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ENVIRONMENTAL REVIEW
APPEALS COMMISSION

BEFORE THE ENVIRONMENTAL REVIEW APPEALS COMMISSION
OF THE STATE OF OHIO

NATURAL RESOURCES DEFENSE COUNCIL

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SIERRA CLUB

71 E. Lake St., Suite 1500
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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”), and Sierra Club (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 November 7, 2008 of the Final National Pollution Discharge Elimination System (“NPDES”) Permit To Discharge to Waters of the State of Ohio to Appellee American Municipal Power-Ohio, Inc. (“AMP”), OEPA Permit No.: 0IB00037*AD (the “Permit”). The Permit allows AMP to discharge pollutants into the Ohio River, John’s Run, and unnamed tributaries of the Ohio River from its proposed coal-fired power plant in Letart Falls, Meigs County, Ohio (“AMP Coal Plant”).

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 on-line activists nationwide, including 35,114 in Ohio. OEC is a statewide non-profit environmental advocacy organization with 115 member environmental/conservation organizations and 2,841 individual members throughout Ohio. The Sierra Club is the nation’s oldest grassroots environmental non-profit organization, with more than 750,000 members nationwide, including 17,665 in Ohio.

The Citizen Groups have numerous members who live, work, and/or recreate in and around Meigs County and the Ohio River, who will be aggrieved and adversely affected by the discharge of polluted wastewater from the AMP Coal Plant and the degradation of water quality that the Permit authorizes. These and other members of the Citizen Groups will be seriously aggrieved and adversely affected by the Director’s action challenged herein because the

discharge of pollutants authorized by the Permit from the AMP Coal Plant will increase the level of pollution in waters that are used and enjoyed by such members.

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 Permit. In addition, members and/or representatives of Sierra Club appeared and made statements at the public hearing regarding the draft Permit held in Racine, Ohio on August 5, 2008.

A copy of the Permit is attached to this notice.

**Citizen Groups' Assignments of Error
in Issuance of Permit No. 0IB00037*AD to AMP**

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

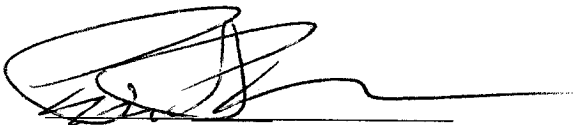
1. The Director unlawfully and unreasonably failed to establish discharge limits in the Permit based on application of Best Available Technology ("BAT") determined through Best Professional Judgment ("BPJ") for numerous pollutants for which BAT is required pursuant to 33 U.S.C. § 1311 and O.A.C. 3745-33-05(A) & 3745-33-07.
2. The Director unlawfully and unreasonably failed to ensure that the AMP Coal Plant would comply with the mercury effluent discharge limits included in the Permit, as required by O.A.C. 3745-33-05(A).
3. The Director unlawfully and unreasonably authorized total residual chlorine ("TRC") discharge concentrations that exceed the TRC water quality standards in violation of O.A.C. 3745-1-05(C)(1) and 3745-33-05(A), and that fail to reflect the application of BAT controls.

4. The Director unlawfully and unreasonably failed to adequately and independently account for the impacts of precipitation events on wastewater management and treatment at the AMP Coal Plant.
5. The Director unlawfully and unreasonably separated the wastewater permit-to-install process for the AMP Coal Plant from the present NPDES permit process and, as a result, failed to consider information relevant to the NPDES permitting and to include best management practices and other requirements in the federally enforceable NPDES Permit.
6. The Director unlawfully and unreasonably failed to evaluate or require non-degradation, minimal degradation, and pollution prevention alternatives that would reduce the water quality impacts and degradation caused by the AMP Coal Plant, in contravention of O.A.C. 3745-1-05(A)(14), (19), (22), (C)(5), & (C)(8)(a)(iii).
7. The Director unlawfully and unreasonably concluded that the water quality degradation authorized by the Permit is “necessary to accommodate important social or economic development.” O.A.C. 3745-1-05(C)(5); 40 C.F.R. § 131.12(a)(2).
8. The Director unlawfully and unreasonably failed to independently evaluate social and economic issues related to the AMP Coal Plant, as required by O.A.C. 3745-1-05(C)(5).
9. The Director unlawfully and unreasonably failed to subject its evaluation and findings regarding the antidegradation standards of O.A.C. 3745-1-05(C)(5) and 40 C.F.R. § 131.12(a)(2) to public review and comment.
10. The Director unlawfully and unreasonably authorized degradation of water quality in the Ohio River, John’s Run, and other unnamed tributaries to the Ohio River without determining whether those waters are impaired or developing TMDLs for them.

REQUESTED REMEDY

Based upon the above, Appellants NRDC, OEC, and the Sierra Club respectfully request that the Commission find that the action of the Director in issuing NPDES Permit No. 0IB00037*AD was unlawful and unreasonable, 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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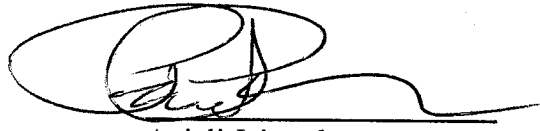
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Counsel for the
Natural Resources Defense Council and
Sierra Club
And lead counsel in this proceeding

Certificate Of Service

I hereby certify that I have served by Federal Express delivery 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 December 5, 2008.

A handwritten signature in black ink, appearing to read 'Anjali Jaiswal', written over a horizontal line.

Anjali Jaiswal