

# BRADLEY MURCHISON KELLY & SHEA LLC

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RE

2014 SEP 17 PM 2:56

OFFICE  
EXECUTIVE

September 12, 2014

AK-14-001-5250

## VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO ALL

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

Peggy Hatch, Secretary  
Louisiana Department of Environmental  
Quality  
P.O. Box 4301  
Baton Rouge, LA 70821-4301

Honorable Eric Holder,  
Attorney General, United States of America  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Mr. Ron Curry, Regional Administrator  
U.S. EPA Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202

Re: First Notice of Intent to File Citizen Suit Against Administrator McCarthy  
regarding Nucor permit nos. PSD-LA-740, 2560-00281-V0, and 2560-00281-V1.

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 failure to take mandatory action under the CAA § 304(a)(2), 42 U.S.C. § 7604(a)(2), for violations of the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551-706, and for relief under the Declaratory Judgment Act ("DJA"), 28 U.S.C. §§ 2201-2202. By separate letter Nucor is also providing 180 days' notice of its intent to file a citizen suit for unreasonable delay in taking a mandatory action.

### Persons Giving Notice:

Nucor Steel Louisiana LLC  
9101 Highway 3125  
Convent, LA 70723

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

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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 ("2012 Order") and January 30, 2014 ("2014 Order") related to permits held by Nucor. These orders violated the CAA and constituted arbitrary and capricious agency action in the following ways:

1. EPA purported to state objections to a Prevention of Significant Deterioration ("PSD") permit in the guise of a title V permit objection, in violation of 42 U.S.C. § 7477 (2011);
2. EPA disregarded the express congressional command in 42 U.S.C. § 7661d(b)(2) that objections are to be made within 60 days of receipt of a petition to object;
3. EPA purported to state objections that are based solely on EPA's own policy preferences, and not the express requirements of the CAA, the Part 70 regulations, or the Louisiana State Implementation Plan ("SIP"), which provide the sole basis for

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decision in this matter. 42 U.S.C. § 7661d(b); 40 C.F.R. 70.8(c); LAC 33:III.507;  
LAC 33:III.533.C;

4. The 2012 Order extended additional petition rights to petitioners and allowed them to file additional petitions to object even after the state has responded to the Order, in violation of 42 U.S.C. § 7661d(b)(2);
5. EPA has failed to issue, revoke, modify or terminate Nucor's permits after timely receipt of Louisiana Department of Environmental Quality's ("LDEQ") response to EPA's 2014 Order;
6. EPA's strategy to avoid making what they believe to be a "final agency action" has deliberately ensured that Nucor's permits will forever remain in administrative limbo without the opportunity for judicial review; and
7. If EPA contends that the CAA does not mandate an opportunity for judicial review because LDEQ has satisfied its objections, then EPA's actions and its application of the CAA are unconstitutional as they have deprived Nucor of due process.

**Jurisdiction and Venue:**

The purpose of this letter is to give 60 days' notice of statutory violations committed by EPA so that EPA is afforded a fair opportunity to rectify those deficiencies. Should EPA fail to fully resolve Nucor's permits in the manner set forth below, Nucor will file suit in the Eastern District of Louisiana and seek declaratory and injunctive relief, including attorneys' fees and costs. Jurisdiction in the Eastern District of Louisiana is based on 28 U.S.C. §§ 1331, 42 U.S.C. § 7604(a)(2), 5 U.S.C. §§ 551-706, and 28 U.S.C. §§ 2201-2202.

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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.

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 adequate remedy in court. The district court has jurisdiction of this action pursuant to 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, APA, and DJA, judicial review in 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*

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*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 Northeastern Wisconsin, Inc. v. EPA*, 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, 69 S.Ct. 1457, 1461 (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.

**Statement of Facts**

Nucor holds PSD permit No. PSD-LA-740 and title V permit No. 2560-00281-V0, both issued on May 24, 2010, and title V permit No. 2560-00281-V1, which amended 2560-00281-V0

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on January 27, 2011, all for a Pig Iron facility (“Pig Iron permits”). Nucor is also the holder of PSD permit No. PSD-LA-751 and title V permit No. 3086-V0, issued on January 27, 2011, for a “direct reduced iron” or DRI manufacturing facility (“DRI permits”). The DRI PSD permit was modified on November 16, 2012 and again on November 26, 2013 and now bears the number PSD-LA-751(M2). The DRI title V permit was modified on March 8, 2012 and on May 29, 2014 and now is numbered 3086-V2.

The process of obtaining these permits began on May 12, 2008, when Nucor submitted to the Louisiana Department of Environmental Quality (“LDEQ”), with 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. EPA did not object to these 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, petitioned EPA pursuant to the CAA to 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. 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 Corporation v. Lisa Jackson*,

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No. 10-4367 (La. E.D. 2010). EPA apparently settled this action with a promise to respond to Zen-Noh's petition by March 16, 2012.

The start of construction on the Pig Iron facility was delayed by numerous objections and permit appeals. In the intervening time, 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, 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 these permits. LEAN and Sierra Club also filed separate petitions with EPA on May 3, 2011. EPA took no action on these petitions.

On March 23, 2012, EPA issued the 2012 Order, which only addressed some of the objections contained in the Zen-Noh petitions and did not address the petitions filed by LEAN and Sierra Club at all. Instead, EPA deferred action on the majority of issues in the petitions by "grant[ing]" the petitions on two "threshold" issues:

- (1) 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 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.

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2012 Order, at 10-11. Although EPA's 2012 Order did not identify any term or condition of the permits that failed to comply with the CAA, or identify an "applicable requirement" that was improperly excluded from the permits, it nevertheless included a purported "objection" to both the DRI and pig iron title V permits.

On June 21, 2012, LDEQ responded to the inquiries posed to it by EPA in the 2012 Order. EPA declared that LDEQ's explanation would be considered a "new" permit subject to new petitions, despite LDEQ's assertions that it did not consider its response to be a new permit.<sup>1</sup> EPA then specifically called counsel for Zen-Noh, LEAN, and the Sierra Club to "emphasize"<sup>2</sup> this position. LEAN and Sierra Club responded with a renewed petition to object to the LDEQ response on October 3, 2012.

Because the 2012 Order violated the CAA, LDEQ sought review of the 2012 Order in the Fifth Circuit. *See Louisiana Dep't of Env'tl. Quality v. EPA*, No. 12-60482 (5th Cir. 2013). Nucor intervened to protect its interests in its permits and its partially-built DRI facility. Nucor contended that EPA lacked authority to take action on a title V permit that does not actually constitute an objection, and that constitute actions instead on a PSD permit. Nucor further contended that EPA could not bifurcate its response to petitions with multiple partial orders issued far beyond the statutory 60-day deadline. Nucor argued that EPA's partial-response strategy created a never-ending objection loop, keeping Nucor's permits in administrative limbo without the opportunity for judicial review. In response, EPA urged the Fifth Circuit to dismiss

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<sup>1</sup> *Louisiana Dep't of Env'tl. Quality v. EPA*, No. 12-60482 (5th Cir. 2013), R. Doc. 00512322527.

<sup>2</sup> *Id.*



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Nucor's petition for review and insisted 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, "we 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, available at [http://www.ca5.uscourts.gov/OralArgRecordings/12/12-60482\\_8-5-2013.wma](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, but held 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.

On July 26, 2013, EPA declared by letter that it had concluded the administrative process regarding all issues related to the 2012 Order, and that therefore it would not further respond to Zen-Noh's petitions (the "2013 letter").<sup>3</sup> 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

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<sup>3</sup> *See Louisiana Dep't of Env'tl. Quality v. EPA*, No. 12-60482 (5th Cir. 2013), R. Doc. 00512322527, R. Doc. 00512322528. ("EPA has taken action on all issues that pertain to the 2012 Order. None of the remaining petition issues pertain to the 2012 Order. To the extent that the EPA has continuing authority to pursue its 2012 Order, it does not intend to take any further action pursuant to that Order. Accordingly, the administrative process following that Order is now complete and concluded.").

title V permits (and after completion of the DRI facility). In light of the 2014 Order, and the 2013 letter confirming that EPA would not further respond to Zen-Noh's petitions, EPA has now responded to all petitions related to the Nucor facility. However, based on past practice, EPA likely views LDEQ's response to the 2014 Order as issuing a "new" permit worthy of additional comments. EPA has taken no action to dissuade this and confirm that Nucor's permits are valid and enforceable and that EPA will not take further action on them.

In light of the above extended series of events, Nucor requests that EPA enter an Order declaring Nucor's permits to be valid, enforceable, and free and clear of any continuing EPA objection.<sup>4</sup> Absent such action by EPA, Nucor will file an action in the Eastern District of Louisiana request 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 (and repeated failures to act) in response to objections to a Louisiana title V permit which were filed under Section 505 of the CAA, 42 U.S.C. §7661d. EPA's delayed actions and failures to act have repeatedly violated Nucor's rights respecting the prompt resolution of objections to Louisiana title V permits for Nucor's Louisiana iron manufacturing project, and are now calling into question the validity of Nucor's most recent permit. EPA has engaged in a pattern and practice of employing *ultra vires* agency action to collaterally attack Nucor's permits, and it has failed to

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<sup>4</sup> According to EPA's title V petition database, both the 2012 and 2014 Orders are designated as having a "final" status. However, this designation in no way precludes EPA from contesting the sufficiency of LDEQ's response to the 2014 Order, and therefore Nucor is still at risk of a future EPA Order contesting the validity of Nucor's title V permits. EPA's title V petition database is available at: <http://www.epa.gov/region7/air/title5/petitiondb/petitiondb.htm>

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confirm that Nucor's permits are valid and enforceable and that EPA will not take further action on them. At best, EPA's actions will leave a permanent "cloud" on Nucor's permits, and at worst, it leaves open the possibility that EPA will again attack Nucor's permits through further *ultra vires* agency action, in any event putting Nucor's massive capital investment in jeopardy. Nucor has expended hundreds of millions of dollars and hired hundreds of employees based upon the issuance of the permits, and therefore is exposed to significant risk by EPA's tactics which leave open the possibility of future attacks on Nucor's permits. EPA's strategy to avoid making what they believe to be a "final agency action" has deliberately ensured that Nucor's permits will forever remain in administrative limbo without the opportunity for judicial review. 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 (2011) (quoting *S. Pac. Terminal Co. v. ICC*, 219 U.S. 498 (1911)).

As detailed below, EPA has, to Nucor's prejudice and harm: (1) repeatedly delayed action on petitions to object, and thereby violated the statutory requirement to "grant or deny" such petitions to object to Nucor's title V permits "within 60 days after the petition is filed" [§505(b)(2)]; (2) taken piecemeal actions without fully disposing of petitions to object, thus delaying resolution of the objections and providing unauthorized and unfair ("second bite") procedural opportunities to petitioners; (3) granted one petition to object based on a purported lack of sufficient information in the permit record, and without identifying any respects in which "the permit is not in compliance with [the CAA], including the requirements of the applicable implementation plan;" (4) objected to Nucor's Prevention of Significant Deterioration ("PSD")

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permit without any appropriate jurisdictional basis in the CAA and in violation of Nucor's rights to due process as identified by the Supreme Court; (5) sought to avoid judicial review of its violations of CAA permitting requirements by arguing to the Fifth Circuit Court of Appeals that jurisdiction is in the district court and arguing to the district court that jurisdiction is solely in the courts of appeals; and (6) failed to take any action on Louisiana's response to EPA's objection.

As EPA does not believe a delay beyond statutory deadlines imposes any bar on its actions, Nucor can obtain no certainty as to the validity of its permits absent an EPA declaration that the permits are valid as they currently stand, or, failing that, a court ruling compelling EPA to state whether EPA intends to modify, terminate, or revoke and reissue its title V permit again.

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 thirty-one 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. EPA did not grant or deny all pending petitions at that time. Rather, EPA identified "threshold issues" for Louisiana to respond to, and invited the petitioners to raise their objections again if they were not satisfied with Louisiana'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. Louisiana 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 CFR 70(g)(4). However, if the Administrator determines that Louisiana's response failed to resolve its objection it still may give Nucor 30 days' notice and terminate, modify, or revoke and reissue Nucor's permit. Absent a judicially imposed requirement to take action or declare the permit valid, EPA will continue to ignore statutory time limits and not act.

Nucor cannot have assurance that its permits are valid until EPA indicates that LDEQ's actions in response to its objection are satisfactory. Nucor contends that, in the circumstances created by the Administrator's repeated violations of the deadlines contained in Section 505 of the CAA, as explained below, the Act must be read to mandate that EPA issue or deny Nucor's permits even after receipt of LDEQ's responses to EPA's 2014 Order in order to afford Nucor due process in the form of an opportunity for judicial review of EPA's objections. If EPA contends that the CAA does not mandate an opportunity for judicial review because LDEQ has satisfied its objections, then EPA's actions are unconstitutional.

**Description of Violations:**

1. EPA's 2012 and 2014 Orders are *ultra vires* actions. The district court should vacate the Orders, declare that EPA may not collaterally attack Nucor's PSD permits in a title V proceeding, and reaffirm that EPA's review is limited to violations of explicit requirements of the Act and/or the Louisiana SIP. LDEQ is the PSD permitting authority in Louisiana; EPA is not. LDEQ issued two currently valid PSD permits to Nucor for the construction of a Pig Iron

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facility and a DRI facility on a common property. Concurrently, LDEQ issued two title V operating permits to Nucor for the same facilities. LDEQ also issued a modification to the title V permit for the Pig Iron facility. Pursuant to those permits, Nucor commenced construction of a multi-million dollar iron making complex. Six hundred and thirty-one 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,<sup>5</sup> jeopardizing Nucor's multi-million dollar investment and acting in derogation of Nucor's PSD permits. In addition to failing to meet the statutory deadline for an objection, the Administrator's objection to the title V permit due to her disagreement with the terms of a valid PSD permit exceeded her authority under the CAA, and violates the structure of CAA § 167 and the Supreme Court's decision in *Alaska Department of Environmental Conservation v. EPA*, 540 U.S. 461 ("ADEC"), where the Court defined the permissible boundaries of EPA's authority to collaterally attack a PSD permit. The Administrator's objection violates each limit established by the Supreme Court on collaterally attacking a valid PSD permit. Her objection reflects nothing more than a mere policy disagreement with LDEQ, which is not a lawful basis for objection under the Act. Finally, the Administrator's power is constrained by statute and she may not ignore the limits on when she may act nor may she grant additional rights to petition against a permit, which is beyond that authorized by the Act.

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<sup>5</sup> In Louisiana, for a project that triggers PSD, both the PSD permit and the title V permit must be issued prior to the source being authorized to begin actual construction. LA. ADMIN. CODE tit. 33, pt. III §§ 501, 507, and 509.

2. Nucor is entitled to a declaration from the district court that Nucor's permits are valid, enforceable, and free and clear of any continuing EPA objection. EPA has now responded to all petitions related to Nucor's facility. EPA has not terminated or revoked Nucor's permits. Having exhausted all authority available to it for acting on Nucor's permits, EPA cannot take any further action on Nucor's permits, and therefore Nucor's permits should be declared as valid and enforceable.

3. Nucor is entitled to a final response from EPA that denies in full the petitions of Zen-Noh, LEAN, and Sierra Club, and confirms that Nucor's permits are valid, enforceable, and free and clear of any continuing EPA objection, and the district court should compel EPA to issue such a response.

### **Conclusion**

As required by law, Nucor obtained both a PSD and a title V permit from LDEQ for the Pig Iron plant. Well after the time allowed by law for either title V permit, the Administrator issued an objection to both title V permits, alleging that the PSD permits were deficient. Despite clear language requiring that an objection be issued within 60 days and be based on violation of the Act, the Administrator neither resolved the issues nor based her objection on any requirement of the Act, instead basing her action merely on her preferences for how the PSD permits should have been issued. The PSD permits are not even within the jurisdiction of the Administrator, but rather are solely within LDEQ's permitting jurisdiction. EPA has also purported to grant additional rights to petitioners beyond the right to request an objection, and have even stated that LDEQ's re-affirmation of the permits constitutes a "new permit" allowing for additional

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challenges. EPA's and the Administrator's actions in no way conform to the requirements of the law. They ignore the structure of the CAA by undermining the cooperative federalism approach to air quality regulation established by the Act and make it impossible for Nucor or any other business to plan investment. The Administrator's objection to the title V permit due to her disagreement with the terms of a valid PSD permit exceeded her authority under the CAA, and violates the structure of CAA § 167 and the Supreme Court's decision in *Alaska Department of Environmental Conservation v. EPA*, 540 U.S. 461, where the Court defined the permissible boundaries of EPA's authority to collaterally attack a PSD permit.

In light of the above, Nucor requests that EPA enter an Order declaring Nucor's permits to be valid, enforceable, and free and clear of any continuing EPA objection. Absent such action by EPA, Nucor will file an action in the Eastern District of Louisiana requesting:

- A. that the court (1) enter an order vacating the 2012 Order and the 2014 Order, and (2) issue a declaratory ruling that (a) EPA may not object to the terms of a valid PSD permit using its title V objection authority, but may merely incorporate the PSD permit terms into the title V permit; (b) EPA may only object to title V permits under 42 U.S.C. § 7661d for reasons set forth in the Act, its implementing regulations, and the Louisiana State Implementation Plan ("SIP"); (c) the objection process under 42 U.S.C. § 7661d does not allow EPA to grant itself a phased-review process, consisting of a series of objections and responses by the state permitting authority (i.e., "multiple bites at the apple"); (d) the objection process under 42 U.S.C. § 7661d does not allow EPA to grant additional petition



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rights to other persons/entities, which are not provided for in the Act; and (e) EPA may only object to title V permits if it does so in compliance with the express congressional command in 42 U.S.C. § 7661d(b)(2) that objections are to be made within 60 days of receipt of a petition to object; and

- B. that the court enter a declaratory judgment that finds Nucor's permits to be valid, enforceable, and free and clear of any continuing EPA objection;
- C. or in the alternative, that the court compel EPA to grant or deny Nucor's title V permits Nos. 2560-00281-V0 and 2560-00281-V1; and
- D. For 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:   
\_\_\_\_\_  
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cc: Mr. Steven J. Rowlan  
Mr. Jeffrey D. Braun  
Mr. Jerald N. Jones  
(All via PDF email)