UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

OCT 14 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Warner Baxter
President and CEO
AmerenUE
1901 Chouteau Avenue
St. Louis, Missouri 63103

Re: Notice of Violation under Section 113(a)(1) of the Clean Air Act

Dear Mr. Baxter:

Enclosed is an amended Notice of Violation (NOV) issued to AmerenUE under Section 113(a)(1) of the Clean Air Act, 42 U.S.C. § 7413(a)(1). This amended NOV supersedes the one previously issued to AmerenUE on January 26, 2010. In the NOV, the United States Environmental Protection Agency (EPA) notifies AmerenUE of violations of pre-construction permitting and Title V requirements of the Clean Air Act (Act) and the Missouri State Implementation Plan at its Labadie Plant near Labadie, Missouri; Meramec Plant in St. Louis, Missouri; Rush Island Plant near Festus, Missouri; and Sioux Plant near West Alton, Missouri.

This NOV does not constitute a waiver of EPA authority to pursue an enforcement action under Section 113 of the Act, or of state or local authority to pursue an enforcement action under applicable state and local statutes, for any violation addressed herein. The NOV does not affect AmerenUE's responsibility to comply with any applicable federal, state, or local regulations. EPA will consider its enforcement options under Section 113 of the Act in further addressing these matters.

RECYCLE
PAPER CONTAINS RECYCLED FIBERS

If AmerenUE has any questions or wishes to discuss the violations identified in this NOV, please contact Lisa Hanlon, Air Permitting and Compliance Branch at (913) 551-7599, or Alex Chen, Office of Regional Counsel, at (913) 551-7962.

Sincerely,

Becky Weber

Becky Weber
Director
Air and Waste Management Division

Enclosure

cc w/encl: Sarah Toevs Sullivan, Esq.
Bryan Cave LLP

Susan B. Knowles, Esq.
Ameren Corporation

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

10 OCT 14 PM 1:11
ENVIRONMENTAL PROTECTION AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:

AmerenUE	)	**AMENDED NOTICE OF VIOLATION**
Proceedings Pursuant to Section 113 of the Clean Air Act, 42 U.S.C. §§ 7413	)	

AMENDED NOTICE OF VIOLATION

This Amended Notice of Violation (NOV) is issued to AmerenUE, for violations of the Clean Air Act (CAA or Act) at its Labadie Plant near Labadie, Missouri; Meramec Plant in St. Louis, Missouri; Rush Island Plant near Festus, Missouri; and Sioux Plant near West Alton, Missouri. Specifically, AmerenUE has violated Title I of the CAA by failing to comply with the Prevention of Significant Deterioration (PSD) requirements of the CAA and the Missouri State Implementation Plan (SIP); and the Nonattainment New Source Review (NNSR) requirements of the CAA and the Missouri SIP. AmerenUE has also violated Title V of the CAA by failing to address the PSD provisions of the CAA as applicable requirements in its Title V permits for the Labadie, Meramec, Rush Island, and Sioux Plants.

This NOV is issued pursuant to Section 113 of the Act, as amended, 42 U.S.C. § 7413. The authority to issue this Amended NOV has been delegated to the Regional Administrator of the United States Environmental Protection Agency (EPA), Region 7 and further re-delegated to the Director, Air and Waste Management Division, EPA, Region 7.

STATUTORY AND REGULATORY BACKGROUND

1. The Clean Air Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

A. The National Ambient Air Quality Standards.

2. Section 108(a) of the Act, 42 U.S.C. § 7408(a), requires the Administrator of EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare, and the presence of which results from numerous or diverse mobile or stationary sources. For each such "criteria" pollutant, Section 109 of the Act, 42 U.S.C. § 7409,

requires EPA to promulgate national ambient air quality standards ("NAAQS") requisite to protect the public health and welfare.

3. Pursuant to Sections 108 and 109, 42 U.S.C. §§ 7408 and 7409, EPA has identified sulfur dioxide (SO_2), nitrogen dioxide (NO_2), fine particulate matter ($PM_{2.5}$), particulate matter, (PM or PM_{10}) and ozone as criteria pollutants, and has promulgated NAAQS for such pollutants. See 40 C.F.R. §§ 50.4, 50.5, 50.6, 50.7, 50.11, and 50.15.

4. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is termed an "attainment" area with respect to such pollutant. An area that does not meet the NAAQS for a particular pollutant is termed a "nonattainment" area with respect to such pollutant.

5. An area that cannot be classified as either "attainment" or "nonattainment" with respect to a particular pollutant due to insufficient data is termed "unclassifiable" with respect to such pollutant.

6. At all times relevant to this NOV, Franklin County, Missouri, where the Labadie Plant is located, has been classified as attainment or unclassifiable with respect to SO_2 and NO_2.

7. At all times relevant to this NOV, St. Louis County, Missouri, where the Meramec Plant is located, has been classified as attainment or unclassifiable with respect to SO_2 and NO_2.

8. At all times relevant to this NOV, Jefferson County, Missouri, where the Rush Island Plant is located, has been classified as attainment or unclassifiable with respect to SO_2 and NO_2.

9. At all times relevant to this NOV, St. Charles County, Missouri, where the Sioux Plant is located, has been classified as attainment or unclassifiable with respect to SO_2 and NO_2.

10. From November 1990 until 1998, Franklin, St. Louis, Jefferson and St. Charles Counties were all classified as nonattainment for the ozone standard. From 1998 until May 2003, these counties were classified as nonattainment for the 1-hour ozone standard. Since June 2004, these counties have been classified as nonattainment for the 8-hour ozone standard.

11. At all times relevant to this NOV, Franklin, St. Louis, Jefferson and St. Charles Counties were all classified as attainment or unclassifiable for Total Suspended Particulates. Since April 2005, all four counties have been classified as nonattainment for the $PM_{2.5}$ annual standard and as attainment or unclassifiable for the $PM_{2.5}$ 24-hour standard.

B. The Prevention of Significant Deterioration Program

12. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration of air quality in those areas designated as either attainment

or unclassifiable for purposes of meeting the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources, and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. 42 U.S.C. § 7470. These provisions are referred to herein as the "PSD program."

13. Section 165(a) of the Act, 42 U.S.C. § 7475(a), among other things, prohibits the construction and operation of a "major emitting facility" in an area designated as attainment or unclassifiable unless a permit has been issued that comports with the requirements of Section 165 and the facility employs the best available control technology (BACT) for each pollutant subject to regulation under the Act that is emitted from the facility.

14. Section 169(1) of the Act, 42 U.S.C. § 7479(1), designates fossil-fuel fired steam electric plants of more than two hundred and fifty million British thermal units per hour heat input to be "major emitting facilities."

15. Section 169(2)(C) of the Act, 42 U.S.C. § 7479(2)(C), defines "construction" to include "modification" (as defined in Section 111(a) of the Act). "Modification" is defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a), to be "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted."

16. Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, require each state to adopt a state implementation plan (SIP) that contains emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality in areas designated as attainment or unclassifiable.

17. A state may comply with Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, by having its own PSD regulations, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166, approved by EPA as part of its SIP. If a state does not have a PSD program that has been approved by EPA and incorporated into its SIP, the federal PSD regulations set forth at 40 C.F.R. § 52.21 may be incorporated by reference into the SIP. 40 C.F.R. § 52.21(a).

18. On May 31, 1972, EPA approved the initial State of Missouri SIP. This SIP did not include any PSD or NNSR provisions. Missouri later revised its regulations and submitted for approval 10 Code of State Regulations (CSR) 10-6.060 to address PSD. This revision was approved by EPA on June 22, 1982. Since then, the Missouri SIP has been amended and approved on February 10, 1986 (51 Fed. Reg. 4916); July 31, 1989 (54 Fed. Reg. 31,524); March 5, 1991 (56 Fed. Reg. 9172); February 29, 1996 (61 Fed. Reg. 7714); and December 22, 1998 (63 Fed. Reg. 70665). On February 25, 2005, Missouri revised its regulations to incorporate by reference 40 C.F.R. § 52.21. EPA approved this revision into the Missouri SIP on June 27, 2006.

19. The regulations appearing at 10 CSR 10-6.060 were incorporated into and part of the Missouri SIP at the time of the major modifications alleged in this NOV. All citations to the

PSD regulations herein refer to the provisions of the Missouri SIP as applicable at the time of the major modifications alleged herein.

20. 10 CSR 10-6.060(1)(C) states that "No owner or operator shall commence construction or modification of any installation subject to this rule, begin operation after that construction or modification, or begin operation of any installation which has been shut down longer than five (5) years without first obtaining a permit from the permitting authority under this rule." This provision is also included in each of AmerenUE's operating permits for its Labadie, Meramec, Rush Island and Sioux Plants.

21. 10 CSR 10-6.060 applies to installations throughout Missouri with the potential to emit any pollutant in an amount equal to or greater than the *de minimis* levels. 10 CSR 10-6.060(1)(B). The *de minimis* level of both sulfur dioxide and nitrogen dioxide is less than or equal to 40 tons per year. 10 CSR 10-6.020(2)(D)4. and (3)(A) Table 1.

22. "Modification" is defined as any physical change, or change in method of operation of, a source operation or attendant air pollution control equipment which would cause an increase in potential emissions of any air pollutant emitted by the source operation. 10 CSR 10-6.020(2)(M)10.

23. The regulations at 10 CSR 10-6.060(6) state that an applicant for a permit to modify a stationary source is required to submit all information necessary to allow the permitting authority to perform any analysis or make any determination required in order to issue the appropriate permit. 10 CSR 10-6.060(6)(B).

24. Any owner or operator who constructs, modifies, or operates an installation not in accordance with the application submitted and the permit issued, or any owner or operator of an installation who commences construction or modification after May 13, 1982 without meeting the requirements of this rule, is in violation of this rule. 10 CSR 10-6.060(6)(E)3.

25. Applicants for permits for construction or major modification of installations which are in a category named in 10 CSR 10-6.020(3)(B), Table 2 and have the potential to emit one hundred tons per year or more of any pollutant shall adhere to the requirements of 10 CSR 10-6.060(8) in addition to the requirements of 10 CSR 10-6.060(6). 10 CSR 10-6.060(8)(A)1. Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input are one of the categories named in 10 CSR 10-6.020(3)(B), Table 2.

26. "Major modification" is defined as any physical change or change in the method of operation at an installation or in the attendant air pollution control equipment that would result in a significant net emissions increase of any pollutant. 10 CSR 10-6.020(2)(M)3.

27. Prior to June 27, 2006, a net "emissions increase" with respect to any pollutant subject to regulation under the Act, means a condition when the increases in pollutant emissions at an installation exceed the decreases of the same pollutant. 10 CSR 10-6.020(2)(N)2. In determining whether a net emissions increase has occurred, all creditable increases and decreases

of actual emissions shall be included occurring at the installation since the most recent permit was issued to the installation pursuant to 10 CSR 10-6.060(1)(C). Id. If no permit has been issued, then the source shall include all increase and decreases that have occurred using the criteria outlined in 10 CSR 10-6.060(2)(N)2.A.(I)-(II) in determining whether a net emissions increase has occurred. Id.

28. "Significant" means a net emissions increase or potential to emit at a rate equal to or exceeding the *de minimis* levels or create an ambient air concentration at a level greater than those listed in 10 CSR 10-6.060(11)(D), Table 4, or any emissions rate or net emissions increase associated with an installation subject to 10 CSR 10-6.060 which would be constructed within 10 kilometers of a Class I area and have an air quality impact on the area equal to or greater than one microgram per cubic meter (1 ug/m^3)(twenty-four hour average). 10 CSR 10-6.020(2)(S)10.

29. Prior to June 27, 2006, any installation subject to 10 CSR 10-6.060(8) shall apply best available control technology (BACT) for each pollutant that it would emit in a significant amount. In addition, each application for a permit for construction or major modification must include, among other things, an analysis of ambient air quality and the impact of the construction or major modification on air quality, visibility, soils, and vegetation. 10 CSR 10-6.060(8)(B), (C).

30. After June 27, 2006, 10 CSR 10-6.060(8) incorporates by reference all of the subsections of 40 C.F.R. § 52.21, other than subsections (a), (q), (s), and (u).

a. The PSD regulations set forth in 40 C.F.R. § 52.21 apply to any "major stationary source" that intends to construct a "major modification" in an attainment or unclassifiable area. 40 C.F.R. § 52.21(i)(2).

b. Under the PSD regulations, "major stationary source" is defined to include, *inter alia*, fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, which emit or have the potential to emit one hundred tons per year or more of any regulated air pollutant. 40 C.F.R. § 52.21(b)(1)(i)(a).

c. Under the PSD regulations, "major modification" is defined at 40 C.F.R. § 52.21(b)(2)(i) as any physical change or change in the method of operation of a major stationary source that would result in a significant net emission increase of any pollutant subject to regulation under the Act.

d. Under the PSD regulations, "net emissions increase" means the amount by which the sum of the following exceeds zero: "[a]ny increase in actual emissions from a particular physical change or change in method of operation at a stationary source" and "[a]ny other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable." 40 C.F.R. § 52.21(b)(3)(i).

e. Under the PSD regulations, a "significant" net emissions increase means an increase in the rate of emissions that would equal or exceed any of the following rates for the following pollutants: 40 tons per year of NO_x, and 40 tons per year of SO_2. 40 C.F.R. § 52.21(b)(23)(i).

f. The PSD regulations define "actual emissions" as the average rate, in tons per year, at which the unit "actually emitted the pollutant during a 24-month period which precedes the particular date" and which is representative of normal operation. 40 C.F.R. § 52.21(b)(21)(i)-(ii). In addition, for any emissions unit that "has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date." 40 C.F.R. § 52.21(b)(21)(iv).

g. Under the PSD regulations, "construction" means "any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit)" that "would result in a change in actual emissions." 40 C.F.R. § 52.21(b)(8); *see also* 42 U.S.C. § 7479(2)(C) ("construction" includes the "modification" (as defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a)) of any source or facility).

h. If a source is a major stationary source in an attainment or unclassifiable area planning to construct a major modification under the foregoing definitions, then it is subject to the requirements of paragraphs (j) through (r) of 40 C.F.R. § 52.21.

i. A major stationary source subject to the requirements of paragraphs (j) through (r) must, among other things, perform an analysis of source impacts, perform air quality modeling and analysis, apply BACT, and allow for meaningful public participation in the process. 40 C.F.R. § 52.21(j)-(r).

j. No major stationary source to which the requirements of paragraphs (j) through (r) of 40 C.F.R. § 52.21 apply shall begin actual construction of a major modification without a permit which states that the stationary source or modification will meet those requirements (a "PSD permit"). 40 C.F.R. § 52.21(i)(1).

k. Any owner or operator of a source or modification subject to 40 C.F.R. § 52.21 who constructs or operates a source not in accordance with a PSD application or commences construction without applying for and receiving approval thereunder is subject to an enforcement action. 40 C.F.R. § 52.21(r)(1).

C. The Non-Attainment New Source Review Program

31. Part D of Title I of the Act, 42 U.S.C. §§ 7501-7515, sets forth provisions for New Source Review (NSR) requirements for areas designated as being in nonattainment with the NAAQS standards. These provisions are referred to herein as the "Nonattainment NSR"

program. The Nonattainment NSR program is intended to reduce emissions of air pollutants in areas that have not attained NAAQS so that the areas make progress towards meeting the NAAQS. Prior to the effective date of the 1990 Clean Air Act Amendments, P. Law 101-549, effective November 15, 1990, the Nonattainment NSR provisions were set forth at 42 U.S.C. §§ 7501-7508.

32. Under Section 172(c)(5) of the Nonattainment NSR provisions of the Act, 42 U.S.C. § 7502(c)(5), each state is required to adopt Nonattainment NSR SIP rules that include provisions to require permits that conform to the requirements of Section 173 of the Act, 42 U.S.C. § 7503, for the construction and operation of modified major stationary sources within nonattainment areas. Section 173 of the Act, in turn, sets forth a series of minimum requirements for the issuance of permits for major modifications to major stationary sources within nonattainment areas. 42 U.S.C. § 7503.

33. Section 173(a) of the Act, 42 U.S.C. 7503(a), provides that construction and operating permits may be issued if, *inter alia*:

> "(a) sufficient offsetting emission reductions have been obtained to reduce existing emissions to the point where reasonable further progress towards meeting the national ambient air quality standards is maintained; and (b) the pollution controls to be employed will reduce emissions to the "lowest achievable emission rate."

34. Section 182(f) of the Act, 42 U.S.C. 7511a(f), enacted as part of the Clean Air Amendments of 1990, set forth additional requirements to take effect no later than November 15, 1992, regarding the construction and operation of new or modified major stationary sources of NO_x located within nonattainment areas for ozone. Section 182(f) defines NO_x as a pollutant that must be treated as a contributor to the criteria pollutant ozone in an ozone nonattainment area. 42 U.S.C. § 7511a(f).

35. For the purposes of Section 182, a "major stationary source" of NO_x is one that emits or has the potential to emit 100 tons per year or more of a regulated pollutant. 40 C.F.R. § 51.165(a)(1)(iv)(A)(*1*). A "significant" net emissions increase of NO_x is one that would result in increased emissions of 40 tons per year or more. A "significant" net emissions increase of ozone is one that would result in increased emissions of 40 tons per year or more of NO_x. Id. § 51.165(a)(1)(x)(A).

36. On May 31, 1972, EPA approved the initial State of Missouri SIP. This SIP did not include any PSD or NNSR provisions. On May 9, 1980, EPA conditionally approved Missouri's SIP revisions pertaining to the review and permitting of new or modified sources of air pollutant emissions in nonattainment areas, see 45 Fed. Reg. 30,626, and later fully approved this revision. See 46 Fed. Reg. 31,011 (June 12, 1981).

37. The Missouri SIP, 10 CSR 10-6.060(7), which applies to sources in nonattainment areas, states that a permit shall not be issued for the construction or major modification of an

installation with the potential to emit a nonattainment pollutant, unless certain requirements, in addition to those in 10 CSR 10-6.060(6), are met. These requirements include, among other things, ensuring that by the time the source is to commence operation, it has obtained sufficient offsetting emissions reductions to ensure that annual incremental reductions in emissions of the nonattainment pollutant will meet the applicable national ambient air quality standard by the applicable date; and installing and operating pollution control equipment or processes which meet the lowest achievable emission rate (LAER) for the nonattainment pollutant.

38. The Missouri SIP, 10 CSR 10-6.060(7), states that any significant increase due to increases in NO_x shall also be considered significant for ozone. A significant increase of NO_x is one that would result in increased emissions of 40 tons per year or more. 10 CSR 10-6.060(2)(S)10.

D. Title V Program

39. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), provides that no source may operate without a Title V permit after the effective date of any permit program approved or promulgated under Title V of the Act. EPA first promulgated regulations governing state operating permit programs on July 21, 1992. See 57 Fed. Reg. 32295; 40 C.F.R. Part 70. EPA promulgated regulations governing the Federal operating permit program on July 1, 1996. See 61 Fed. Reg. 34228; 40 C.F.R. Part 71.

40. Section 503 of the CAA, 42 U.S.C. § 7661b, sets forth the requirement to submit a timely, accurate, and complete application for a permit, including information required to be submitted with the application.

41. Section 504(a) of the CAA, 42 U.S.C. § 7661c(a), requires that each Title V permit include enforceable emission limitations and standards, a schedule of compliance, and other conditions necessary to assure compliance with applicable requirements, including those contained in a state implementation plan. 42 U.S.C. § 7661c(a).

42. Missouri's program under subchapter V of the CAA was granted final approval on May 14, 1997. 62 Fed. Reg. 26,405. These regulations are currently codified at 10 CSR 10-6.065 and are federally enforceable pursuant to Section 113(a)(3) and 10 CSR 10-6.065(6)(C)2.

43. The regulations at 40 C.F.R. § 70.1(b) provide that: "All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements." See also 10 CSR 10-6.065(3).

44. The regulations at 40 C.F.R § 70.2 define "applicable requirement" to include "(1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including revisions to that plan promulgated in part 52 of this chapter . . ." See also 10 CSR 10-6.020(2)(A)23.

45. The regulations at 40 C.F.R. § 70.7(b) provide that no source subject to 40 C.F.R. Part 70 requirements may operate without a permit as specified in the Act. See also 10 CSR 10-6.065(1)(D)1.

46. The regulations at 40 C.F.R. § 70.5(a) and (c) require timely and complete permit applications for Title V permits with required information that must be submitted and 40 C.F.R. § 70.6 specifies required permit content. See also 10-6.065(6)(B)1.A(II).

47. The regulations at 40 C.F.R. § 70.5(b) provide that: "Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information." See also 10 CSR 10-6.065(6)(B)2.

48. The regulations at 10 CSR 10-6.065(6)(C)3.E. state that all operating permits must require the source to certify compliance with the terms and conditions of the permit to EPA and MDNR on an annual basis.

FACTUAL BACKRGOUND

49. AmerenUE is a Missouri corporation, with its headquarters located in St. Louis, Missouri.

50. AmerenUE is a "person," as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

51. At all times relevant to this Notice, AmerenUE was the owner and/or operator of the following facilities in Missouri: Labadie Plant (located near Labadie, in Franklin County), Meramec Plant (located near St. Louis, in St. Louis County), Rush Island Plant (located near Festus, in Jefferson County), and Sioux Plant (located near West Alton, in St. Charles County).

52. All four of these facilities have the potential to emit more than 100 tons per year each of nitrogen oxides, sulfur dioxide, and particulate matter. Each facility is also a fossil-fuel-fired steam electric plant of more than 250 million British thermal units (BTU) per hour heat input. Therefore, each facility is a "major emitting facility" within the meaning of 42 U.S.C. § 7479(1) and a "major stationary source" within the meaning of 40 C.F.R. §§ 52.21(b)(1)(i)(a) and 51.165(a)(1)(iv)(A)(*1*). Each facility is also an installation subject to the requirements of 10 CSR 10-6.060(6).

53. AmerenUE's Labadie Plant consists of four units, each of which has a heat input greater than 250 million BTU per hour. The first unit began operations in 1970, and the subsequent units were added between 1970 and 1973. Between 2001 and 2003, various physical changes or changes in the method of operation were made at the Labadie Plant. These changes include, but are not limited to:

Labadie Unit 1 2002 Projects
- replaced economizer
- replaced air preheater rotor
- associated turbine projects

Labadie Unit 2 2001 Projects
- replaced economizer
- replaced air preheater rotor
- associated turbine projects

Labadie Unit 3 2003 Projects
- replaced economizer
- replaced air preheater
- associated turbine projects

Labadie Unit 4 2002 Projects
- replaced economizer
- replaced air preheater rotor
- underwent condenser retubing
- associated turbine projects

54. AmerenUE's Meramec Plant consists of four units, each of which has a heat input greater than 250 million BTU per hour. The first unit began operations in 1953, and the subsequent units were added between 1953 and 1961. Between 1995 and 2005, various physical changes or changes in the method of operation were made at the Meramec Plant. These changes include, but are not limited to:

Meramec Unit 1 2000-2001 Projects
- replaced primary superheater and other components

Meramec Unit 1 2004 Projects
- replaced secondary superheater
- replaced air heater
- replaced economizer

Meramec Unit 2 2000-2001 Projects
- replaced primary superheater and other components

Meramec Unit 2 2004 Projects
- replaced secondary superheater
- replaced economizer sidewall

Meramec Unit 3 2000 Projects
• replaced feed water heater
• underwent condenser retubing
• installed new electrostatic precipitator ducts

Meramec Unit 3 2002-2003 Projects
• upgraded coal mill

Meramec Unit 4 1995-1996 Projects
• underwent boiler modifications

Meramec Unit 4 2001-2002 Projects
• upgraded coal mill
• replaced feed water heater
• underwent condenser retubing

Meramec Unit 4 2005 Projects
• replaced economizer
• associated turbine projects

55. AmerenUE's Rush Island Plant consists of two units, each of which has a heat input greater than 250 million BTU per hour. The first unit began operations in 1976 and the second unit began operations in 1977. Between 2001 and 2007, various physical changes or changes in the method of operation were made at the Rush Island Plant. These changes include, but are not limited to:

Rush Island Unit 1 2001-2002 Projects
• replaced superheater pendant
• underwent condenser retubing
• replaced ID (induced draft) fan
• associated turbine projects

Rush Island Unit 1 2007 Projects
• replaced economizer, reheater, and lower slope tubes
• replaced air preheater
• associated turbine projects

Rush Island Unit 2 2004 Projects
• modified superheater
• associated turbine projects

Rush Island Unit 2 2010 Projects
• replaced economizer and reheater

56. AmerenUE's Sioux Plant consists of two units, each of which has a heat input greater than 250 million BTU per hour. The first unit began operations in 1967 and the second unit began operations in 1968. Between 2000 and 2004, various physical changes or changes in the method of operation were made at the Sioux Plant. These changes include, but are not limited to:

Sioux Unit 1 2001 Projects
- replaced economizer

Sioux Unit 1 2003 Projects
- modified secondary superheater
- associated turbine projects

Sioux Unit 2 2000 Projects
- replaced economizer

Sioux Unit 2 2004 Projects
- modified secondary superheater
- associated turbine projects

57. The operating permits issued to AmerenUE by the Missouri Department of Natural Resources for its Labadie, Meramec, Rush Island and Sioux Plants all require that AmerenUE comply with 10 C.S.R. 10-6.060; specifically, they state that AmerenUE "shall not commence construction, modification, or major modification of any installation subject to this rule, begin operation after that construction, modification, or major modification, or begin operation of any installation which has been shut down longer than five (5) years without first obtaining a permit from the permitting authority."

FINDING OF VIOLATIONS

58. The activities described in Paragraphs 53 through 56, are major modifications that caused a significant net emissions increase of SO_2, NO_x, PM, ozone, and/or $PM_{2.5}$ within the meaning of the Clean Air Act and 10 CSR 10-6.060. AmerenUE failed to apply for or obtain a PSD or NNSR permit prior to commencing construction of such activities. AmerenUE violated and continues to violate Sections 165(a) and 173 of the Act, 42 U.S.C. §§ 7475(a) and 7503, and 10 CSR 10-6.060 by commencing construction of, and continuing to operate, a major modification at the Labadie, Meramec, Rush Island and Sioux Plants without applying for and obtaining a PSD/NNSR permit. 42 U.S.C. § 7475(a); 10 CSR 10-6.060; and 40 CFR §§ 52.21(i)(1) and 52.21(r)(1). AmerenUE did not install BACT or LAER for the control of SO_2, NO_x, PM, ozone and/or $PM_{2.5}$ prior to commencing construction of such activities, and continues to operate those plants without BACT or LAER. AmerenUE violated and continues to violate Section 165(a) and 173 of the Act, 42 U.S.C. §§ 7475(a) and 7503, and 10 CSR 10-6.060 by failing to install and operate BACT or LAER for such pollutants. 42 U.S.C. § 7475(a); 42 U.S.C. § 7503; 10 CSR 10-6.060.

59. AmerenUE has failed to submit an accurate and complete Title V permit application for the Labadie, Meramec, Rush Island, and Sioux Plants with information pertaining to the modifications identified in Paragraphs 53 through 56 and with information concerning all applicable requirements, including, but not limited to, the requirement to apply, install, and operate BACT or LAER for the control of SO_2, NO_x, PM, ozone and/or $PM_{2.5}$ at the plants. AmerenUE also failed to supplement or correct the Title V permit applications for these plants in violation of Sections 502, 503, and 504 of the Act, 42 U.S.C. §§ 7661a, 7661b and 7661c; the regulations at 40 C.F.R. Part 70, including, but not limited to, 40 C.F.R. §§ 70.1(b), 70.5, 70.6, and 70.7(b); and the Missouri Title V provisions at 10 CSR 10-6.065.

60. The activities described in Paragraphs 53 through 56 are major modifications within the meaning of 10 CSR 10-6.060, for which AmerenUE commenced without first obtaining a permit from the permitting authority. By doing so, AmerenUE violated the terms of its Title V permits for the Labadie, Meramec, Rush Island and Sioux Plants.

61. Since 2002, AmerenUE has also failed to comply with 10 CSR 10-6.065(6)(C)3.E. because it has erroneously certified that it is in compliance with "all of the federally enforceable terms and conditions contained in this permit."

ENFORCEMENT PROVISIONS

62. Sections 113(a)(1) and (3) of the Act, 42 U.S.C. § 7413(a)(1) and (3), provide that the Administrator may bring a civil action in accordance with Section 113(b) of the Act, 42 U.S.C. § 7413(b), whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of, *inter alia*, the PSD requirements of Section 165(a) of the Act, 42 U.S.C. § 7475(a); and NNSR requirements of Section 173 of the Act, 42 U.S.C. § 7503; Title V of the Act, 42 U.S.C. §§ 7661-7661f, or any rule or permit issued thereunder; or the PSD and NNSR provisions of the Missouri SIP. *See also* 40 C.F.R. § 52.23.

63. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to $25,000 per day for each violation occurring on or before January 30, 1997; up to $27,500 per day for each such violation occurring on or after January 31, 1997 and up to and including March 15, 2004; up to $32,500 per day for each such violation occurring on or after March 16, 2004 through January 12, 2009; and up to $37,500 per day for each such violation occurring on or after January 13, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, 40 C.F.R. § 19.4, and 74 Fed. Reg. 626 (Jan. 7, 2009) against any person whenever such person has violated, or is in violation of, *inter alia,* the requirements or prohibitions described in the preceding paragraph.

64. Section 167 of the Act, 42 U.S.C. § 7477, authorizes the Administrator to initiate an action for injunctive relief, as necessary to prevent the construction, modification or operation of a major emitting facility which does not conform to the PSD requirements in Part C of the Act.

PENALTY ASSESSMENT CRITERIA

65. Section 113(e)(1) of the Act, as amended, 42 U.S.C. § 7413(e)(1), states that the court, in an action for assessment of civil or criminal penalties, shall, as appropriate in determining the amount of penalty to be assessed, take into consideration (i.e., in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by the violator of penalties previously assessed for the same violation, the economic benefit of non-compliance, and the seriousness of the violation.

66. Section 113(e)(2) of the Act, 42 U.S.C. § 7413(e)(2) allows the court to assess a penalty for each day of violation. For purposes of determining the number of days of violation, where the United States makes a prima facie showing that the conduct or events giving rise to this violation are likely to have continued or recurred past the date of the NOV, or a previously issued air pollution control agency NOV, or the previous NOV, and each and every day thereafter, until AmerenUE establishes that continuous compliance has been achieved; except to the extent that AmerenUE can prove by the preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

OPPORTUNITY FOR CONFERENCE

67. AmerenUE may, upon request, confer with EPA. The conference will enable AmerenUE to present evidence bearing on the finding of violation, on the nature of violation, and on any efforts it may have taken or proposes to take to achieve compliance. AmerenUE has the right to be represented by counsel. A request for a conference must be made within 10 days of receipt of this NOV, and the request for a conference or other inquiries concerning the NOV should be made in writing to:

Alex Chen
Senior Assistant Regional Counsel
U.S. EPA, Region 7
901 N. 5th Street
Kansas City, Kansas 66101
(913) 551-7962

68. By offering the opportunity for a conference or participating in one, EPA does not waive or limit its right to any remedy available under the Act.

DISCLOSURE INFORMATION

69. Certain companies may be required to disclose to the Securities and Exchange Commission ("SEC") the existence of certain pending or known to be contemplated environmental legal proceedings (administrative or judicial) arising under federal, state or local

environmental laws. Please see the attached "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings" for more information about this requirement and to aid you in determining whether your company may be subject to the same.

70. EPA is enclosing an Information Sheet entitled "U.S. EPA Small Business Resources" (EPA 300-F-99-004, September 1999), which identifies a variety of compliance assistance and other tools available to assist small businesses in complying with federal and state environmental laws.

EFFECTIVE DATE

71. This NOV shall become effective immediately upon issuance.

10/13/10
Date

Becky Weber
Director
Air and Waste Management Division