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BEFORE THE
OHIO POWER SITING BOARD

In the Matter of Application of American Municipal Power-Ohio, Inc., for a Certificate of Environmental Compatibility and Public Need for an Electric Generation Station and Related Facilities in Meigs County, Ohio	))))))	**Case No. 06-1358-EL-BGN**

AMERICAN MUNICIPAL POWER-OHIO, INC.'S MOTION FOR MODIFICATION OF CONDITION

American Municipal Power-Ohio, Inc. ("AMP-Ohio") moves for modification of one condition contained in its Certificate of Environmental Compatibility and Public Need ("Certificate") to resolve potentially inconsistent regulatory obligations. The accompanying Memorandum in Support specifically sets forth the grounds for this Motion.

Respectfully submitted,

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April R. Bott (0066463)
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Counsel for American Municipal Power-Ohio, Inc.

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MEMORANDUM IN SUPPORT

I. Background

On March 3, 2008, the Ohio Power Siting Board ("Board") issued a Certificate to AMP-Ohio for construction, operation and maintenance of the American Municipal Power Generating Station ("AMPGS"). The Certificate contains various conditions ("Conditions") that impose certain restrictions and obligations on AMP-Ohio relating to construction and operation of AMPGS. AMP-Ohio must comply with all Conditions of the Certificate.

AMP-Ohio continues pursuit of all necessary permits and authorizations for construction and operation of AMPGS, including a permit to be issued by the Ohio Environmental Protection Agency ("Ohio EPA") to install the residual solid waste landfill ("Landfill") that will serve AMPGS. On June 16, 2008, Ohio EPA issued a draft permit to install ("Landfill PTI") for construction of the Landfill. A copy of the draft Landfill PTI is attached as "Attachment A." As explained below, modification of the Certificate is necessary because the draft Landfill PTI contains Permit Conditions that would be, if contained in the final Landfill PTI, inconsistent with a Condition of the Certificate.

II. A Modification is Necessary to Avoid Conflicting Obligations to Two Different Agencies.

Modification of a condition in the Certificate is necessary due to Permit Conditions in the draft Landfill PTI that would, if contained in the final Landfill PTI, conflict with Conditions of the Certificate. Specifically, Condition 15 of the Certificate requires AMP-Ohio to construct the Landfill on a cell-by-cell basis and prohibits use of Cells 2A, 2B, and 3A as depicted in Figure 4 of the Staff Report of Investigation. *See* Opinion, Order, and Certificate, p. 36. Condition 15 requires AMP-Ohio to file an amendment if it seeks to utilize Cells 2A, 2B, and 3A in the future.

The draft Landfill PTI mandates a different method for phased construction of the Landfill. Specifically, Permit Condition 15 of the draft Landfill PTI mandates that, prior to

acceptance of waste in Cell 1B, AMP-Ohio must obtain authorization to re-phase the Landfill so that portions of the facility within drainage areas of certain identified streams will be constructed after all other portions of the Landfill are constructed. Attachment A, p. 5. Permit Condition 16 prohibits use of the drainage areas for certain specified streams unless gypsum is being produced as part of the flue gas desulfurization process for AMPGS (i.e., use is only permitted if AMPGS employs a limestone-based scrubber).[1] Id. If, after ten years, gypsum is not produced as part of the flue gas desulfurization process, Permit Condition 16 prohibits use of drainage areas for these designated streams. Id.

It is apparent that, while both Condition 15 of the Certificate and Permit Conditions 15 and 16 of the Landfill PTI have the goal of minimizing ecological impacts associated with Landfill construction, the methods and mandates for achieving this goal are not consistent. Specifically, Condition 15 of the Certificate's method for minimizing impacts is tied to the Phases of Landfill construction, whereas the Landfill PTI's method for minimizing impacts requires AMP-Ohio to re-phase the Landfill and is tied to avoidance of drainage areas for certain streams.

AMP-Ohio is confident that Ohio EPA and the Board would agree that the above-discussed landfill conditions should be consistent and that the two sets of obligations should be aligned to provide a clear mandate for the appropriate method of Landfill construction and to ensure regulatory certainty. Further, as the Ohio EPA has now had additional time to review the landfill's ecological impacts, its Permit Conditions, determined subsequent to the Board's determination of its Conditions, should appropriately be the conditions in the Certificate as well. Accordingly, AMP-Ohio requests that effective upon the date of final Landfill PTI issuance Certificate Condition 15 be modified as necessary to reflect Permit Conditions 15 and 16 of the

[1] Of course, Condition 9 of the Certificate requires AMP-Ohio to file an amendment before the OPSB and obtain approval prior to construction if AMP-Ohio elects to use a sulfur control technology other than Powerspan.

Landfill PTI, provided Permit Conditions 15 and 16 in the draft Landfill PTI are substantively identical in the final Landfill PTI.

III. A Modification is Necessary to Make Conditions of the Certificate Internally Consistent.

Modification of the Certificate is necessary because, if the Landfill PTI is issued in final form as currently drafted, it may be impossible for AMP-Ohio to comply with all Conditions of the Certificate. Specifically, Condition 4 requires AMP-Ohio to obtain and comply with all applicable permits and authorizations, and Condition 4(e) requires AMP-Ohio to obtain and comply with the Landfill PTI. *See* Opinion, Order, and Certificate, p. 32. As such, the Certificate requires AMP-Ohio to obtain and comply with the terms and conditions of the Landfill PTI, including Permit Conditions 15 and 16.

Simultaneously, Condition 15 of the Certificate imposes certain restrictions on the phased construction of the Landfill. As currently drafted, however, and as explained above, AMP-Ohio's construction of the Landfill under the mandates of Condition 15 of the Certificate would be inconsistent with the mandates for Landfill construction under Permit Conditions 15 and 16 of the Landfill PTI. As such, compliance with Condition 15 of the Certificate might lead to non-compliance with the mandates of the Landfill PTI, which in turn would threaten compliance with Condition 4 of the Certificate. A modification of Condition 15 of the Certificate to align mandates for construction of the Landfill is necessary to cure this internal conflict between provisions of the Certificate.

IV. Conclusion

For the reasons set forth above, AMP-Ohio respectfully requests that Condition 15 of the Certificate be modified to reflect Permit Conditions 15 and 16 of the Landfill PTI, effective upon the date of final issuance of the Landfill PTI and provided that Permit Conditions 15 and 16 in the final Landfill PTI are substantively identical to Permit Conditions 15 and 16 in the draft Landfill PTI.

Respectfully submitted,

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Counsel for American Municipal Power-Ohio, Inc.

Attachment A

OhioEPA
State of Ohio Environmental Protection Agency

STREET ADDRESS:
Lazarus Government Center
50 W. Town St., Suite 700
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184
www.epa.state.oh.us

MAILING ADDRESS:
P.O. Box 1049
Columbus, OH 43216-1049

June 16, 2008

CERTIFIED

American Municipal Power-Ohio, Inc.
2600 Airport Drive
Columbus, OH 43219

RE: American Municipal Power Generating Station
Residual Solid Waste Landfill (AMPGS Landfill)
Draft Permit to Install Application
PTI #06-08301

Dear Madams or Sirs:

The application for a Permit to Install with accompanying plans and specifications for the above referenced facility has been reviewed by the staff of the Ohio EPA. It is the recommendation of the staff that the director issue a Permit to Install since your proposal appears to comply with applicable Ohio solid waste rules.

Therefore, enclosed please find a Permit to Install which is being issued to you today in draft form pursuant to Ohio Revised Code Chapter 3734 and the rules adopted thereunder.

A public notice concerning the issuance of this draft Permit to Install application will appear in The Daily Sentinel. A Public Information Session/ Public Hearing will be held on Tuesday, August 5, 2008, at the Southern Elementary School, 920 Elm Street, Racine, Ohio 45771. The meeting will begin at 6:30 p.m. Written comments will be accepted for the director's consideration until August 12, 2008. The application may be reviewed in accordance with Ohio EPA's file review procedures by contacting Ohio EPA Southeast District Office, 2195 Front Street, Logan, Ohio 43138, Tel: (740) 385-8501.

Following the close of the public comment period, the director may issue a final Permit to Install upon such terms and conditions as he finds necessary to ensure that the operation of your facility is in accordance with Ohio's solid waste rules.

AMPGS Landfill Draft Permit #06-08301

Please be advised that the detailed plans which you had submitted with your application will be transmitted with the issuance of the final permit. If you have any questions concerning this draft Permit to Install, please contact the Ohio EPA Southeast District Office at the above address and telephone number.

Sincerely,

Kimberly L. Reese

Kimberly L. Reese
Systems Management Unit
Division of Solid & Infectious Waste Management

Enclosures: Draft Permit, Public Notice

cc: Scott Hester, DSIWM, CO
Rich Fox, SEDO, DSIWM
Meigs County Health Department

DRAFT

OHIO ENVIRONMENTAL PROTECTION AGENCY
PERMIT-TO-INSTALL

Application Number: 06-08301
Application Received: May 4, 2007
Permit Fee: $80,000.00
Permit Fee Balance: $79,600.00

Applicant: American Municipal Power-Ohio, Inc.
Address: 2600 Airport Drive
Columbus, Ohio 43219

Name: American Municipal Power Generating Station Residual Solid Waste Landfill (AMPGS Landfill)

Location: The facility is located between the intersections of Hill Road and State Route 124, and Hill Road and East Letart Road. The facility is within Letart Township, Meigs County.

Permit: New Residual Solid Waste Landfill

Issuance Date: JUN 1 6 2008

Effective Date:

The above-named entity is hereby issued a permit-to-install (permit) for the above-described source pursuant to Ohio Administrative Code (OAC) Rule 3745-27-02. Issuance of this permit does not constitute expressed or implied approval or agreement that, if constructed and/or modified in accordance with the plans, specifications, and/or information accompanying the permit application, the above-described source of environmental pollutants will operate in compliance with applicable state and federal laws, rules, and regulations, and does not constitute expressed or implied assurances that, if constructed and/or modified in accordance with those plans, specifications, and/or information accompanying the permit application, the above-described source of environmental pollutants will be granted the necessary operating permits and/or licenses. This permit is issued subject to the attached conditions which are hereby incorporated and made a part hereof.

Ohio Environmental Protection Agency

Chris Korleski, Director

PERMIT SUMMARY

This is a **DRAFT** permit (PTI Number 06-08301) which authorizes construction of AMPGS Landfill (Facility), a proposed new residual solid waste landfill in Meigs County. American Municipal Power-Ohio, Inc. (AMP - Ohio) is the applicant for the permit to install.

AMP - Ohio proposes to construct a 133-acre disposal area which will have a capacity of approximately 27.4 million cubic yards. The anticipated daily waste receipt at the Facility is 2,200 tons. The Facility's anticipated life is 41.4 years.

The Facility's design includes the following: a composite liner system which consists of an eighteen-inch recompacted soil liner and a 60 mil high density polyethylene (HDPE) geomembrane; a leachate collection system; a surface water management system; a ground water monitoring system; and a final closure cap system. The permit also incorporates 15 years of post-closure care and financial assurance for closure and post-closure care.

This permit grants AMP - Ohio an exemption from OAC Rule 3745-30-07(C)(4)(d)(iv), which requires that a sedimentation pond be lined.

This summary is provided solely for informational purposes and does not constitute a part of, or otherwise affect, the attached permit.

PERMIT CONDITIONS

1. The director of the Ohio Environmental Protection Agency (Ohio EPA), or an authorized representative, may enter upon the premises of the above-named applicant (permittee) at any reasonable time during construction and operation for the purpose of making inspections, conducting tests, or examining records or reports pertaining to the construction, modification, or installation of the above-described source of environmental pollutants (residual solid waste disposal facility).

2. The proposed facility shall be constructed in strict accordance with the plans, specifications, and information submitted as part of the permit application. There may be no deviation from the approved plans without the express, written approval of Ohio EPA. Any deviation from the approved plans or the permit conditions may lead to such sanctions and penalties as provided under Ohio law. Approval of these plans does not constitute an assurance that the proposed facility will operate in compliance with all Ohio laws and regulations. Additional landfill components shall be installed upon orders of Ohio EPA if the proposed residual solid waste disposal facility is inadequate or cannot meet applicable standards.

3. Issuance of this permit approval does not relieve the permittee of the duty to comply with all applicable federal, state, and local laws, ordinances, and regulations.

4. This permit shall apply only to those facilities shown on the plans submitted as part of PTI Application Number 06-08301 as received on May 04, 2007, with subsequent revisions received on December 24, 2007 and April 24, 2008.

5. This permit may be modified, or alternatively revoked and reissued, to comply with any revisions to OAC Chapter 3745-30 applicable to this residual solid waste disposal facility.

6. The permittee shall provide for the proper maintenance and operation of the residual solid waste disposal facility in accordance with the provisions of OAC Chapter 3745-30.

7. Nothing in this permit shall be construed to authorize any waiver from the requirements of any applicable federal or state laws or regulations except as specified herein. This permit shall not be interpreted to release the permittee from responsibility under Ohio Revised Code (ORC) Chapters 3704, 3714, 3734, or 6111; under the Federal Clean Water Act, the Resource Conservation and Recovery Act, or the Comprehensive Environmental Response, Compensation, and Liability Act; or from other applicable requirements for remedying conditions resulting from any release of contaminants to the environment.

8. This permit does not authorize the acceptance of any hazardous or infectious wastes.

9. This permit does not authorize the acceptance of any asbestos or asbestos-containing waste material that is subject to the provisions of NESHAP, 40 CFR Part 61, Subpart M. No such asbestos or asbestos-containing waste material may be accepted without first obtaining the necessary permits from Ohio EPA.

10. Not later than seven days prior to starting any construction authorized by this permit, the permittee shall submit to Ohio EPA, Southeast District Office (SEDO) and the Meigs County Health Department written notification of the anticipated construction start date so that construction of this Facility can be routinely inspected by Ohio EPA, SEDO and the Meigs County Health Department before the Facility is placed into operation.

11. The permittee shall clear naturally occurring vegetation only to the extent necessary to prepare for construction that will occur within three years of the clearing of the vegetation.

12. The permittee shall perform the following activities during construction and operation of the Facility in accordance with the cited provisions of OAC Chapter 3745-30 as follows:

    a. The test pad required by OAC Rule 3745-30-07(F)(1) shall be constructed, as necessary, and a report containing the test results shall be submitted to Ohio EPA, SEDO not later than 14 days prior to the initial construction date of the landfill component that the test pad models. Each lift of the test pad shall be tested not less than twice for the maximum dry density and optimum moisture content according to ASTM D698-00a (standard proctor), or ASTM D1557-00 (modified proctor), grain size distribution using ASTM D422-63 (sieve and hydrometer), and Atterberg limits using ASTM D4318-00.

    b. The pre-construction tests required by OAC Rule 3745-30-07(D) shall be performed and the test results submitted to Ohio EPA, SEDO not later than seven days prior to the intended use of the materials in construction.

13. The permittee shall provide for the following inspections and facility maintenance:

    a. The permittee shall provide for daily inspection of the disposal facility and completion of the Residual Solid Waste Landfill Facility Inspection Checklist. Written results of the inspections, including any corrective measures employed, shall be made available to Ohio EPA or the Meigs County Health Department upon request.

    b. Surface water control structures, including sedimentation ponds, sedimentation pond discharge structures, pipes, ditches, and culverts, shall be inspected at least monthly for erosion, clogging, or failure, and prompt corrective action shall be taken, if necessary. A log documenting inspection results, any corrective measures taken, any water quality samples taken, and the date and weather conditions during any water quality sampling shall be maintained on site and submitted to Ohio EPA, SEDO or the Meigs County Health Department upon request.

    c. To ensure proper operation of sedimentation pond(s), the pond(s) shall be cleaned out when the sediment storage volume, as measured at the primary riser, has reached sixty percent of the height of the primary riser. This height shall be measured from the base of the sedimentation pond to the bottom of the lowest inlet orifice on the primary riser.

14. The permittee shall execute and fund a financial assurance instrument meeting the

requirements of OAC Rules 3745-27-15, 3745-27-16, and 3745-27-17 prior to waste acceptance.

15. Prior to the acceptance of waste in Phase 1 Cell 1B, the permittee shall obtain authorization to re-phase the facility so that the portions of the facility within the drainage areas of the streams designated bm-s13d, bm-s13, bm-s18, bm-s19trib, bm-s20trib, bm-s20, and bm-s21 on figure 5 of Appendix 4-1D Army Corps of Engineers Wetlands Delineation Correspondence will be constructed after all other portions of the facility have been constructed.

16. The portions of the facility within the drainage areas of the streams designated bm-s13d, bm-s13, bm-s18, bm-s19trib, bm-s20trib, bm-s20, and bm-s21 on figure 5 of Appendix 4-1D Army Corps of Engineers Wetlands Delineation Correspondence are only authorized for construction by this permit if gypsum is being produced as part of the flue gas desulfurization process at the American Municipal Power Generating Station Power Plant. If, ten years after the issuance of this permit, gypsum is not being produced as part of the flue gas desulfurization process at the American Municipal Power Generating Station Power Plant, the permittee shall obtain authorization to revise the permit to eliminate the portions of the facility within the drainage areas of the streams designated bm-s13d, bm-s13, bm-s18, bm-s19trib, bm-s20trib, bm-s20, and bm-s21 on figure 5 of Appendix 4-1D Army Corps of Engineers Wetlands Delineation Correspondence.

17. This permit will not be issued as a final action until Ohio EPA has provided concurrence on the wording of a draft financial assurance instrument. Execution and funding of the instrument must take place prior to waste acceptance at the facility in accordance with OAC Rules 3745-27-15, 3745-27-16, and 3745-27-17.

18. This permit will not be issued as a final action until all properties within the facility boundary have been purchased or leased.

19. This permit will not be issued as a final action until the National Pollutant Discharge Elimination System permit and the 401 permit associated with this permit have been issued final.

20. Pursuant to ORC Sections 3745.11(Q) and (V), payment of the solid waste permit to install fee balance, in the amount of $79,600.00 payable to "Treasurer, State of Ohio," shall be submitted to Ohio EPA, Attn: Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049. The fee balance shall be submitted within 30 days of the effective date of this permit. Failure to timely submit the required permit fee

balance will result in assessment of late penalties in accordance with ORC Sections 3745.11(Q) and (V).

END OF PERMIT CONDITIONS

ORC Section 3734.02(G) Exemption from OAC Rule 3745-30-07(C)(4)(d)(iv)

The permittee has requested an exemption from OAC Rule 3745-30-07(C)(4)(d)(iv), which requires that a sedimentation pond be lined.

This sedimentation pond liner requirement is stricter than the similar requirement in the municipal solid waste rules. Specifically, OAC Rule 3745-27-08 does not require a sedimentation pond to be lined at municipal solid waste landfills. There are four proposed sedimentation ponds for the Facility. Except for the lack of a constructed liner, their designs meet all other criteria specified in OAC Rule 3745-30-07(C)(4)(d) for storage volume and spillway design. The ponds are to retain only non-contact storm water runoff. The ponds are not to receive any leachate or storm water that comes in contact with waste. The outfalls of the sedimentation ponds will be monitored through a NPDES discharge permit.

Pursuant to ORC Section 3734.02(G), the director may, by order, exempt any person generating, collecting, storing, treating, disposing of, or transporting solid wastes, or processing solid wastes that consist of scrap tires, in such quantities or under such circumstances that, in the determination of the director, are unlikely to adversely affect the public health or safety or the environment from any requirement to obtain a registration certificate, permit, or license or comply with other requirements of ORC Chapter 3734.

Because the sedimentation ponds are designed to meet all storage volume and spillway design requirements, and because the sedimentation ponds are to retain only storm water runoff that does not contact waste, granting an exemption from OAC Rule 3745-30-07(C)(4)(d)(iv) is unlikely to adversely affect the public health or safety or the environment. Therefore, pursuant to ORC Section 3734.02(G), the permittee is hereby granted an exemption from OAC Rule 3745-30-07(C)(4)(d)(iv), which requires that a sedimentation pond be lined. This exemption shall remain in effect throughout the effective period of this permit unless otherwise revoked.

PUBLIC NOTICE

Meigs County

ISSUANCE OF DRAFT SOLID WASTE PERMIT TO INSTALL,
ISSUANCE OF DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION
SYSTEM PERMIT **AND** NOTICE OF PUBLIC INFORMATION SESSION / HEARING

Notice is hereby given that on June 16, 2008, Ohio Environmental Protection Agency issued a draft solid waste permit to install (PTI Application # 06-08301) and a proposed modification of a wastewater National Pollutant Discharge Elimination System (NPDES) Permit (0IB00037) to American Municipal Power-Ohio, Inc., 2600 Airport Drive, Columbus, Ohio 43219. The draft solid waste PTI application authorizes construction of American Municipal Power Generating Station Residual Solid Waste Landfill (AMPGS Landfill) Facility, a proposed new residual solid waste landfill. The facility is located between the intersections of Hill Road and State Route 124 and Hill Road and East Letart Road, in Meigs County, Ohio. The NPDES Permit is for the discharges from the wastewater collection, treatment and disposal system serving a proposed coal fired power plant, dredging landfill and flyash/FGD landfill. "Draft Actions" are written statements of the Director's intent with respect to the issuance, denial, etc. of a permit, license, order, etc. Interested persons may submit written comments regarding draft actions.

The discharges for the facility, if approved, would result in degradation to, or lowering of, the water quality of a tributary of Ohio River. However, the chemical-specific water quality criteria developed to protect aquatic life and human health, set forth in Ohio Administrative Code (OAC) 3745-1-07 will not be exceeded.

In accordance with Ohio Revised Code (ORC) 3734.05 and OAC 3745-1-05, Ohio EPA will provide an opportunity for public comment concerning this project. Comments received shall be considered by the director before the draft actions are issued as final. A **public information session / public hearing** has been scheduled for 6:30 p.m. on **August 5, 2008, at Southern Elementary School, 920 Elm St., Racine, OH 45771**. The public hearing will end when everyone in attendance has had an opportunity to provide testimony related to the project.

All interested persons are entitled to attend or be represented and give written or oral comments on the project. The purpose of the hearing is to obtain additional information that will be considered by the Director of Ohio EPA prior to further action on the draft permits. Persons wishing to be on Ohio EPA's interested parties mailing list for this project or submit comments regarding the draft NPDES permit must do so in writing to Ohio EPA-DSW, Permits Processing Unit, P.O. Box 1049, Columbus, Ohio 43216-1049 (614)644-2001. Comments regarding the Solid Waste PTI should be sent to: Ohio EPA, Division of Solid and Infectious Waste Management, Systems Management Unit, P.O. Box 1049, Columbus, Ohio 43216-1049, Tel: (614)644-2621. Comments must be received by the close of business on August 12, 2008. Comments received after this date may not be considered as part of the official record of this hearing. Copies of the pending PTI and NPDES applications, draft permits and technical support information may be reviewed and/or copies made at the Ohio EPA's Southeast District Office, 2195 Front Street, Logan, Ohio 43138, by first calling (740) 385-8501.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing American Municipal Power-Ohio, Inc.'s Motion for Modification of Condition was served upon the following persons via electronic mail and/or via postage prepaid U.S. Mail on August 11, 2008:

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