UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

APR 26 2011

Alana L. Rugen
Environmental Engineer II
Missouri Department of Natural Resources – Air Pollution Control Division
205 Jefferson Street
P.O. Box 176
Jefferson City, MO 65102-0176

RE: Part 70 Operating Permit, Project 2005-02-010, Response to Comments

Dear Ms. Rugen:

EPA Region 7 received Missouri Department of Natural Resources (MDNR) response to public comments for the Labadie Part 70 (Title V) Operating Permit for Ameren Missouri and the permit on October 25, 2010. Region 7 has reviewed the response and permit. The region would like to thank MDNR for including EPA in the Part 70 permitting process.

Region 7 is not objecting to the permit but is providing a number of comments to the response. In general, the Department's response addressed issues raised by the commenters very well. Still, Region 7 is recommending that some sections of the draft permit and MDNR's response to comment be changed before the final permit is issued.

If there are any questions from our comments, please contact Eric Sturm by phone at 913.551.7377 or email at sturm.eric@epa.gov. Thank you again.

Sincerely,

Mark A. Smith
Air Permitting and Compliance Branch Chief
EPA Region 7

Enclosure: EPA's Comments on Ameren Labadie Part 70 Operating Permit and MDNR's Response to Public Comment

RECYCLED

EPA's Comments on Ameren Labadie Part 70 Operating Permit
& MDNR's Response to Public Comment

Permit Condition (EU0001 through EU0004) – 003

As part of the 40 C.F.R. Part 64 Compliance Assurance Monitoring (CAM), page 9 and 10 of the permit lists operational limitations for Boilers 1, 2, 3, and 4.

1. The permittee shall perform stack testing using Method 17 for filterable PM and Method 202 or Method OTM28 for condensable PM within one year of the effective date of this operating permit.
   a) The permittee shall submit a Proposed Stack Test Plan to the Air Pollution Control Program no later than 30 days prior to the date of stack testing so that the test plan may be reviewed and approved and an observer may be present during the testing.
2. The permittee shall apply for an operating permit significant modification to update the CAM monitoring approach within 6 months of completion of the above required stack testing. The significant modification application shall include stack testing results and a new filterable PM to Opacity correlation along with proposed opacity levels for excursions and exceedances. All calculations for the correlation shall be included as well as explanations for the determination of the excursion and exceedance levels.
3. The permittee shall perform **repeat stack testing** (bold added) every three years. No later than 6 months after each stack test the installation is required to revise the filterable PM to Opacity correlation to account for particulate emission distribution changes due to boiler aging.

Operational limitation "1." specifies which test methods are allowable in developing PM CAM for the Ameren Labadie power plant. EPA understands that operational limitation "3." to mean that Ameren will be required to perform repeat stack testing as in operational limitation "1." Nonetheless, others might read this requirement to be vague because the test methods to be performed are not exclusively listed in the limitation. Consistent with 40 C.F.R. §70.6(3)(A), please list the testing requirements as they apply in operational limitation "3."

Public Comments Regarding EPA-issued Notice of Violation (NOV)

On page 2 of the MDNR's *Response to Public Comments,* there is a discussion in respect to the NOV that was sent to Ameren January 16, 2010.

> EPA has not resolved the NOV; therefore, it can not be said definitively that Ameren skipped permitting processes. The NOV was issued due to different interpretations of the term "routine maintenance, repair and replacement" (RMRR). The proper interpretation of RMRR has been an ongoing issue between the electric industry and EPA nationwide for a number of years. Ameren is not being allowed to skip any permitting processes. If EPA decides that Ameren misinterpreted RMRR, thereby violating New Source Review requirements, then Ameren will be required to complete the necessary construction permitting processes for those activities.

EPA suggests that MDNR remove this paragraph in their final response to comments. The NOV does make reference 40 C.F.R. § 52.21(b)(2)(iii)(a) or routine maintenance, repair, and replacement, often referred to as RMRR. Ameren has not shared an RMRR analysis with EPA or MDNR. Therefore, MDNR should not comment on the applicability of an RMRR exemption in regard to projects at the Labadie power plant.

Public Comments Regarding Compliance with the Title V Permit

On pages 41 and 42 of the MDNR's *Response to Public Comments*, MDNR states that Labadie is in compliance with the provisions of the Title V permit which contains all applicable requirements from issued construction permits and federal requirements. However, EPA notes the NOV in January 16, 2010 alleges that Ameren failed to meet certain New Source Review and Title V permitting requirements at the Labadie power plant. Even though EPA issued an NOV to the facility, MDNR should not put a compliance schedule in the Title V permit. EPA considers the potential impact enforcement cases and Title V decisions have on one another. In cases where EPA has initiated an enforcement action at the same time as the permitting authority is taking action on a title V permit application, the source and EPA could find themselves in two separate actions, litigating essentially the same issues -- whether a substantive rule was violated and the appropriateness of a compliance schedule -- with the risk of potentially different and conflicting results. Such proceedings are best left out of the Title V permitting process. Once limits are established in a construction permit, consent decree, or court order, the requirements would then be included in a Title V permit.