

**BEFORE THE ENVIRONMENTAL REVIEW APPEALS COMMISSION  
OF THE STATE OF OHIO**

**NATURAL RESOURCES DEFENSE COUNCIL**

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**Appellants,**

**vs.**

**CHRIS KORLESKI**

**DIRECTOR**

**OHIO ENVIRONMENTAL PROTECTION AGENCY**

50 W. Town Street, Suite 700  
Columbus, Ohio 43215

**AMERICAN MUNICIPAL POWER-OHIO**

2600 Airport Drive  
Columbus, Ohio 43219

**Appellees.**

**NOTICE OF APPEAL**

## **BACKGROUND**

Notice is hereby given that the Natural Resources Defense Council (“NRDC”), Ohio Environmental Council (“OEC”), Sierra Club, and the National Parks Conservation Association (“NPCA”) (collectively the “Citizen Groups”), on behalf of their members who will be aggrieved and adversely affected, hereby appeal to the Environmental Review Appeals Commission from the Ohio Environmental Protection Agency’s Director’s issuance on February 7, 2008 of the Final Permit to Install (“PTI”) No. 06-08138 to Appellee American Municipal Power-Ohio (“AMP”). The Permit allows AMP to build the proposed American Municipal Power Generating Station, a 960 megawatt (“MW”) pulverized coal-fired power plant and related facilities, which are hereinafter referred to as the “AMP Coal Plant.” The AMP Coal Plant is an “air contaminant source” as that term is defined in O.R.C. § 3704.01(C) that will be located in Letart Falls, Meigs County, Ohio.

The Citizen Groups are each non-profit environmental organizations with numerous members in Ohio and/or nationwide. NRDC is a national, non-profit, environmental organization with more than 1.2 million members and online activists nationwide, including 35,114 in Ohio. OEC is a statewide non-profit environmental advocacy organization with 115 member environmental/conservation organizations and 2,364 individual members throughout Ohio. Sierra Club is the nation’s oldest grassroots non-profit organization, with more than 750,000 members nationwide, including 18,270 in Ohio. NPCA is a nationwide non-profit organization that works to protect and enhance America’s National Parks, with more than 330,000 members nationwide, including 13,344 in Ohio.

The Citizen Groups have numerous members who live, work, and/or recreate in and around Meigs County and areas downwind from the site for the AMP Coal Plant that will be

aggrieved and adversely affected by the “air contaminants,” O.R.C. § 3704.01(B), that will be emitted from the “air contaminant source” that is permitted by PTI No. 06-08138. These and other members of the Citizen Groups will be seriously aggrieved and adversely affected by the Director’s action challenged herein because the activities and emissions authorized by the PTI for the AMP Coal Plant will increase the level of pollution in the air that is breathed by such members. In addition, the mercury, sulfur dioxide, nitrogen oxide, and particulate matter emissions from the AMP Coal Plant that are authorized by the PTI will adversely affect the use and enjoyment by the Citizen Groups members of rivers, lakes, streams, and natural areas near the AMP Coal Plant and in federally protected Class I Areas and other areas downwind from the Plant. All of the Citizen Groups’ members will also be adversely affected by the AMP Coal Plant’s carbon dioxide (“CO<sub>2</sub>”) emissions and the global warming that such emissions will exacerbate.

NRDC, OEC, and Sierra Club were parties to the proceeding before the Director regarding the Permit, as those organizations jointly filed comments on the draft PTI for the AMP Coal Plant. In addition, members and/or representatives of each organization appeared and made statements at the public hearing regarding the draft PTI held in Meigs County on October 25, 2007. NRDC, OEC, and Sierra Club were also found to have standing to intervene in the Ohio Power Siting Board proceeding regarding the proposed AMP Coal Plant. OPSB Case No. 06-1358-EL-BGN, Dec. 5, 2007 Order.

A copy of the PTI and the accompanying letter from the Director are attached to this notice.

**Citizen Groups' Assignments of Error in Issuance of the American Municipal Power  
Generating Station Permit to Install No. 06-08138:**

The action of the Director in approving and issuing the PTI for the AMP Coal Plant was unreasonable and unlawful for a number of reasons, including, but not limited to, the following:

1. The PTI unreasonably and unlawfully does not include a Best Available Control Technology ("BACT") limit for carbon dioxide ("CO<sub>2</sub>") emissions from the AMP Coal Plant.
2. The Director unreasonably and unlawfully dismissed the serious adverse economic, social, and environmental consequences of the AMP Coal Plant's CO<sub>2</sub> emissions in deciding whether to grant or deny the PTI pursuant to O.A.C. § 3745-31-05(B).
3. The Director unreasonably and unlawfully failed to exercise his authority under O.A.C. § 3745-31-05(C) to impose limits on the AMP Coal Plant's CO<sub>2</sub> emissions or require other actions that would reduce such emissions.
4. The Director unreasonably and unlawfully failed to exercise his authority under 42 U.S.C. § 7475(a)(2) to impose limits on the AMP Coal Plant's CO<sub>2</sub> emissions, or to require other actions that would reduce such emissions.
5. The Director unreasonably and unlawfully failed to meaningfully consider or respond to public comments regarding the need to impose a BACT limit on or otherwise address the CO<sub>2</sub> emissions from the AMP Coal Plant, as the Director announced before the public hearing that he would not regulate CO<sub>2</sub> emissions from the AMP Coal Plant.
6. The emission limits included in the PTI for the following pollutants that will be emitted by the AMP Coal Plant are unreasonable and unlawful because they do not reflect the use of BACT:
  - a. sulfur dioxide ("SO<sub>2</sub>");
  - b. nitrogen oxide ("NO<sub>x</sub>");
  - c. particulate matter ("PM");
  - d. carbon monoxide ("CO");
  - e. volatile organic compounds ("VOC"); and
  - f. sulfuric acid mist ("SAM").
7. The emission limits included in the PTI for SO<sub>2</sub>, NO<sub>x</sub>, PM, CO, VOC, and SAM are unreasonable and unlawful because they do not represent the maximum degree of emissions reductions achievable. In fact, significantly lower levels of emissions for each of those pollutants can be achieved.
8. The emission limits included in the PTI for SO<sub>2</sub>, NO<sub>x</sub>, PM, CO, VOC, and SAM were unreasonably and unlawfully set at levels that are higher than the limits included in

permits for numerous other pulverized coal-fired power plants. No reasonable or lawful reason was provided for rejecting or ignoring such lower emission limits.

9. Relevant sources of information, including control technology vendors, trade literature, power plant inspection and performance test reports, emission control levels achieved at other plants, and EPA's New Source Review bulletin board, were unreasonably and unlawfully not evaluated or considered in setting the emission limits included in the PTI for SO<sub>2</sub>, NO<sub>x</sub>, PM, CO, VOC, and SAM.
10. The emission limits included in the PTI for SO<sub>2</sub>, NO<sub>x</sub>, PM, CO, VOC, and SAM were unlawfully and unreasonably set on the basis of out-of-date information regarding available control technologies and the control effectiveness of such technologies.
11. The Director unlawfully and unreasonably failed to meaningfully consider air quality impacts to Class I Areas, and Federal Land Manager concerns about such impacts, in setting emission limits for SO<sub>2</sub>, NO<sub>x</sub>, PM, CO, VOC, and SAM.
12. The Director unlawfully and unreasonably failed to evaluate or consider Integrated Gasification Combined Cycle ("IGCC") as an available control technology for SO<sub>2</sub>, NO<sub>x</sub>, PM, CO, VOC, and/or SAM, despite strong evidence that IGCC technology can achieve significantly lower emissions of such pollutants than are allowed by the PTI.
13. The PTI and the emission limits contained therein are unlawfully and unreasonably based on a sub-critical plant design, even though a more efficient design must be evaluated as BACT, and AMP has stated that it plans to build a more efficient supercritical plant.
14. The Director unlawfully and unreasonably did not evaluate or consider Powerspan's "ECO" pollution controls as an available control technology for SO<sub>2</sub> and other pollutants, despite AMP's publicly stated intent to use such technology, and evidence suggesting that ECO technology can achieve lower emissions than are allowed by the PTI.
15. The Director unreasonably and unlawfully failed to evaluate, or rejected, the use of cleaner fuels as an available control technology in setting the emission limits for SO<sub>2</sub>, NO<sub>x</sub>, PM, CO, VOC, and SAM in the PTI.
16. The PTI unlawfully and unreasonably does not require specific removal efficiencies for each type of emission control included in the PTI.
17. The emission limits for SO<sub>2</sub> and SAM in the PTI are unlawfully and unreasonably based on the use of "worst case sulfur content" coal.
18. The Director unreasonably and unlawfully failed to evaluate, or rejected, the use of lower sulfur content coal in the setting of emission limits for SO<sub>2</sub> and SAM in the PTI.

19. The PTI unreasonably and unlawfully does not include tiered emission limits for SO<sub>2</sub> and SAM based on the actual sulfur content of the coal used in the AMP Coal Plant.
20. The PTI unreasonably and unlawfully fails to require a specific removal efficiency for the wet-FGD mandated by the PTI for SO<sub>2</sub> control.
21. The SO<sub>2</sub> emission limits in the PTI are unreasonably and unlawfully based on a removal efficiency for wet-FGDs that is well below the 99+% removal efficiency that can be achieved by wet-FGDs.
22. The Director unlawfully and unreasonably ignored or rejected the fact that there are numerous pulverized coal plants with lower SO<sub>2</sub> emission limits than are included in the PTI. No lawful or reasonable reason was given for why such lower SO<sub>2</sub> emission limits cannot be achieved at the AMP Coal Plant.
23. The PTI unreasonably and unlawfully does not require specific removal efficiencies for the NO<sub>x</sub> controls included in the PTI.
24. The NO<sub>x</sub> emission limits in the PTI are unlawfully and unreasonably based on removal efficiencies for Low-NO<sub>x</sub> Burners, Over-fired Air, and Selective Catalytic Reduction that are well below the removal efficiencies that can be achieved by such controls.
25. The Director unlawfully and unreasonably ignored or rejected the fact that there are numerous pulverized coal plants with lower NO<sub>x</sub> emission limits than are included in the PTI. No lawful or reasonable reason was given for why such lower NO<sub>x</sub> emission limits cannot be achieved at the AMP Coal Plant.
26. The Director unlawfully and unreasonably ignored or rejected the fact that there are numerous pulverized coal plants with lower PM emission limits than are included in the PTI. No lawful or reasonable reason was given for why such lower PM emission limits cannot be achieved at the AMP Coal Plant.
27. The opacity limit included in the PTI fails to reflect the use of BACT, and the Director unlawfully and unreasonably ignored or rejected the fact that there are numerous pulverized coal plants with lower opacity limits than are included in the PTI.
28. The Director unlawfully and unreasonably ignored or rejected the fact that there are numerous pulverized coal plants with lower CO emission limits than are included in the PTI. No lawful or reasonable reason was given for why such lower CO emission limits cannot be achieved at the AMP Coal Plant.
29. The Director unlawfully and unreasonably ignored or rejected the fact that there are numerous pulverized coal plants with lower VOC emission limits than are included in the PTI. No lawful or reasonable reason was given for why such lower VOC emission limits cannot be achieved at the AMP Coal Plant.

30. The Director unlawfully and unreasonably ignored or rejected the fact that there are numerous pulverized coal plants with lower SAM emission limits than are included in the PTI. No lawful or reasonable reason was given for why such lower SAM emission limits cannot be achieved at the AMP Coal Plant.
31. The PTI unlawfully and unreasonably fails to require AMP to comply with all emission limits during periods of start-up, shutdown, maintenance, and malfunction.
32. The PTI unlawfully and unreasonably allows AMP to submit the required start-up, shutdown, and malfunction plan after the public comment period closed and the permit was made final.
33. The PTI unlawfully and unreasonably fails to include an emission limit for mercury that reflects the use of Maximum Achievable Control Technology (“MACT”) as required by 42 U.S.C. § 7412 and O.A.C. § 3745-31-28.
34. The PTI includes an emission limit for mercury that unlawfully and unreasonably fails to represent the use of Best Available Technology and is improperly designated as not federally enforceable.
35. The PTI unlawfully and unreasonably provides AMP with the right to seek a less stringent mercury emission limit at a later time.
36. The PTI unlawfully and unreasonably fails to include MACT emission limits for each of the other hazardous air pollutants that would be emitted by the AMP Coal Plant.
37. The PTI unlawfully and unreasonably fails to include a BACT limit for PM 2.5 emissions from the AMP Coal Plant.
38. The Director unlawfully and unreasonably failed to evaluate the air quality impacts of PM 2.5 emissions from the AMP Coal Plant and, instead, improperly used PM 10 emissions as a “surrogate” for PM 2.5.
39. The Director unlawfully and unreasonably failed to ensure that the AMP Coal Plant would not cause or contribute to a violation of the National Ambient Air Quality Standard (“NAAQS”) for PM 2.5. In fact, the AMP Coal Plant would cause or contribute to PM 2.5 NAAQS violations, especially in nearby PM 2.5 non-attainment areas.
40. The Director unlawfully and unreasonably failed to ensure that the impacts of emissions from the AMP Coal Plant on soils and vegetation were fully analyzed. The analysis of soils and vegetation provided by AMP was inadequate for a number of reasons, including:

- a. It relied on deficient air quality modeling that underestimates the air quality impacts of the AMP Coal Plant.
  - b. It did not inventory the types and condition of soils and vegetation in the area.
  - c. It failed to analyze the impacts of the AMP Coal Plant's emission on soils and vegetation in the Ohio River Islands National Wildlife Refuge. In fact, AMP's analysis did not even mention the Refuge, even though a portion of it is located approximately 1 mile from the site of the AMP Coal Plant.
  - d. It relied on outdated screening methods that are not adequately protective of soils and vegetation.
41. The Director unlawfully and unreasonably failed to reference the Ohio River Islands National Wildlife Refuge or potential impacts to the Refuge in the public notice it issued regarding the draft PTI for the AMP Coal Plant.
42. The Director unlawfully and unreasonably failed to ensure that the AMP Coal Plant's emissions would not exceed allowable increment consumption limits designed to protect air quality related values in Class I Areas.
43. The PTI unlawfully and unreasonably authorizes emissions that will cause significant air quality, visibility and deposition impacts in Class I areas, including exceedance of the 24-hour PSD increment for SO<sub>2</sub>, and exceedances of Federal Land Manager ("FLM") guidelines for maximum visibility and deposition impacts.
44. The Director unlawfully and unreasonably relied on air quality modeling that underestimates the Class I and Class II air quality impacts of the AMP Coal Plant.
45. The Director unlawfully and unreasonably failed to consider startup, shutdown, maintenance and malfunction conditions in evaluating the air quality impacts of the AMP Coal Plant.
46. The Director unlawfully and unreasonably failed to evaluate the impacts of the AMP Coal Plant's emission of mercury and other hazardous air pollutants on public health.
47. The Director unlawfully and unreasonably failed to ensure that plume blight impacts were evaluated.
48. The Director unlawfully and unreasonably failed to satisfy Clean Air Act requirements regarding consultation with Federal Land Managers ("FLMs") about the air quality impacts of the AMP Coal Plant in a number of ways, including by:
- a. Failing to timely provide all of the information regarding the AMP Coal Plant that the FLMs requested and needed to evaluate the air quality impacts of the Plant;
  - b. Failing to consult with the FLMs regarding their conclusions that the AMP Coal Plant would have adverse impacts on federally protected Class I Areas and that the emission limits in the draft PTI were "unusually high";

- c. Failing to notify the FLMs that the draft PTI had been issued and that a public comment period deadline had been set;
  - d. Failing to meaningfully consider the FLMs' adverse impacts findings and improperly rejecting those findings solely on the unproven and un-modeled assumption that the Clean Air Interstate Rule ("CAIR") would eliminate any such adverse impact;
  - e. Failing to provide the public with notice of and opportunity to comment on the concerns that the FLMs had raised about the air quality impacts of the AMP Coal Plant or the Director's dismissal of those concerns; and
  - f. Not providing public notice of the increment consumption that the proposed plant would have in Class I Areas.
49. The Director unlawfully and unreasonably failed to ensure that the AMP Coal Plants emissions will not cause violations of NAAQS or exceed increment consumption limits for Class II Areas.
50. The Director unreasonably and unlawfully failed to meaningfully consider or respond to public comments regarding the draft PTI for the AMP Coal Plant.

### **REQUESTED REMEDY**

Based upon the above, Appellants NRDC, OEC, the Sierra Club, and NPCA respectfully request that the Commission find that the action of the Director in issuing Permit to Install No. 06-08138 to American Municipal Power-Ohio was unlawful and unreasonable and, as a result, vacate the Permit to Install and remand the matter to the Director for further action as required by law and for such other relief as appropriate and just.

Respectfully submitted,

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**Certificate Of Service**

I hereby certify that I have served by first class certified U.S. mail a copy of this notice of appeal upon the Director of the Ohio Environmental Protection Agency, Chris Korleski, at 50 W. Town Street, Suite 700, Columbus, Ohio 43215; American Municipal Power-Ohio, Marc Gerken, 2600 Airport Drive, Columbus, Ohio 43219; and John W. Bentine, Chester, Willcox, and Saxbe, 65 E. State Street, Suite 1000, Columbus, Ohio 43215 on March 6, 2008.

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Peter Precario