

Last update: November 20, 2006 – 10:07 PM

Sierra Club suit will allege violations of Clean Air Act

The environmental group contends that a South Dakota coal-fired power plant doesn't have the required pollution control equipment and that Minnesota lakes show the effects.

[Tom Meersman](#), Star Tribune

The Big Stone power plant in South Dakota near Minnesota's western border has been violating the federal Clean Air Act for the past 11 years, environmental leaders alleged Monday as they began legal action against its owners.

Sierra Club attorney Bruce Nilles said Otter Tail Power Co. and two other owners did not follow the law, which requires utilities to add modern pollution control equipment whenever they make "major modifications" to an older plant.

Big Stone has been producing electricity since 1975, and Nilles said the utilities should have added filters and scrubbers to remove pollutants at least three times in recent years: in 1995 when they rebuilt a boiler so it could burn a different type of coal, in 2001 when they started providing steam to an ethanol plant and in 2005 when they installed a redesigned steam turbine.

Ongoing violations at the South Dakota plant are of particular concern in Minnesota, Nilles said, because the prevailing winds are from the west.

Pollutants such as mercury blow into Minnesota lakes and rivers to contaminate fish, he said, and other emissions can cause respiratory and heart problems in humans.

Nilles said that he sent certified letters Monday to the three co-owners of the plant: Otter Tail Power, of Fergus Falls, Minn.; NorthWestern Energy, of Sioux Falls, S.D., and Montana-Dakota Utilities Co., of Bismarck, N.D.

The letters are legal notices of intent to sue, which are required under the Clean Air Act before suit can be filed. They detail allegations and warn that a lawsuit will follow in 60 days unless all sides can negotiate a solution.

Ward Uggerud, Otter Tail Power senior vice-president, said Monday that he had not seen the letter and could not comment on it. "I have no idea what they're alleging," he said. "I have no basis to say anything."

The issue of whether older power plants need to reduce air emissions, and by how much, has spawned litigation across the country.

Authors of the Clean Air Act anticipated that older power plants would not need to meet "new source" requirements for pollution control because they would likely be retired in a decade or two.

However, the act required utilities to add state-of-the-art equipment to control air emissions if they were renovating, expanding or significantly modifying the old plants to operate well into the future.

Utilities have claimed that the law's language is vague and that its interpretation during the Clinton administration was too strict.

This month, the U.S. Supreme Court heard arguments in a case involving Duke Energy of North Carolina, which has contested how much it needs to clean up emissions from several coal-fired plants that it renovated and began to reopen in the late 1990s.

The Sierra Club's legal stance regarding Big Stone could affect the prospects for Big Stone II, a proposed \$1.8 billion coal-fired power plant at the same location. The project, now under review in Minnesota, has drawn support from those who say the electricity is needed, and opposition from those who say that its carbon dioxide emissions will contribute to global warming.

Tom Meersman • 612 673-7388 • meersman@startribune.com

©2006 Star Tribune. All rights reserved.