

BEFORE THE  
ADMINISTRATIVE HEARING COMMISSION  
and the CLEAN WATER COMMISSION  
STATE OF MISSOURI

SIERRA CLUB,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. _____
	)	
SARA PARKER PAULEY, in her official capacity	)	
as Director of the DEPARTMENT OF NATURAL	)	
RESOURCES,	)	
	)	
Respondent.	)	
	)	
Appeal of Missouri State Operating Permit	)	
No. MO-0004812, for Ameren's Labadie	)	
Energy Center	)	

**COMPLAINT**

Petitioner Sierra Club, by and through undersigned counsel, hereby appeals the decision of Respondent Sara Parker Pauley, Director of the Missouri Department of Natural Resources (“DNR”), to issue certain terms and conditions in the August 1, 2015 revised Missouri State Operating Permit No. MO-0004812 (the “Permit”), to Union Electric Company d/b /a Ameren Missouri (“Ameren”) for the Labadie Energy Center (“Labadie”) without complying with the federal Clean Water Act and the Missouri Clean Water Law. A copy of the Permit issued by DNR is attached hereto as Exhibit A, and a copy of DNR’s accompanying Fact Sheet is attached hereto as Exhibit B.

**JURISDICTION**

1. The Administrative Hearing Commission has jurisdiction to hear and make a recommended ruling in this appeal, and the Clean Water Commission has jurisdiction to render a final decision in this appeal, pursuant to §§ 621.250, 640.010.1, 640.013, 644.026.1, and

644.051, R.S.Mo., and 10 CSR 20-6.020.

2. This appeal is timely filed pursuant to § 621.250.2, R.S.Mo.

### **PARTIES**

3. Petitioner Sierra Club is the nation's oldest grassroots environmental non-profit organization, with more than 600,000 members nationwide, including more than 8,500 members in Missouri and 110 members in Franklin County, where the Labadie plant is located.

4. Sierra Club brings this action on behalf of itself and its members, some of whom live, work, and/or recreate in the vicinity of the Labadie plant and are or may be aggrieved and adversely affected by the discharge of pollutants that the Permit authorizes.

5. Sierra Club submitted written comments to DNR on the draft revised Permit. Sierra Club and its members testified at the public hearing held by DNR on the draft revised Permit. Written comments submitted on behalf of the Sierra Club to DNR regarding the draft revised Permit are attached hereto as Exhibit C.

6. Respondent Sara Parker Pauley, Director of the Missouri Department of Natural Resources, is responsible for administering the Missouri Clean Water Law, chapter 644, R.S.Mo., and implementing regulations in accordance with said Law and with the federal Clean Water Act, 33 U.S.C. § § 1251 et seq.

### **BACKGROUND FACTS**

7. Ameren owns and operates the Labadie Energy Center, a four unit coal-fired power plant near the town of Labadie, alongside the Missouri River in Franklin County.

8. The Labadie plant commenced operation in 1970.

9. The Labadie plant is the largest coal-fired power plant in Missouri.

10. The Labadie plant takes more than one billion gallons of water each day out of the Missouri River, uses it for cooling purposes, to transport coal ash, and for other purposes, and then discharges heated water, ash pond wastewater, and storm water into the Missouri River.

11. The Labadie plant's discharges are governed by the Permit, which is also known as a National Pollutant Discharge Elimination System ("NPDES") permit under the federal Clean Water Act.

12. The pallid sturgeon, listed since 1990 as endangered under the federal Endangered Species Act, inhabits the Missouri River including the vicinity of the Labadie plant.

13. Neither the Permit nor the accompanying fact sheet mentions the pallid sturgeon or discusses the potential impact of the plant's discharges on this endangered fish.

14. Prior to the revision at issue in this appeal, the Labadie plant's last NPDES permit was issued effective March 18, 1994, modified on or about September 2, 1994, and expired March 17, 1999. A copy of the Labadie plant's 1994 permit is attached hereto as Exhibit D.

15. Ameren initially filed a renewal application on or about September 16, 1998. At DNR's request, Ameren filed an updated renewal application on or about December 28, 2011.

16. Between March 1999, when the previous permit expired, and July 29, 2015, when DNR issued the revised Permit, DNR prepared draft revised permits in 1999, 2009, 2012, and 2013. DNR did not finalize any of those draft revised permits.

17. On January 2, 2015, DNR published the draft revised Permit for public comment. DNR held a public hearing on the draft revised Permit on February 17, 2015, and accepted written comments on the draft revised Permit until March 3, 2015. A copy of the January 2, 2015 draft revised Permit is attached hereto as Exhibit E.

18. DNR issued the final revised Permit on or about July 29, 2015, with an effective date of August 1, 2015.

19. On August 3, 2015, Counsel for the Sierra Club received from DNR via U.S. mail a copy of the Permit and a letter dated July 29, 2015 responding to the written comments submitted to DNR on behalf of the Sierra Club regarding the draft revised Permit. A copy of DNR's July 29, 2015 letter to Sierra Club's counsel is attached hereto as Exhibit F.

**COUNT I: THE PERMIT CONDITIONS FOR THE PLANT'S COOLING WATER DISCHARGE ARE UNLAWFUL.**

20. The Missouri Clean Water Law requires that water pollution discharge permits issued pursuant thereto comply with the federal Clean Water Act. §§ 644.011, 644.026.1(13), and 644.051, R.S.Mo.

21. The Clean Water Act, 33 U.S.C. §§ 1342(a)(1) and 1342(b)(1)(A), requires that permits for discharges of thermal pollution must include effluent limits that

(a) are at least based on the best available technology economically achievable ("BAT"), 33 U.S.C. § 1311(b)(2)(A), (F), and

(b) are more stringent than BAT if necessary to meet applicable water quality standards, 33 U.S.C. § 1311(b)(1)(C).

22. The Clean Water Act allows for permit limits that are less stringent than those described above if the discharger demonstrates that the otherwise-applicable limit is more stringent than necessary to assure the protection and propagation of a balanced, indigenous population of fish and wildlife, and that the alternate effluent limit will assure the protection and propagation of a balanced, indigenous population of fish and wildlife. 33 U.S.C. § 1326(a) ("Section 316(a) variance").

23. The State's water quality standard for temperature is ninety degrees Fahrenheit (90°F), and water contaminant sources may not lower or raise the temperature of a stream by more than five degrees Fahrenheit (5°F). 10 CSR 20-7.031(5)(D).

24. In 1975, DNR issued the Labadie plant its first NPDES permit. For the cooling water discharge, the 1975 permit set a temperature limit of 118 degrees Fahrenheit and required the plant to achieve off-stream cooling by July 1981 as required by federal effluent limitation regulations then in effect.

25. In 1977, DNR granted Ameren's Labadie plant a Section 316(a) variance, replacing the temperature limit and off-stream cooling requirement with a permit condition that allows the plant to add up to  $10.63 \times 10^9$  Btus/hour of heat to the cooling water. This "internal energy increase" limit was based on Ameren's calculation of the maximum amount of heat that the plant could add to the cooling water if all four units were operating at maximum design capacity.

26. DNR renewed the plant's Section 316(a) variance and included the same internal energy increase limit for the Labadie plant's cooling water discharge in the plant's 1982 and 1987 NPDES renewal permits.

27. In the Labadie plant's 1994 permit, DNR again renewed the plant's Section 316(a) variance but also raised the internal energy increase limit to  $11.16 \times 10^9$  Btus/hour at Ameren's request. Ameren asserted that the increased limit was still based on the maximum amount of heat that the plant could add to the cooling water if all four units were operating at maximum design capacity, but represented a better method of calculating the temperature increase.

28. In its 1998 and 2011 renewal applications, Ameren requested a renewal of its Section 316(a) variance for the Labadie plant's cooling water discharge.

29. In issuing the August 2015 revised Permit, DNR determined that Ameren did not meet its burden for the renewal of its Section 316(a) variance because it had not established that the otherwise-applicable limits are more stringent than necessary for the protection and propagation of a balanced, indigenous population of fish and wildlife.

30. DNR nevertheless retained the Section 316(a) variance limits in the 2015 Permit for at least the next ten years.

31. DNR explained its approach to the thermal limits for the cooling water discharge, Outfall #001, as follows:

At this time, the department does not have the information necessary to revoke the 316(a) variance. The department has determined that the appropriate path for updating the temperature requirements in this permit is to apply the previously granted 316(a) effluent limits as interim effluent limits, while Ameren does the required studies for the 316(b) rules in 40 CFR 122.21 and 40 CFR 125.94-98.

DNR Fact Sheet (Exhibit B), page 56.

32. DNR unlawfully renewed the Section 316(a) variance by maintaining the variance-based limits in the absence of the demonstration by Ameren required by Section 316(a) of the Clean Water Act.

33. Although the Permit will be in effect for five years (i.e., from August 1, 2015 through July 31, 2020), the Permit (Table A-1, Outfall #001) recites that the “interim effluent limitations” on the plant’s cooling water discharge will be in effect for ten years (i.e., from August 1, 2015 through July 31, 2025).

34. The Permit (D. Schedule of Compliance – Thermal Discharges) requires Ameren to “reestablish a biological monitoring program” and, if it obtains support for the reissuance of the

Section 316(a) variance, apply for the renewal of its Section 316(a) variance when it applies for the renewal of the current Permit.

35. The Permit (Table A-1) sets “interim effluent limitations” for the Labadie plant’s cooling water discharge that are identical to the limits in the prior Permit’s Section 316(a) variance – i.e.,  $11.16 \times 10^9$  Btus/hour.

36. By re-labeling the limits as “interim effluent limitations” pursuant to a “schedule of compliance,” DNR unlawfully pretended that it was not renewing the Labadie plant’s 316(a) variance.

37. DNR unlawfully issued the Permit with Section 316(a) variance limits in the absence of the demonstration necessary to support a variance, and directed Ameren to obtain the required documentation after the fact.

38. The Permit (Table A-2, Outfall #001) sets “final effluent limitations” for the Labadie plant’s cooling water discharge based on the state’s water quality standards – i.e., the temperature of the discharge may not be higher than 90°F and may not cause a temperature change greater than 5°F at the edge of the mixing zone.

39. The Permit (Table A-2) recites that these final effluent limitations will become effective on August 1, 2025 – i.e., five years after the Permit expires.

40. The Permit unlawfully sets “final effluent limitations” (Table A-2. Final Effluent Limitations) based solely on the state’s water quality standards without first determining technology-based limits reflecting the best available technology economically achievable for reducing the thermal pollution in the cooling water discharge, as required by the Clean Water Act.

41. The Permit's conditions applicable to Outfall #001, the cooling water discharge, violate the Clean Water Act because they do not reflect best available technology economically achievable, and because they provide Ameren with a Section 316(a) variance to which it is not entitled.

42. The Permit's conditions applicable to Outfall #001 are not prescribed or authorized by regulation or statute, and are therefore unlawful under § 640.016.1, R.S.Mo.

WHEREFORE, Petitioner Sierra Club respectfully requests that the Permit be remanded to DNR to revise the effluent limits for Outfall #001 to reflect the best available technology economically achievable and, if necessary, more stringent limits to ensure compliance with the state's water quality standards.

**COUNT II: THE PERMIT'S CONDITION FOR GROUNDWATER  
MONITORING AT THE PLANT'S ASH PONDS ARE UNLAWFUL.**

43. The Missouri Clean Water Law requires DNR to "protect, maintain, and improve the quality" of the waters of the state, "to provide that no waste be discharged into any waters of the state without first receiving the necessary treatment or other corrective action..." and "to provide for the prevention, abatement and control of new or existing water pollution." § 644.011, R.S.Mo.

44. The Clean Water Law makes it unlawful to pollute the waters of the state or to place "any water contaminant in a location where it is reasonably certain to cause pollution of any waters of the state." § 644.051.1, R.S.Mo.

45. The Clean Water Law requires DNR to determine whether a source is causing exceedances of water quality standards, and to deny a permit if the source will violate or appreciably affect water quality standards, unless the permit contains conditions to bring the source into compliance with an acceptable time schedule. § 644.051.4, R.S.Mo.



46. "Waters of the state" include subsurface water, also known as groundwater. § 644.016(27), R.S.Mo.

47. Missouri's water quality standards include provisions specifically designed to protect groundwater quality. 10 CSR 20-7.031(6).

48. The Clean Water Law authorizes DNR to investigate potential violations of water quality standards. § 644.056, R.S.Mo.

49. The Labadie plant disposes of its coal ash in two ponds onsite. One pond is unlined and was built in 1970. The other pond is lined and was built in 1993.

50. In its 1992 permit renewal application, Ameren reported to DNR that the unlined ash pond was leaking.

51. DNR did not include groundwater monitoring requirements in the Labadie plant's 1994 NPDES renewal permit.

52. In 2012, the Missouri Dam and Reservoir Safety Program, accompanied by DNR personnel, conducted a visual inspection of the ash ponds. The visual inspection revealed several wet zones along the toe of the embankment. Some of the wet zones appeared to be permanently wet, including one area where flowing seepage had historically been observed.

53. Residents around the Labadie plant rely on groundwater for drinking water.

54. The Permit marks the first time that DNR is requiring Ameren to conduct groundwater monitoring at the plant's ash ponds. Permit (Exhibit A), Special Condition 16.

55. The Permit's groundwater monitoring provisions are inadequate to satisfy DNR's duties to protect and abate pollution of groundwater.

56. While the draft Permit required Ameren to conduct groundwater monitoring on a quarterly basis, Draft Permit (Exhibit E), Special Condition 13(f)(4) and (g), the final Permit does not specify any frequency for the groundwater monitoring.

57. The Permit sets an unreasonably long period of time for Ameren to develop and implement a groundwater monitoring program. Under the Permit, Special Condition 16(e)(3), Ameren is not required to submit any groundwater quality data to DNR until April 2018 – six months after a comparable requirement in EPA regulations, 40 CFR § 257.90(b)(1).

WHEREFORE, Petitioner Sierra Club respectfully requests that the Permit be remanded to DNR to revise Special Condition 16 of the Permit to specify that groundwater monitoring be conducted on a quarterly basis and to revise the deadlines in Special Condition 16 to require the groundwater monitoring program to be set up and implemented more promptly, with data submitted to DNR by no later than October 2017.

Respectfully Submitted,

SIERRA CLUB

By:



Maxine I. Lipeles, Mo. Bar #32529  
Director, Interdisciplinary Environmental Clinic  
Washington University School of Law  
One Brookings Drive - Campus Box 1120  
St. Louis, MO 63130-4899  
Phone: (314) 935-5837  
Fax: (314) 935-5171  
[milipele@wustl.edu](mailto:milipele@wustl.edu)

Attorneys for Petitioner Sierra Club

Contact information for Petitioner Sierra Club per 1 CSR 15-3.350(a)(B):  
Sierra Club  
2818 Sutton Avenue  
St. Louis, MO 63143  
314-644-1011