

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA,
CENTRAL DIVISION

SIERRA CLUB, a foreign non-stock corporation,)	
)	
Plaintiff,)	
)	
v.)	COMPLAINT FOR DECLARATORY and
)	INJUNCTIVE RELIEF and FOR CIVIL
MIDAMERICAN ENERGY COMPANY, a)	PENALTIES PURSUANT TO 42 U.S.C. §
domestic corporation,)	7604.
)	
Defendant.)	Civil Action No. 07-195
)	
)	

Plaintiff Sierra Club, by their attorneys Plains Justice and Garvey, McNeil & McGillivray, S.C., complain of Defendant, MidAmerican Energy Company, as follows:

INTRODUCTION

1. This is a civil action for declaratory and injunctive relief and for the imposition of civil penalties, together with costs and fees, under the Clean Air Act (“the Act” or “CAA”), 42 U.S.C. §§ 7401 *et seq.*

2. Sierra Club seeks an order enjoining the Defendant, MidAmerican Energy Company (Defendant), from operating various emission units at Council Bluffs Energy Center for which Defendant failed to obtain Prevention of Significant Deterioration Construction Permits (Permits) or that Defendant constructed in violation of Permits, as described in the Violation Notice issued March 20, 2007, by the Iowa Department of Natural Resources (IDNR) to Defendant.

PARTIES

3. Sierra Club is a national non-profit organization formed in 1892 to enhance and improve the environment of the United States, including the State of Iowa. Sierra Club has members in every state and approximately 800,000 members nationwide.

4. Sierra Club's principle place of business in Iowa is 3839 Merle Hay Road, Suite 280, Des Moines, IA 50310. The Iowa Chapter of the Sierra Club has over 5000 members, including members in Pottawattamie County, where the emission units at issue in this complaint are located.

5. Sierra Club members live, work, and recreate in areas that are impacted by air pollution emissions from the coal-fired generating units and other emission units at issue in this case. Sierra Club members use Iowa's waters, which are impacted by the heavy metals that settle into surface waters from air pollution emissions from Defendant's Council Bluffs Energy Center. Sierra Club members are also beneficiaries of the public trust, in which Iowa's waterbodies (including those harmed by Council Bluffs Energy Center's air pollution emissions) are held for public use and enjoyment.

6. Sierra Club members will suffer increased health problems caused by the illegal air pollution from Council Bluffs Energy Center complained of herein. The U.S. Environmental Protection Agency's (EPA's) own research states conclusively that health threats from regulated air pollutants emitted by coal-fired power plants include visual impairment, reduced manual dexterity, poor learning ability, difficulty in performing complex tasks (all associated with elevated carbon monoxide levels); central nervous system damage in fetuses and children (caused by low doses of lead); increased incidence of acute respiratory disease in children (caused by frequent exposure to elevated levels of nitrogen dioxide); damaged lung tissue, reduced lung function, and sensitization of lungs to other irritants (caused by ground level ozone); negative effects on breathing and respiratory systems, aggravation of existing respiratory and cardiovascular disease, alterations in the body's

defense systems against foreign materials, damage to lung tissue, carcinogenesis, and premature death (caused by exposure to particulate matter, or soot); respiratory illness, alterations in the lungs' defenses, and aggravation of existing cardiac disease (caused by exposure to high concentrations of sulfur dioxide). All these impacts will be elevated by Defendants' failure to comply fully with the Clean Air Act, which is explicitly designed to protect Plaintiffs from such impacts.

7. The illegal air pollution emissions from Council Bluffs Energy Center also harm Sierra Club members' use and aesthetic enjoyment of the natural resources of the State of Iowa by reducing visibility, increasing smog, and further contaminating game fish with heavy metals such as mercury, which is deposited into surface waters for hundreds of miles around a coal-fired power plant and bio-accumulates in fish, then in humans who eat the fish. The health impacts of methylmercury consumption are well-documented. Methylmercury is formed from inorganic mercury by the action of anaerobic organisms that live in aquatic systems. For fetuses, infants, and children, the primary health effect of methylmercury is impaired neurological development. Methylmercury exposure in the womb, which can result from a mother's consumption of fish and shellfish that contain methylmercury, can adversely affect a baby's growing brain and nervous system. Impacts on cognitive thinking, memory, attention, language, and fine motor and visual spatial skills have been seen in children exposed to methylmercury in the womb. Other symptoms of methylmercury poisoning may include: impairment of the peripheral vision; disturbances in sensations ("pins and needles" feelings, usually in the hands, feet, and around the mouth); lack of coordination of movements; impairment of speech, hearing, walking; and muscle weakness.

8. The Defendant, MidAmerican Energy Company, is a domestic corporation in the State of Iowa that has majority ownership in four of the five jointly owned coal-fueled generating stations in Iowa. Defendant owns and operates Council Bluffs Energy Center, the site of the violations at issue in

this complaint. Defendant's principle place of business in Iowa is at 666 Grand Avenue, Des Moines, IA, 50306. Paul J. Leighton, 666 Grand Avenue, Des Moines, IA, 50306, is Defendant's Registered Agent in Iowa.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over the claims set forth in this complaint pursuant to 42 U.S.C. § 7604(a)(3), 28 U.S.C. § 1331, and 28 U.S.C. § 2201. The relief requested by Sierra Club is authorized by statute in 28 U.S.C. §§ 2201 and 2202, and 42 U.S.C. § 7604.

10. Venue is proper in this Court pursuant to 42 U.S.C. § 7604(c)(1) because Sierra Club's claims are for violations of an emission standard or limitation by Defendant's Council Bluffs Energy Center power plant, a stationary source located in the Southern District of Iowa judicial district.

NOTICE

11. The statute authorizing this claim, 42 U.S.C. § 7604, does not place any pre-filing notice requirement on claims brought under 42 U.S.C. § 7604(a)(3), for claims alleging construction of "any new or modified major emitting facility without a permit required under [CAA] part C... or part D of subchapter I... or who is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of any condition of such permit."

REGULATORY BACKGROUND

12. The objective of the Clean Air Act is "to protect and enhance the quality of the nation's air resources so as to promote the public health and welfare and the productive capacity of its population." Act § 101(b), 42 U.S.C. § 7401(b).

13. EPA has established at 40 C.F.R. § 52.21 a construction permitting process for new major sources. This program implements the Clean Air Act's Prevention of Significant Deterioration (PSD) program. 42 U.S.C. § 7470, *et seq.*

14. Pursuant to 42 U.S.C. § 7475(a) and 40 C.F.R. § 52.21(a)(iii), no major source of air

pollution can be constructed unless specific conditions are met, including the requirement that each emission source be subject to best available control technology and that the owner or operator has obtained a permit.

15. U.S. EPA has also established National Ambient Air Quality Standards (Air Quality Standards) to protect human health and the environment from seven “criteria” pollutants including sulfur dioxide (SO₂), nitrogen oxides (NO_x), carbon monoxide (CO), ozone, and particulate matter or soot. 42 U.S.C. § 7602(e); 40 C.F.R. Part 50. Areas where the ambient air quality meets the Air Quality Standards for a criteria pollutant are designated “in attainment” for that pollutant, or “in nonattainment”, as the case may be. 42 U.S.C. § 7407(d).

16. States are required to adopt plans to implement the Act (42 U.S.C. § 7410(a)). These plans, called State Implementation Plans or “SIPs”, contain enforceable regulations that are designed, among other things, to prevent the significant deterioration of air quality in attainment areas and to clean up the air in nonattainment areas to bring them back into attainment. Pursuant to the Act, states submit their proposed SIPs to EPA. If the proposed SIP meets the requirements of the Act, EPA approves the SIP and publishes it in the Code of Federal Regulations (CFR). After publication in CFR, the state SIP is federal law and can be enforced by the state, EPA, or citizens.

17. Iowa has a federally enforceable SIP, adopted at 40 C.F.R. § 52.820, and incorporated into the Iowa Administrative Code at 567 IAC Title II.

18. Iowa’s SIP includes a Prevention of Significant Deterioration program, including requirements that apply to the construction of any new major stationary source and to any project at an existing major stationary source in an area designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the Act. 567 IAC 33.3(2); 40 C.F.R. 52.21(a)(2).

**Count 1: Defendant Constructed Eleven New Emission Sources Without
Required Prevention of Significant Deterioration Construction Permits**

19. Clean Air Act § 165, 42 U.S.C. § 7475, requires that each new major stationary source receive a permit prior to beginning construction. This requirement is repeated in the regulations implementing the Clean Air Act's Prevention of Significant Deterioration program. 567 IAC 33.3(2)(b); 40 C.F.R. 52.21(a)(2)(iii).

20. Council Bluffs Energy Center meets the statutory definition of a major stationary source because it is a fossil fuel-fired steam electric plant with more than 250 million British thermal units (MMBTU) per hour of heat input and is therefore subject to Prevention of Significant Deterioration permitting requirements. 42 U.S.C. §§ 7475(a), 7479(1); see also 567 IAC 33.3(1) and MidAmerican Prevention of Significant Deterioration Permit Review Technical Support Document at 8.

21. Defendant constructed eleven (11) new emission sources at Council Bluffs Energy Center that require Prevention of Significant Deterioration construction permits. These sources are: Lime Day Bin Vent Filter; Lime Filter Separator Exhaust #2; Activated Carbon Silo Vent #1; Activated Carbon Silo Vent #2; Flyash Recycle Silo Vacuum System Exhaust #1; Flyash Recycle Silo Vacuum System Exhaust #2; Flyash Recycle Silo Vacuum System Exhaust #3; Flyash Recycle Silo Vent Filter; Water Treatment Area Lime Storage Silo A Vent Filter; Water Treatment Area Lime Storage Silo B Vent Filter; and Water Treatment Area Soda Ash Storage Silo Vent Filter.

22. Defendant did not obtain the required Permits for these sources before construction and still does not possess the required Permits.

23. This violation is also set forth in a Notice of Violation issued by the Iowa Department of Natural Resources (IDNR) to Defendant, dated March 20, 2007 (Violation Notice), which is incorporated herein by reference and attached.

Count 2: Defendant Is Operating Six New Emission Sources Without

Required Prevention of Significant Deterioration Construction Permits

24. Iowa's SIP and federal law require that any new major emission source achieve compliance with the terms of an approval to construct, i.e. a Prevention of Significant Deterioration construction permit, prior to operating that emission unit. 567 IAC 33.3(2); 40 C.F.R. 52.21(a)(2)(iii).

25. Defendant commenced operation of six (6) of the eleven (11) new unpermitted emission units as early as September 2006, violating state and federal law daily for nearly 8 months at the time this complaint was filed. The emission units that Defendant is already operating are: Lime Day Bin Vent Filter (started on 2/14/07); Activated Carbon Silo Vent #1 (started on 1/9/07); Activated Carbon Silo Vent #2 (started on 1/9/07); Water Treatment Area Lime Storage Silo A Vent Filter (started on 10/20/06); Water Treatment Area Lime Storage Silo B Vent Filter (started on 9/6/06); and Water Treatment Area Soda Ash Storage Silo Vent Filter (started on 9/6/06).

26. This violation is also set forth in the attached Violation Notice.

Count 3: Defendant Constructed Thirteen New Emission Sources in Violation of Terms

of Applicable Prevention of Significant Deterioration Construction Permits

27. Federal regulations state that any owner or operator who constructs a source not in accordance with the application submitted pursuant to the Act shall be subject to appropriate enforcement. 40 CFR 52.21(r)(1).

28. Defendant failed to construct thirteen (13) new emission sources, including the primary new CBEC4 boiler itself, in accordance with the application submitted pursuant to the Act or in compliance with the terms of the applicable Prevention of Significant Deterioration construction permits. The emission units that do not comply with Permit specifications are: CBEC #4 Boiler; Auxiliary Boiler; Emergency Generator; Fire Pump; Cooling Tower; Flyash/FGD Waste Vacuum System Exhauster #1; Flyash/FGD Waste Vacuum System Exhauster #2; Flyash/FGD Waste Vacuum

System Exhauster #3; Flyash/FGD Waste Storage Silo Vent Filter; Lime Storage Silo Vent Filter; Lime Filter Separator Vacuum Exhauster #1; Unit 4 East Coal Silos Dust Collection; and Urea Silos.

29. Unpermitted changes to the emission units listed at Paragraph 28 include the following increases in size and emission rates: (1) an increase in the Unit 4 boiler's exhaust flow rate from 2,256,500 Standard Cubic Feet per Minute (SCFM) to 2,343,400 SCFM; (2) an increase in boiler building height from 110 feet to 157 feet; (3) an increase in the cooling tower emission rate for particulate matter under 10 microns in diameter (PM₁₀) from 1.22 to 1.28 lb/hr; (4) an increase in the lime day bin's PM₁₀ emission rate from 0.024 to 0.03 lb/hr; (5) an increase in the lime storage silo's PM₁₀ emission rate from 0.024 to 0.03 lb/hr and an increase in the stack tip diameter from 3.2 to 4 inches; and (6) an increase in activated carbon silos' PM₁₀ emission rates from 0.024 to 0.03 lb/hr. Appendix C (Dispersion Modeling Info) to Public Notice of Draft PSD Construction Permit Modifications.

30. Defendant further failed to obtain a supplement to the relevant permits prior to changing the final specifications.

31. This violation is also set forth in the attached Violation Notice.

Count 4: Defendant Is Operating Twelve New Emission Sources Constructed in Violation of Terms of Applicable Prevention of Significant Deterioration Construction Permits

32. Federal regulations state that any owner or operator who operates a source not in accordance with the terms of any approval to construct shall be subject to appropriate enforcement. 40 CFR 52.21(r)(1).

32. Condition 3 of thirteen Prevention of Significant Deterioration Construction Permits issued to Defendant for CBEC4 states: "It shall be the responsibility of the owner to ensure that construction conforms to the final plans and specifications as submitted and that adequate operation and maintenance is provided to ensure that no condition of air pollution is created. A supplement to

this permit shall be obtained if the owner proposes changes to the final submitted plans and specifications.” Prevention of Significant Deterioration Construction Permits 03-A-425-P1, 03-A-426-P1, 03-A-427-P, 03-A-428-P, 03-A-429-P, 03-A-430-P1, 03-A-431-P1, 03-A-432-P1, 03-A-433-P1, 03-A-434-P1, 03-A-435-P, 03-A-440-P1, and 03-A-442-P1.

33. Defendant failed to obtain required supplements approving changes to the final specifications of the following emission units prior to commencing operation: CBEC #4 Boiler (started on 1/27/07); Auxiliary Boiler (started on 8/3/06); Emergency Generator (started on 12/5/06); Fire Pump (started on 4/13/06); Cooling Tower (started on 1/6/07); Flyash/FGD Waste Vacuum System Exhauster #1 (started on 2/22/07); Flyash/FGD Waste Vacuum System Exhauster #2 (started on 2/22/07); Flyash/FGD Waste Vacuum System Exhauster #3 (started on 2/22/07); Flyash/FGD Waste Storage Silo Vent Filter (started on 2/22/07); Lime Storage Silo Vent Filter (started on 3/9/07); Unit 4 East Coal Silos Dust Collection (started on 2/19/04); and Urea Silos (2/20/04). Two of these violations have persisted for more than three years with Defendant’s full knowledge.

34. This violation is also set forth in the attached Violation Notice.

Count 5: Defendant Failed to Obtain Required Prevention of Significant Deterioration

Construction Permits Prior to Commencing Construction of New Sources

35. Iowa’s SIP states that, except in case of certain exemptions that do not apply here, “no person shall construct, install, reconstruct or alter any equipment, control equipment or anaerobic lagoon without first obtaining a construction permit, or conditional permit, or permit pursuant to 22.8(455B), or permits required pursuant to 22.4(455B) and 22.5(455B) as required in this subrule. A permit shall be obtained prior to the initiation of construction, installation or alteration of any portion of the stationary source or anaerobic lagoon.” 567 IAC 22.1(1).

36. Defendant constructed eleven new emission sources without obtaining the required construction permits, and has commenced operation of six of these unpermitted sources, as detailed in

Counts 4 and 5.

37. This violation is also set forth in the attached Violation Notice at 2, 3.

Count 6: Defendant Failed to Submit All Final Plans and Specifications for New Emission Units and Respective Control Equipment to IDNR Within 30 Days of Start of Construction

38. Condition 14 of thirteen Prevention of Significant Deterioration Construction Permits issued to Defendant for CBEC emission units states: "Submit all final plans and specifications for these emission units and its respective control equipment to the Department within thirty (30) days of the start of construction. These final plans and specifications will be made available in the Records Center of the Air Quality Bureau." Prevention of Significant Deterioration Construction Permits 03-A-425-P1, 03-A-426-P1, 03-A-427-P, 03-A-428-P, 03-A-429-P, 03-A-430-P1, 03-A-431-P1, 03-A-432-P1, 03-A-433-P1, 03-A-434-P1, 03-A-435-P, 03-A-440-P1, and 03-A-442-P1.

39. Defendant failed to submit final plans and specifications for the permitted emission units and their respective control equipment to the Department until after those units were constructed and twelve of the thirteen were operational.

40. Defendant filed some plans late, but even those plans failed to meet the requirements of the relevant Permits.

41. This violation is also set forth in the attached Violation Notice at 2, 3.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

A) Declare that Defendant has knowingly violated and continues to violate the Clean Air Act as described above.

B) Enjoin Defendant from violating the CAA, including the terms of any applicable Prevention of Significant Deterioration construction permitting requirement at the CBEC power plant;

C) Order Defendant to take steps to comply fully with existing applicable Prevention of

Significant Deterioration Construction Permits;

D) Order Defendant to acquire Prevention of Significant Deterioration Construction Permits for all emission units for which Defendant has not obtained Permits;

E) Order Defendant to offset its unlawful pollution and to disgorge any profits made due to violations of the Clean Air Act alleged herein;

F) Order Defendant to pay a fine of up to \$32,500.00 per day for each violation of the Clean Air Act. 42 U.S.C. § 7604(g); 40 C.F.R. § 19.4.

G) Order Defendant to pay \$100,000 for a beneficial mitigation project, that is consistent with the Clean Air Act and enhances public health and the environment. 42 U.S.C. § 7604(g)(2);

H) Award Plaintiff its costs and reasonable attorney and expert witness fees. 42 U.S.C. § 7604(d);

I) Retain jurisdiction over this action to ensure compliance with the Court's decree; and

J) Grant all other relief the Court deems just and proper.

JURY PLEA

Plaintiff requests a jury trial on all issues permitted to be tried to a jury.

Dated this ____ day of May, 2007.

Plains Justice

/s/ _____
Carrie L. La Seur LI0018855
for
Plains Justice
319 3rd St. NW

Mount Vernon, IA 52314
Tel. 319.560.4729
Email: claseur@plainsjustice.org

/s/ _____
David C. Bender
Pro Hac Vice (Wis. Bar No. 1046102)
for
Garvey, McNeil & McGillivray
634 W. Main Street, Suite 101
Madison, WI 53703
Tel. 608.256.1003
Email: bender@gmmattorneys.com

ATTORNEYS FOR SIERRA CLUB

Cc (via certified mail):

Paul J. Leighton
Registered Agent
MidAmerican Energy Company
666 Grand Avenue
Des Moines, IA 50306

John Askew, Regional Administrator
U.S. Environmental Protection Agency
US EPA Region 7
901 N. 5th Street
Kansas City, KS 66101

Steven Brewer
MidAmerican Energy Company
7215 Navajo Street
Council Bluffs, IA 51501

Hon. Chester Culver, Governor of Iowa
State Capitol
1007 E. Grand Ave.
Des Moines, IA 50319

Michael Leavitt, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Richard Leopold, Director
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, IA 50319-0034