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St. Louis judge holds fate of pollution controls at two area Ameren coal-fired power plants

By Robert Patrick St. Louis Post-Dispatch Apr 15, 2019

ST. LOUIS • Either Ameren's failure to install pollution controls on its Rush Island coal-fired power plant near Festus caused the premature death of hundreds of people by releasing 160,000 tons of sulfur dioxide into the air, or the emissions had no measurable health impact and a remedy could cost each Ameren ratepayer at least \$1,345.

Those were the two sides presented to U.S. District Judge Rodney Sippel in court Monday at the end of the second phase of a lawsuit that was filed more than eight years ago on behalf of the U.S. Environmental Protection Agency.

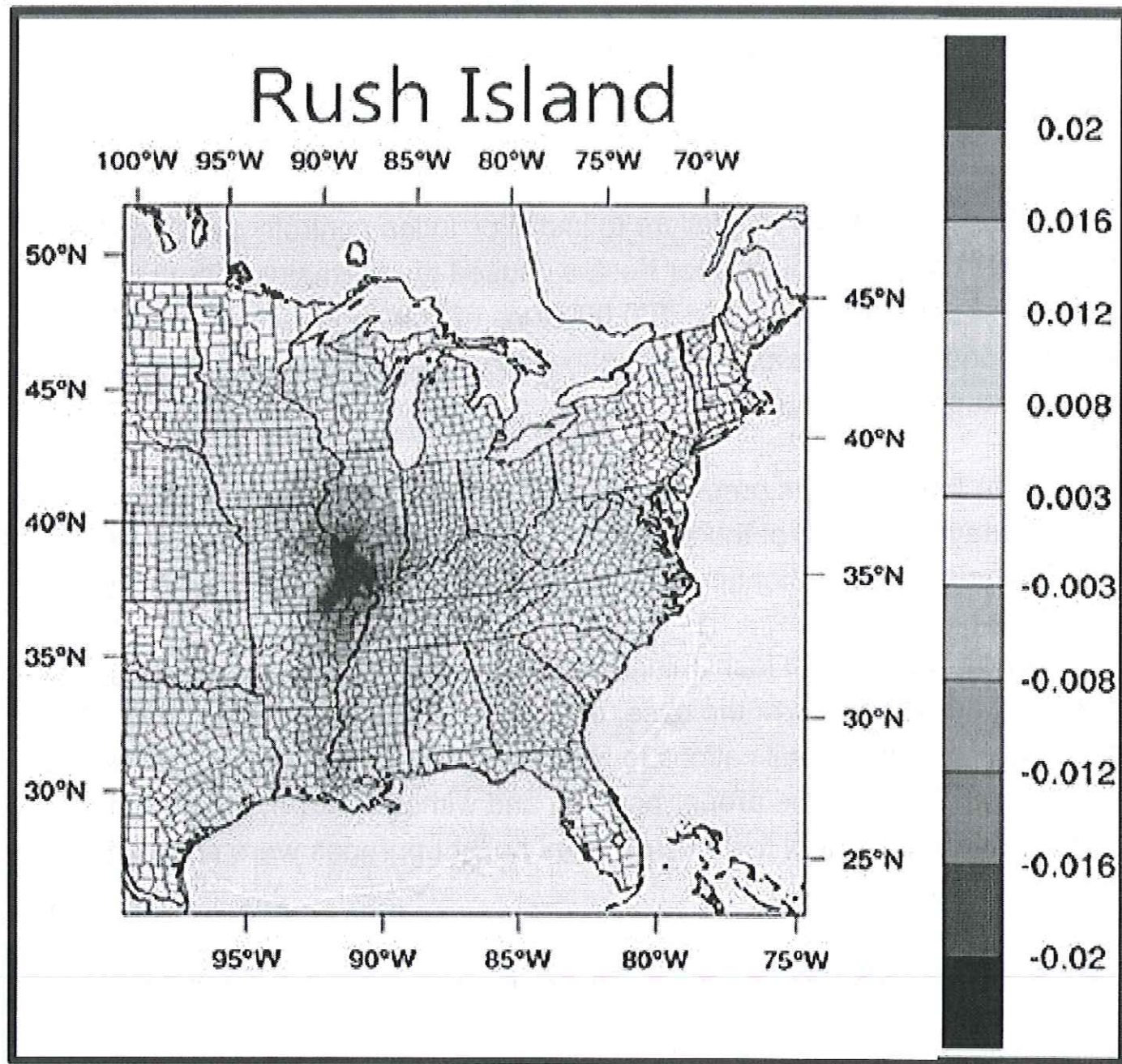
Sippel is now tasked with fashioning a remedy after ruling in January 2017, at the end of the first phase of the case, that Ameren had violated the Clean Air Act by making major modifications to Rush Island without reporting the work to the EPA and obtaining the proper permits, and without installing the "best-available pollution control technology." The boiler upgrades were completed in 2007 and 2010.

Since that time, lawyers on both sides have fought over the appropriate fix.

On Monday, Justice Department lawyer James W. Beers Jr. said that Sippel should order Ameren to apply for a permit under the Clean Air Act and install pollution controls that would bring it into compliance in three years.

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Each year of delay, Beers said, represents another 16,000 tons of sulfur dioxide released by the plant, adding to the 160,000 pounds released since Ameren's failure to install pollution control equipment when the plant modifications were made. That pollution, he said, affected most of the eastern seaboard of the U.S. and areas from Texas to Michigan, resulting in between 600 and 880 premature deaths.



An image from a court filing by lawyers for the U.S. Environmental Protection Agency shows an estimate of downward impact of sulfur dioxide emissions from Ameren's Rush Island coal-fired power plant near Festus. The graphic was prepared by a witness for the EPA, air quality modeling expert Lyle Chilken, the filings says.

Sulfur dioxide can cause breathing problems, including exacerbating asthma in children, and other health problems.

Power plants are a major source, and Beers said that 80 percent of coal-fired plants have scrubbers to help remove the pollutant.

Beers said the cost would be reasonable for a company with \$1 billion in cash flow and \$400 million in dividends a year. Those costs stem from decisions made by Ameren, not actions taken by the EPA or Sippel, Beers said, adding that Ameren does not have to seek a rate increase to pay for the fix.

Beers also said that the best way to make up for Rush Island's past pollution would be to reduce the emissions of a plant in the same area, Ameren's Labadie coal-fired plant in Franklin County.

Benjamin J. Blustein, a lawyer for the Sierra Club, spoke briefly, asking Sippel for steeper caps on emissions.

"Like a good neighbor, Ameren should clean up the mess it made ... as soon as possible," Blustein said.

Ronald S. Safer, a lawyer for Ameren, instead argued that past pollution should be offset by Ameren turning over "allowances" it won for emissions reductions elsewhere. Safer said scrubbers to remove the sulfur dioxide would cost billions of dollars and require Ameren to run Rush Island for 30 more years to maximize the return on investment for ratepayers. He said installing a less expensive technology, dry sorbent injection, would save money and allow Rush Island to be closed if more energy efficient options became available.

(The EPA says that dry sorbent injection is less efficient at removing sulfur dioxide pollution than using scrubbers.)

Safer said that the past amounts of sulfur dioxide emitted by the plant were so low that they did not pose a threat, and are less dangerous than the pollution caused by traffic.

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"No one believes these tiny increments cause a health impact. Nobody," he said.

Both sides have until May 23 to file their proposed findings of facts and conclusions of law to Sippel, and an additional four weeks to respond to each others' filings.

After the first nonjury trial was held in August 2016 and lawyers filed their post-trial briefs, Sippel released his 195-page opinion and order in January of 2017.

Robert Patrick

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