



GREAT RIVERS PREVAILS:

Federal Court Holds that the City of St. Louis and the City-Owned Lambert St. Louis International Airport violated federal asbestos standards when they demolished buildings to make way for new runway



Many roads in Bridgeton were closed before demolitions began.

Photo courtesy of Jami Schoenewies, 56housesleft.com

“The defendants’ use of the wet demolition method to demolish structurally sound buildings violated the National Emission Standards for Hazardous Pollutants (NESHAP)....Defendants are liable for 99 violations of the asbestos NESHAP.”

*September 15, 2008
Judge Carol E. Jackson,
U.S. District Court Judge for the Eastern District of Missouri*

Letter from the President:



Your Support Makes a Difference!

It sounds like a platitude, but it isn't. In this issue, we report on our victory in the asbestos case. The court ruled in our favor that the City of St. Louis violated federal law when it demolished ninety-nine buildings to make room for the new airport runway using only the wet method of containing asbestos in the buildings. In the wet method, a building is demolished with the asbestos left in place. The case has national significance as other cities had been considering using the wet method of removing asbestos but now may think otherwise. The case has been reported on several web sites concerning mesothelioma, a cancer caused by exposure to asbestos.

In this case, our clients, the homeowners, clearly had no alternative but to go to the courts. There was absolutely **no other alternative for relief**. However, the homeowners did not have the funds to pay for private attorneys.

Thanks to you, our individual donors, we were able to bring this case to court. Your donations do make a difference. Whether the amount is \$5.00 or \$5,000, all donations help us keep going so that we can continue to provide our legal services.

During the years that we worked on this case, I applied to several dozen foundations for funding for this project. They all turned me down. Some of the smaller Missouri foundations told me they are afraid to fund litigation. I believe this fear is groundless. Specifically, I have not heard from any of the foundations that fund some of our other work that they have suffered any repercussions. If anyone knows of a direct consequence a foundation has suffered for funding a lawsuit, in Missouri or nationally, please let me know about it.

Kathleen Henry

Board News

Great Rivers welcomes two new board members: **Ben Senturia** and **Nancy Kistler**. **Ben Senturia** is President of Center for Active Citizenship and a co-founder of Missouri Votes Conservation. He is also an active participant in and consultant to many environmental organizations in St. Louis and the nation, including the Missouri Coalition for the Environment and the Maryland-based Institute for Conservation Leadership.

Nancy Kistler is the Deputy City Counselor in charge of litigation for the City of St. Louis. She graduated from Washington University Law School in 1986, and has practiced in a variety of areas of the law, focusing on appellate and administrative law.

We are delighted to have their help!

**Great Rivers
Environmental Law Center**
The legal resource for natural resources.
(a 501(c)(3) tax-exempt nonprofit corporation)

Mission Statement

We provide legal services to citizens' groups, organizations and individuals who seek to protect and preserve the environment.

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GREAT RIVERS' AIR QUALITY AND PUBLIC HEALTH PROGRAMS

GREAT RIVERS PREVAILS: Federal Court Cites City of St. Louis for Illegal Asbestos Removal

On September 15, 2008, the US District Court for the Eastern District of Missouri agreed with Great Rivers and ruled that the City of St. Louis and the city-owned Lambert-St. Louis International Airport violated federal asbestos standards when they demolished 99 asbestos-laden buildings in Bridgeton, without removing the asbestos before demolition.

Great Rivers Environmental Law Center and Trial Lawyers for Public Justice brought the case on behalf of Families for Asbestos Compliance, Testing and Safety (FACTS), whose members lived near the demolished buildings and are concerned that their health was threatened by asbestos releases during the demolitions.

"The court's ruling confirms our claim that the federal, state and local officials who are supposed to protect public health all failed to enforce the law," said co-counsel Bruce Morrison of Great Rivers Environmental Law Center.

Co-counsel Jim Hecker, Environment Enforcement Director of Public Justice of Washington, DC, said, "This is the first time a federal court has held a city liable for violating federal asbestos safety standards. It's outrageous that public health officials risked exposing an entire community to asbestos, just so the city and the airport authority could save money by using a cheaper asbestos removal method."

Wet Method of Demolition Used

Instead of removing all asbestos from buildings before they were demolished, as federal National Emissions Standards for Hazardous Air Pollutants (NESHAP) regulations under the Clean Air Act require, the airport authority left much of the asbestos in place and merely wet it down during demolition. Asbestos is an extremely hazardous material that can cause cancer and other diseases that show up decades after the exposure occurs. The court concluded that "defendants' use of the wet demolition method to demolish structurally sound buildings violated the NESHAP." The court also concluded that "the approval of the county and [U.S. Environmental Protection Agency] does not shield the defendants from liability."

Testimony of Residents

"The Airport Authority used the illegal wet method on three houses within a block of my home while I was living there," said Carole Donnelly, a Bridgeton resident and member of



Bridgeton home slated for demolition.

Photo courtesy of Jami Schoenewies, 56housesleft.com

FACTS. "I am outraged that no one told me that this method was illegal and that required steps to protect my health were ignored."

Future Steps

"The city and the airport authority conducted an illegal and immoral human experiment on our community without our knowledge or consent," said FACTS President and Bridgeton resident Sean Donnelly. "We filed this citizen suit to protect public health and to hold the city and airport authority accountable for their violations of federal law."

In its next steps in the case, FACTS intends to seek civil penalties for the City's violations, and an order requiring the city and the airport authority to evaluate and clean up contaminated soil. FACTS is not seeking damages for personal injuries to its members.

GREAT RIVERS' ENERGY PROGRAM

Intervention in AmerenUE's 2008 Rate Case

On October 9, 2008, the Public Service Commission (PSC) granted Great Rivers' Application to Intervene on behalf of the Missouri Coalition for the Environment ("Coalition") and Missourians for Safe Energy ("MSE") in AmerenUE's ongoing rate case, solely on an issue related to Callaway 2. AmerenUE is seeking a rate increase of \$251 million from its Missouri customers. The Coalition and MSE learned that Ameren has spent about \$51 million in filing the NRC license application and is already seeking to recover at least \$46 million of that money.

The problem is that Missouri has a law prohibiting a utility from charging customers for plants before they are fully operational. Utilities cannot charge ratepayers for construction work in progress (CWIP). The Coalition for the Environment was responsible for the voter-backed initiative that outlawed construction work in progress charges in 1976.

Great Rivers will be making the legal arguments against these charges in filings we will make before and after the hearing on the rate case, which is to be held in November and December.

Investigation into Planned Second Nuclear Unit at Callaway

AmerenUE has filed a Construction and Operating License Application with the Nuclear Regulatory Commission (NRC) for approval of a second unit at its Callaway nuclear power plant. Opponents of Callaway 2 have asked Great Rivers to investigate legal challenges both in the NRC and the Missouri Public Service Commission (PSC).



*AmerenUE is clearing land near the first nuclear reactor.
Photo taken in October, 2008.*

Intervention in AmerenUE'S Integrated Resource Plan Continues

On February 5, 2008, AmerenUE filed its revised Integrated Resource Plan (IRP), a forecast of energy needs in Ameren's service territory for the next 20 years and the utility's plans to

meet those needs. Thanks to our intervention in their 2005 IRP, which they initially filed as "highly confidential" in its entirety, a significant portion of their revised plan has been made public. The 2008 IRP envisions Callaway 2 and some modest renewable energy and efficiency investments. GRELC filed a report on June 18, 2008 pointing out ways in which the IRP failed to comply with the PSC rules. The various parties then attempted to reach agreement on how to remedy deficiencies in the plan, with only partial success.

At press time we are waiting to hear if the Commission will grant a hearing on the disputed issues.

A major fundraising effort would be required to challenge the licensing in the Nuclear Regulatory Commission (NRC). Meanwhile, the Office of Public Counsel, an agency created to be a consumer watchdog in matters before the PSC, has asked the Commission to open a case that would probe the financial prospects for Callaway 2, which is likely to cost at least \$9 billion. Our clients would be interested in such a case.

Legislation Drafting

Great Rivers has been engaged for the last year and a half in drafting state energy legislation.

Net Metering Bill

In the 2007 legislative session, a net metering bill written by Great Rivers was introduced as the Easy Connection Act (ECA) and, after being amended and attached to a larger bill, was enacted. Net metering lets customers who generate their own electricity, primarily with solar panels, get full credit on their bills any time they generate more than they need and feed that excess electricity back onto the utility grid for other customers to use. In October, 2008 the PSC completed its rulemaking. Once approved by the Secretary of State, the rule will finally bring the ECA into effect.

Unfortunately, whoever amended our bill didn't do a very good job. The Commission's rule requires owners of small generating systems to have \$100,000 in liability insurance even though the law contains no insurance requirement. An appeal of the rule is currently being contemplated. Net metering is safe, and the whole purpose of the Easy Connection Act was to make it easy for the customer-generator.

Proposition C, a Renewable Electricity Standard

The environmental and clean energy communities have had less luck in achieving a Renewable Electricity Standard. On behalf of Renew Missouri, a nonprofit dedicated to this issue, Great Rivers drafted a ballot initiative for direct approval by the voters. The initiative would require investor-owned utilities to generate or purchase 15% of their retail sales from renewable sources by 2021. Proposition C was on the ballot for voter approval this November 4.

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BRIEF UPDATE ON OTHER PROJECTS

AIR QUALITY AND PUBLIC HEALTH PROGRAMS

Fighting a Proposed Coal-Fired Pig Iron Ore Smelter for Crystal City, Missouri

Great Rivers represents the Concerned Citizens for Crystal City in their lawsuit against the City of Crystal City over its violations of Missouri's Open Records Law. The City negotiated the deal for a pig-iron ore smelter in secret and even went so far as to sign a confidentiality agreement prohibiting city council members from talking with their constituents, upon penalty of litigation. Great Rivers filed suit in November, 2007, and has been seeking documents since then. In September, 2008, we learned that a great deal of the mayor's and city clerk's documents can't be found on the computers and the city calendars were destroyed.



The grand old brick house sits next door to the land on which the proposed smelter will be built. The Concerned Citizens show their opposition in this sign.

LAND USE PROGRAM

Preservation of LaBarque Creek Watershed, Jefferson County, Missouri.

LaBarque Creek is a beautiful Creek in Jefferson County that drains water from a 13-mile watershed into the Meramec River. It is remarkably healthy for a stream so close to St. Louis and in 2005 was home to 42 species of fish. Some of the lands surrounding it were donated to the Missouri Department of Conservation by Mrs. Hilda Jones in 1987.

In 2007, AmerenUE selected an area crossing the Creek for the construction of a new transmission line. AmerenUE chose this area over two others, and over objections from local residents, the Nature Conservancy, and the Department of Conservation.

On behalf of neighboring citizens, Great Rivers is reviewing the deeds granting the land to the Department of Conservation.

Preservation of Boonville Bridge

Great Rivers continues to work to preserve the historic Boonville Lift Bridge as a vital part of the Katy Trail corridor. Over the past several months we have been urging the Coast Guard to rescind a permit it issued to Union Pacific earlier this year. Federal Law requires that agencies like the Coast Guard have in place a system for early warning to applicants that anticipatory demolition of a historic property may result in the loss of Federal assistance or approval for a proposed undertaking. Instead of warning Union Pacific over its plans to demolish the historic Lift Bridge, the Coast Guard persuaded Union Pacific to resubmit a pending bridge application scrubbed of any reference of using spans from the historic bridge. Great Rivers believes that the Coast Guard's actions violate Federal law, and is an active participant in proceedings now being conducted by the Coast Guard.

GREAT RIVERS' ENERGY PROGRAM *(Continued from page 4)*

Energy Efficiency

Great Rivers has also drafted legislation to promote energy efficiency. One bill would allow utilities to get more favorable rate treatment for their efficiency programs than for their generation investments, thus removing the disincentive to help customers use less energy. Under Missouri's antiquated regulatory system, which is all about electrification, utilities only make money by selling electricity; they lose money if their customers save energy. This can be changed to allow

utilities to profit even if they sell fewer electrons. In the age of global warming such a change is long overdue.

Another bill would remove regulatory and utility barriers to the use of combined heat and power (CHP). CHP is the use of waste heat from industrial processes or the generation of electricity to heat and cool a building (and possibly some neighboring buildings) or to generate more electricity. CHP can double or triple the efficiency with which the original fuel is used.

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FLOODPLAIN PRESERVATION PROGRAM

Floodplains in St. Peters

In July, 2007, Great Rivers Environmental Law Center served upon the custodian of records for the City of St. Peters a request for public information pursuant to Missouri's Open Records Law. The request concerns St. Peters' effort to revise the effective Flood Insurance Rate Map or Flood Insurance Study report for St. Charles County, Missouri, and incorporated areas. St. Peters has not made any of the requested records available for inspection and copying.

In September, 2007, Great Rivers brought suit against the City for violating the Open Records Law. On August 29, 2008, the Court entered judgment in favor of St. Peters and against Great Rivers. The court ruled that the records could be withheld under an exception to the Sunshine Law which allows governments to withhold records made in the course of litigation. Great Rivers is appealing that judgment to the Court of Appeals.

Flooding Was 100% Manmade

In October, 1993, the St. Louis Journalism Review quoted Lewis Green, the founder of Great Rivers, as saying that the tremendous floods of that year were 100% man-made. In the spring of 2008, three respected local scientists said that projects of the US Army Corps of Engineers would increase flooding on the Missouri and Mississippi Rivers, and this year we did indeed, have terrific floods. The St. Louis Post-Dispatch printed a story on June 30, 2008, in which Carolyn Kousky, Ph.D. Public Policy, Harvard University, stated, "A 2005 study found that of all the states affected by the 1993 flood, the St. Louis region has been the leader in floodplain development, with half of it occurring on floodplains that were under water in 1993....It is time for the St. Louis region to realize that it needs to make way for the Missouri and Mississippi Rivers, instead of trying to force the rivers to make way for us." (*St. Louis Post-Dispatch*, June 30, 2008.)

It is a dubious honor to be a part of the "leader in floodplain development" on lands that were flooded in 1993. The US Army Corps of Engineers, showing its lack of knowledge on



'Oh, I Just Thought I'd Come Over And See What It Was Like Livin' In A Flood Plain'

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this issue, continues to issue permits to developments in the last few remaining floodplains in the St. Louis region. The time is long overdue for this practice to stop.

GREAT RIVERS' PROJECTS ON THE NATIONAL STAGE

Imagine my surprise when, sitting in the Amtrak Station in Pittsburg, Pennsylvania, at 11:00 pm in July, 2008, I picked up the USA Today someone had abandoned on the chair next to mine and saw Great Rivers' former client, Susan Brown, of Concerned Citizens for Platte County, quoted on the front page! (*Deals Cut for Energy, Land Use*, USA Today, July 30, 2008.) She was discussing the landmark settlement that followed Great Rivers' victory in the Court of Appeals in the Kansas City Power and Light case. In the settlement we reached after litigating in and against the Public Service Commission for four years, KCPL promised to reduce emissions from its coal-fired power plants by 20%, a promise

with national significance.

In September, 2008, the Wall Street Journal published an article about the Crystal City smelter pointing out that citizens do not want jobs resulting from dirty industry in their city. (*Jobs Unwanted*, the Wall Street Journal, Sept. 16, 2008.) Our litigation was briefly mentioned. The article reported that the company lined up to finance the plant had pulled out due to public opposition, and that the developer is searching for a new company. The citizens will continue their opposition to the dirty plant no matter what company is brought in to finance it.

Kathleen Henry

***We extend our heartfelt thanks to our supporters.
Without your support, we would not be able to carry on our projects.***

Contributions received May 2008 - September 2008

IN MEMORY OF:

Willa Mae Boisseau

Marvin Boisseau

Eugene Buder

Emilie Brandhorst

Joseph Thomas Giucastro

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Joseph Logan

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Great Rivers thanks the family for suggesting that memorial donations be made to Great Rivers Environmental Law Center

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Sponsors

You can become a member of our **Cornerstone Society** by making a three-year commitment to sponsorship at any of the levels indicated at \$500 or more.

Great Rivers started a Sponsorship program in the Summer of 2006. Sponsors are entitled to certain benefits based on their level of contribution. Our levels are:

Platinum - \$15,000 or Higher
Gold - \$10,000
Silver - \$7,500
Diamond - \$5,000
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Rosemary Wakeham

**Members of our Cornerstone Society—a Three-Year Commitment at any of our Sponsorship Levels*

GREAT RIVERS' ENERGY PROGRAM *(Continued from page 5)*

PSC Rulemaking

Great Rivers participated in the Public Service Commission workshops that prepared the ground for two formal rulemakings: the Easy Connection Act and the Renewable Energy Objective.

The Easy Connection Act charged the PSC with setting the rules and drafting simple contracts for customer-generators. Great Rivers seeks to ensure that the rules will be as fair to customers and as easy for them to follow as the statute allows.

Last year the legislature also passed a non-binding utility renewable energy "objective." As the only environmental voice in the utility-dominated workshops on the future rule, Great Rivers tried to ensure that some shred of the renewable energy goal will survive the utilities' least-cost planning process (IRP).

The PSC opened a case on the renewable energy objective on August 21. Great Rivers hopes this will be rendered moot by passage of Proposition C, the Renewable Energy Standard, on November 4.

Later this year the PSC expects to start rewriting the Integrated Resources Plan rule. With our experience before

the PSC, Great Rivers is uniquely capable of representing environmental and clean energy interests in this rulemaking. However, we will need funds to engage the technical consultants who would be required.

Litigation Over AmerenUE's Proposal to Rebuild the Taum Sauk Hydropower Plant

Great Rivers represents the Missouri Parks Association (MPA) and the Missouri Coalition for the Environment (MCE), in their suit against the Federal Energy Regulatory Commission (FERC) in federal court. MPA and MCE believe that FERC prepared a defective Environmental Assessment, in lieu of an Environmental Impact Statement, regarding AmerenUE's request to rebuild the upper reservoir of the Taum Sauk pumped storage project located on the East Fork Black River in Reynolds County.

In February, 2008, Great Rivers filed a petition for review in the United States Court of Appeals for the Eighth Circuit on behalf of MPA and MCE. Bruce Morrison argued the case September 24, 2008, and on October 23, the court denied the petition and held that FERC's environmental assessment was not defective.

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