

November 10, 2004

VIA USPS CERTIFIED MAIL

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Environmental Protection Agency
Washington, DC 20460

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Re: Notice of Intent to Sue Pursuant to Clean Air Act ' 304

Dear Administrator Leavitt *et al.*:

For the past three years North Carolina has followed with interest the legal proceedings of the federal Environmental Protection Agency's (AEPA@) Administrative Compliance Order (AOrder@) initially issued to the Tennessee Valley Authority (ATVA@) on November 3, 1999

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(and amended thereafter) involving the New Source Review provisions of the Clean Air Act (ANSR requirements) and other Clean Air Act (the Act) requirements. Now that the U.S. Supreme Court has refused the request to review the Eleventh Circuit's resolution of TVA's challenge to the Order, it remains uncertain how TVA's compliance status will be effectively reviewed. The plants identified in the Order have been shown to contribute significantly to air quality problems in North Carolina, resulting in adverse consequences to the health and welfare of the citizens of this State. For this reason, North Carolina has a compelling interest in ensuring that these plants have complied, and continue to comply, with the Clean Air Act NSR requirements.

By its enactment in 2002 of the Clean Smokestacks Act, North Carolina publicly committed to dramatic reductions in emissions from coal-fired power plants. The State also was directed to aggressively pursue emissions reductions from out-of-state plants that are adversely affecting our air quality. While we are encouraged by TVA's plans to undertake voluntary actions aimed at reducing emissions from the coal-fired plants within TVA's system, the impact of these proposed projects remains unclear to us. We are not certain of the schedule and extent of the planned projects, but most importantly, these plans are only voluntary.

As you are aware, in March of this year we filed with EPA a petition under section 126 of the Act requesting that EPA mandate a remedy regarding NO_x and SO₂ emissions from coal-fired electric generating units in thirteen states upwind of North Carolina, including Tennessee, Kentucky and Alabama. We are also cognizant of the Clean Air Interstate Rule (CAIR) that EPA has proposed. However, the CAIR proposal suggests that full implementation of the proposed reductions, especially of SO₂, may be delayed several years through the use of Title IV credits. Moreover, the CAIR rule has yet to be finally promulgated.

The health benefits of emissions reductions must be realized expeditiously. North Carolina wants clean air, not litigation. However, NSR enforcement is one tool -- along with section 126 and the CAIR B to help us achieve the goal of cleaner air in the near term.

Therefore, pursuant to section 304 of the Act, 42 U.S.C. ' 7604, we hereby notify you of our intent to file suit against TVA in federal district court for violations of the Act. Specifically, we will allege that TVA modified several of its coal-fired power plants and in the process violated the New Source Review requirements (ANSR) under part C of title I (relating to prevention of significant deterioration of air quality) and/or part D of Title I (relating to nonattainment areas) of the Act, *see* 42 U.S.C. ' ' 7475, 7503, and the related state implementation plans (SIPs). As a result, these plants have operated without required permits, without undergoing the procedure necessary to determine whether further emissions controls are necessary, and without, as necessary, installing best available control technology (BACT) or lowest achievable emission rate (LAER) controls.

Description of the Violations

§	Allen Unit 3 Shelby County, TN	Modifications made in or around 1992-93 including but not limited to replacement of the reheater.
§	Bull Run Unit 1 Clinton, TN	Modifications made in or around 1988 including but not limited to replacement of the secondary superheater outlet pendant and the replacement of all economizer elements in the AA@ and AB@ furnace.
§	Colbert Unit 5 Tuscumbia, AL	Modifications made in or around 1982-83 including but not limited to rehabilitation of the boiler, turbine, and controls.
§	Cumberland Units 1 and 2 Cumberland City, TN	Modifications made in or around 1994-96 including but not limited to replacement of secondary superheater outlet headers and replacement of the inlet terminal tubes and main steam piping tee.
§	John Sevier Unit 3 Rogersville, TN	Modifications made in or around 1986 including but not limited to replacement of waterwall tubes in the front, rear, and sidewalls of both furnace.
§	Kingston Units 6 and 8 Kingston, TN	Modifications made in or around 1989-90 including but not limited to replacement of reheater and superheater element, waterwalls of superheater and reheater furnaces.
§	Paradise Units 1, 2, and 3 Drakesboro, KY	Modifications made in or around 1985-86 including but not limited to replacement of the cyclones and lower furnace walls including headers and floor.
§	Shawnee Units 1 and 4 McCracken County, KY	Modifications made in or around 1989-90 including but not limited to replacement of secondary superheater elements.
§	Widows Creek Unit 5 Jackson County, AL	Modifications made in or around 1989-90 including but not limited to replacement of secondary superheater and crossover elements and reheater and crossover elements.

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In addition, we intend to allege that (1) the modifications described above also constitute continuing violations of applicable standards of performance under section 111 of the Act, 42 U.S.C. ' 7411, the implementing regulations at 40 CFR Part 60, and applicable provisions of the Tennessee, Kentucky and Alabama SIPs; (2) the continued operation of these plants after the effective date of the Title V operating permit requirements constitutes a violation of the Title V requirements of the Act at 42 U.S.C. ' ' 7661-7661f, implementing regulations, 40 CFR Part 70, and each States' SIP; and (3) the modifications indicated above were in violation of applicable state regulations known commonly as the AMinor NSR@ rules, which are included in each States' SIP. *See* 42 U.S.C. 7410(a)(2)(C). We have attached, for your information, a more detailed statement of the primary regulations at issue, but we do not intend this statement to limit the scope of any action.

If there is interest in discussing settlement of our claims regarding these plants, I may be contacted at (919) 716-6400, or Senior Deputy Attorney General James Gulick, head of our Environmental Division may be contacted at (919) 716-6940. We may be reached by mail (North Carolina Department of Justice, 9001 Mail Service Center, Raleigh, NC 27699-9001) or by courier (North Carolina Department of Justice, 114 West Edenton Street, Raleigh, NC 27602).

Sincerely,

Roy Cooper

Attachment

cc: The Honorable Phil Bredesen
The Honorable Ernie Fletcher
The Honorable Bob Riley
The Honorable Paul G. Summers
The Honorable Gregory D. Stumbo
The Honorable Troy King
J.I. Palmer, Jr., Regional Administrator, US EPA Region IV