

To: Jackson, Ryan[jackson.ryan@epa.gov]; gdbaker@wms-jen.com[gdbaker@wms-jen.com]
From: Renfrow, Paul
Sent: Fri 6/30/2017 2:06:52 PM
Subject: FW: Court Limits Sierra Club's Access to Confidential Third Party Documents in NSR Case - Enforcement

I thought this was interesting. FYI only. We weighed in again and prevailed. PR

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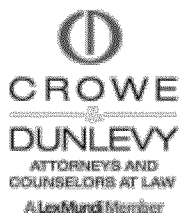
Very nice!

The limitation on third party documents is what we really pressed the judge for and fortunately, he agreed with most of our argument.

Had we not intervened, this likely wouldn't have happened since Ameren was more concerned about its own documents (not the third party category). Also, several utilities sent a letter objecting to the Sierra Club motion but did not attempt to intervene. The judge stated from the bench that he would not read the letter given they had not properly entered the case. Judge Sippel stated that the only proper third party before the court was OG&E. As a result, it was primarily the efforts of the company that led to the ruling benefitting us and many other utilities.

Best,

Don



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The following alert has been added to the Class of '85 Extranet for:

Class of 85

On June 28, 2017, the U.S. District Court for the Eastern District of Missouri issued an order that limits Sierra Club's access to information submitted by companies to EPA in response to Section 114 requests, including confidential business information, that has been produced in an ongoing new source review ("NSR") case by EPA against Ameren Missouri ("Ameren"). The case is *United States v. Ameren Missouri*, Case No. 4:11-cv-77 (E.D. Mo.).

On January 23, 2017, the U.S. District Court for the Eastern District of Missouri ruled that Ameren violated the prevention of significant deterioration ("PSD") and Title V provisions of the Clean Air Act ("CAA"), as well as its operating permit, by carrying out projects at its Rush Island Plant without obtaining the required permits, installing best available control technology, or otherwise meeting applicable requirements. After that decision on Ameren's liability, Sierra Club filed a motion to intervene in the remedy phase of the case, arguing that the new Administration's policy positions create a significant likelihood that Sierra Club's interests will no longer be protected by the United States. Sierra Club then filed a motion seeking access to all discovery from the liability phase of the case, including highly confidential documents. These documents include confidential business information from over 40 companies that EPA obtained pursuant to CAA Section 114, which the companies authorized EPA to provide to Ameren subject to treatment under a protective order as "highly confidential" and "for attorneys' eyes only." This information was used by Ameren's expert witness to complete his report on routine maintenance, repair, and replacement ("RMRR").

The court's order requires Ameren to "catalogue all third-party documents it produced in this case." These third party documents are not to be produced absent a request from the plaintiffs (including Sierra Club) and an opportunity to be heard by the relevant third parties. This ensures that companies will have an opportunity to object to any future request by Sierra Club to obtain their confidential business information during the course of discovery in this litigation, but does not guarantee that it will not be produced.

The court's order is attached.

If you have questions, please contact me at 202.639.7703 or rachel.kenigsberg@bakerbotts.com, or Allison Watkins Mallick at 202.639.7754 or allison.mallick@bakerbotts.com.

Rachel

The following 1 attachment should be included with this alert: Ameren NSR Order.pdf

Click here to access the [Class of '85 Extranet](#)

This message was sent via the Class of '85 Extranet by Rachel Kenigsberg.

Site Contact: [Megan Berge](#)

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