPA declared that LDEQ's response would itself be considered a "new" permit subject to new petitions to object, and did so despite the explicit instructions of § 505(c) of the Act, 42 U.S.C. § 7661d(c), that: "[i]f the permitting authority fails, within 90 days after the date of an objection under subsection (b) of this section, to submit a permit revised to meet the objection, *the Administrator shall issue or deny the permit* in accordance with the requirements of this subchapter." (Emphasis added.)

The Administrator's failure to follow the requirement of § 505(c) to issue or deny the permit after LDEQ declined to submit a permit "revised to meet the objection," and her declaration that any LDEQ response would be a "new" permit, were designed to avoid judicial review of EPA's untimely, *ultra vires* actions. As set forth below, EPA's strategy to shield the 2012 Order from judicial review has thus far prevailed, making this suit necessary.

After LDEQ responded to its objection, EPA then specifically called counsel for Zen-Noh, LEAN, and the Sierra Club to "emphasize" its position that LDEQ's response was a new permit. LEAN and Sierra Club responded with a renewed petition to object to the LDEQ's response on October 3, 2012, as if the LDEQ response were a new Title V permit issued by LDEQ.

Because the 2012 Order violated the CAA in the ways described above, LDEQ sought review of the 2012 Order in the Fifth Circuit. *See Louisiana Dep't of Env'tl. Quality v. EPA*, 730

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F.3d 446 (5th Cir. 2013). Nucor intervened to protect its interests in its permits and its partially-built DRI facility. Nucor contended that EPA's 2012 Order was *ultra vires* because EPA had employed a deliberate strategy of bifurcating its response to petitions with multiple partial orders issued far beyond the statutory 60-day deadline, without ever actually denying the petitions, or alternatively, granting them and subsequently modifying, terminating or revoking Nucor's permits as required by 42 U.S.C. § 7661d(b)(3). Nucor contended that EPA's strategy allowed EPA to raise baseless and irrelevant issues to object to state-issued permits without the opportunity for judicial review.

In response, EPA urged the Fifth Circuit to dismiss LDEQ's and Nucor's petitions for review, arguing that because it had not taken final action to issue or deny a permit in its 2012 Order, it was entitled to the shield of 42 U.S.C. § 7661d(c), which provides that "[n]o objection shall be subject to judicial review until the Administrator takes final action to issue or deny a permit under this subsection." This was a convenient argument for EPA, given that the shield of 42 U.S.C. § 7661d(c) was only available because EPA deliberately chose not to take final action to "modify, terminate, or revoke" Nucor's permits in the 2012 Order, despite its clear legal duty to do so. In other words, by violating the mandate of 42 U.S.C. § 7661d(b)(3) to "modify, terminate, or revoke," and ignoring the fact that LDEQ did not submit a permit "revised to meet the objection," or any revised permit at all, EPA deliberately sought to foreclose judicial review of its 2012 Order.

Additionally, EPA insisted as a litigating strategy, if nothing else, that the proper forum for Nucor's petition was a United States district court. *See* EPA's brief, pp. 26, 27, available at *Louisiana Dep't of Env'tl. Quality v. EPA*, No. 12-60482 (5th Cir. 2013), R. Doc. 00512107706; *see also* comments at oral argument by counsel for EPA, "[w]e believe there are district court remedies that could facilitate getting this issue in a form suitable for this Court's review. ... what they could do, in the district court what you could do, assuming standing is satisfied, you could bring a suit to compel EPA to issue a response to a petition ... and **if somebody believed that what EPA had done didn't count under the statute, it wasn't legally a response ... they could come back to the district court and say 'no, they haven't answered the petition.'**" Panel Oral Argument at 21:55 (emphasis added), available at: http://www.ca5.uscourts.gov/OralArgRecordings/12/12-60482_8-5-2013.wma.

Ultimately the Fifth Circuit dismissed LDEQ's and Nucor's petitions for lack of subject matter jurisdiction, finding that the 2012 Order was an "objection" that did not constitute "final action to issue or deny a permit under this subsection." *Louisiana Dep't of Env'tl. Quality*, 730 F.3d at 449. The Fifth Circuit further noted that "we do not determine whether LDEQ and Nucor may pursue other avenues of judicial review, such as an action in district court under 42 U.S.C. § 7604(a)(2)." *Id.* at 450.

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On January 30, 2014, EPA issued another Order (the “2014 Order”), partially granting the 2010, 2011, and 2012 petitions (and dismissing the remaining issues) filed by Sierra Club and LEAN, nearly four years after LDEQ issued Nucor’s Title V permits (and after completion of the DRI facility). The 2014 Order was *ultra vires* because the review process should have ended with EPA’s response to the first round of petitions, given the mandate in 42 U.S.C. § 7661d(b)(3) that EPA either deny the petitions, or instead modify, terminate, or revoke the permits. The CAA does not allow EPA to grant itself a phased-review process, consisting of a series of objections by EPA and responses by the state permitting authority, as EPA did with the 2012 and 2014 Orders. Despite EPA’s continuing *ultra vires* actions, on April 30, 2014, LDEQ responded to the 2014 Order.

EPA still has not taken what it has contended would be final action on Nucor’s permits, either in the form of denying the petitions in full, or granting them and subsequently modifying, terminating or revoking the permits as required by 42 U.S.C. § 7661d(b)(3). Its actions are therefore void *ab initio* and should be declared to be so by the district court.

In light of the above extended series of events, Nucor intends to file an action in the Eastern District of Louisiana requesting the various items of relief set forth fully below.

Harm to Nucor

This notice of intent to sue is made necessary by EPA’s repeated delays, failures to act, and acting in violation of the CAA in response to objections to a Louisiana Title V permit which were filed under § 505 of the CAA, 42 U.S.C. § 7661d. EPA’s actions have repeatedly violated Nucor’s rights respecting the prompt and final resolution of objections to Louisiana Title V permits for Nucor’s Louisiana iron manufacturing project. EPA has engaged in a pattern and practice of employing *ultra vires* agency action to collaterally attack Nucor’s permits and other permits issued by other states. Evidence of numerous such EPA abuses regarding permits issued by other states is maintained by EPA in a Title V Petition database which is readily accessible to the public. The database contains information showing chronic EPA delays in responding to petitions to object, and numerous objections to already-issued state permits which were issued by EPA without compliance with the requirements of §§ 505(b)(3) and 505(c) of the Act, 42 U.S.C. §§ 7661d(b)(3) and (c), to “modify, terminate or revoke such permit[s].” See <http://www.epa.gov/region07/air/title5/petitiondb/petitiondb.htm>.

If not subject to judicial review, EPA’s actions will leave in place a system by which it imposes irrelevant requirements on state-issued permits which state permitting authorities contend are in compliance with the Act. Nucor has expended hundreds of millions of dollars and hired hundreds of employees based upon the issuance of the permits. EPA’s strategy to avoid taking what it admits would be “final action to issue or deny a permit” has allowed EPA to impose unauthorized requirements on permitting agencies and permittees while deliberately

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avoiding judicial review in numerous cases found in the aforementioned database. This dispute is clearly not moot because it “falls within a special category of disputes that are ‘capable of repetition’ while ‘evading review.’” *Turner v. Rogers*, 131 S.Ct. 2507, 2514-2515 (2011) (quoting *S. Pac. Terminal Co. v. ICC*, 219 U.S. 498 (1911)).

EPA’s actions and delays in acting have violated the clearly expressed intent of Congress that petitions to object to Title V permits be granted or denied promptly. Six hundred and sixty-nine days after the Pig Iron PSD and Title V permit issuance and 421 days after the DRI PSD and Title V permit issuance, and well past the applicable statutory deadlines, the Administrator purported to object to Nucor’s Title V permits, jeopardizing Nucor’s multi-million dollar investment and acting in derogation of Nucor’s PSD permits and LDEQ’s permitting authority. The CAA vested EPA with limited authority for responding to petitions to object: if EPA chooses to object, it is required to modify, terminate, or revoke the permits. Instead, here, EPA identified “threshold issues” for LDEQ to respond to, and invited the petitioners to raise their objections again if they were not satisfied with LDEQ’s response. One petitioner did so. EPA ignored that “new” petition until the petitioner sued, and then granted its petition in part and denied it in part. The result of this process was that EPA did not finally act on all petitions until January 30, 2014, 1,441 days after they were first filed.

Even now it is not clear that EPA has finalized the process. LDEQ responded to EPA’s most recent objection within 90 days of its issuance on April 30, 2014, as required by EPA’s regulations at 40 C.F.R. § 70.7(g)(4). If the Administrator at any time determines that LDEQ’s response failed to resolve the objection, EPA still may give Nucor 30 days’ notice and terminate, modify, or revoke and reissue Nucor’s permit.

Absent a judicial declaration that EPA’s 2012 and 2014 Orders are *ultra vires* and should be vacated, EPA will continue its practice of ignoring the requirements of the CAA. If EPA contends that the CAA allows it to issue “objections” to already-issued permits without complying with 42 U.S.C. § 7661d(b)(3)’s requirement to “modify, terminate, or revoke” the permits, and without taking final action to issue or deny the permit under 42 U.S.C. § 7661(c) if the state permitting authority does not agree with its objections, then EPA’s actions are unconstitutional as they have deprived Nucor of the opportunity for judicial review and due process.

Conclusion

In light of the above, Nucor intends to file an action in the Eastern District of Louisiana requesting:

- A. that the court enter an order vacating the 2012 Order and the 2014 Order;

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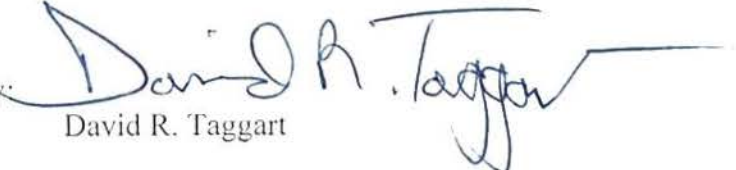
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- B. that the court issue a declaratory ruling that when a state permitting authority has issued a permit before receipt of any EPA "objection," the EPA may not issue an "objection" without complying with 42 U.S.C. § 7661d(b)(3)'s requirement to take final action to "modify, terminate, or revoke" the permit in question;
- C. that the court enter a declaratory judgment that finds Nucor's permits (PSD permit No. PSD-LA-740(M-1), Title V permit 2560-00281-V1, PSD permit No. PSD-LA-751(M2) and Title V permit No. 3086-V3) to be valid, enforceable, and free and clear of any continuing EPA objection;
- D. or, in the alternative, that the court compel EPA to grant or deny Nucor's permits (PSD permit No. PSD-LA-740(M-1), Title V permit 2560-00281-V1, PSD permit No. PSD-LA-751(M2) and Title V permit No. 3086-V3); and
- E. any and all other equitable relief that the court may deem appropriate.

If you would like to discuss any portion of this Notice or a proposal for the resolution of the issues discussed above, please feel free to contact the undersigned.

Yours very truly,

BRADLEY MURCHISON KELLY & SHEA LLC

By: 
David R. Taggart

DRT/nwm

cc: Honorable Loretta Lynch
Attorney General, United States of America
U.S. Department of Justice
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Washington, DC 20530-0001
Via Certified Mail, Return Receipt No.: 7014 1200 0002 0921 6582

Peggy Hatch, Secretary
Louisiana Department of Environmental Quality
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Baton Rouge, LA 70821-4301
Via Certified Mail, Return Receipt No.: 7014 1200 0002 0921 6599

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Mr. Ron Curry, Regional Administrator

U.S. EPA Region 6

1445 Ross Avenue, Suite 1200

Dallas, TX 75202

Via Certified Mail, Return Receipt No.: 7014 1200 0002 0921 6605

Mr. Steven J. Rowlan (via PDF email)

Mr. Jeffrey D. Braun (via PDF email)

Mr. Jerald N. Jones (via PDF email)