

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

ARKANSAS DEPARTMENT OF ENERGY
AND ENVIRONMENT, DIVISION OF
ENVIRONMENTAL QUALITY,

Plaintiff,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY; MICHAEL REGAN, IN HIS
OFFICIAL CAPACITY AS
ADMINISTRATOR OF THE UNITED
STATES ENVIRONMENTAL PROTECTION
AGENCY,

Defendants.

Civil Action No. 4:22-cv-359 (BSM)

DEFENDANTS' MOTION TO DISMISS

Defendants U.S. Environmental Protection Agency (“EPA”) and Michael Regan, in his official capacity as the Administrator of EPA, respectfully move this Court, pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6) as follows:

EPA seeks dismissal of the Complaint by Plaintiff Arkansas Department of Energy and Environment, Division of Environmental Quality (“DEQ”) for lack of jurisdiction and failure to state a cognizable claim under the Administrative Procedure Act (“APA”). DEQ challenges EPA’s four objection letters to two proposed National Pollutant Discharge Elimination System permits and alleges that EPA’s objections were untimely under Clean Water Act, 33 U.S.C. § 1342, and its implementing regulations in 40 C.F.R. § 123.44. Specifically, DEQ claims that EPA’s objection letters were untimely because DEQ had already issued both permits before EPA sent its objections.

As set forth more fully in the accompanying brief, dismissal is proper on three related but independent grounds: (1) DEQ fails to assert claims ripe for adjudication because it has not exhausted its administrative remedies; (2) judicial review in this Court improperly interferes with the potential future jurisdiction of the Circuit Court of Appeals; and (3) DEQ does not challenge a final agency action, as required by the APA.

Accordingly, the Court should grant EPA's motion to dismiss and dismiss the Complaint.

Respectfully submitted,

Dated: May 20, 2022

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/s/ Sarah Izfar
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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2022, I filed the foregoing using the Court's CM/ECF system, which will electronically serve all counsel of record registered to use the CM/ECF system.

/s/ Sarah Izfar
