Office of California Attorney General Edmund Brown Jr.
Office of Connecticut Attorney General Richard Blumenthal
Office of Delaware Attorney General Beau Biden
Office of District of Columbia Attorney General Linda Singer
Office of Massachusetts Attorney General Martha Coakley
Office of Rhode Island Attorney General Patrick C. Lynch
Office of Vermont Attorney General William H. Sorrell

November 30, 2007

VIA FACSIMILE & U.S. MAIL

Ohio Environmental Protection Agency
Attn: Dean Ponchak
Southeast District Office
2196 Front Street
Logan, Ohio, 43138

Re: Letart Falls Draft Permit

Dear Mr. Ponchak:

The Attorneys General of the States of California, Connecticut, Delaware, the District of Columbia, Massachusetts, Rhode Island, and Vermont jointly submit these comments to the Ohio Environmental Protection Agency (Ohio EPA) to voice concerns regarding the proposed issuance of an air quality permit to American Municipal Power (AMP) for the construction of a new coal-fired power plant in Letart Falls, Meigs County. As explained below, we urge Ohio EPA not to issue a permit for the proposed plant unless AMP designs and sites the plant in a way that minimizes the generation of carbon dioxide (CO_2) emissions and/or allows for the capture and secure sequestration of such emissions.

Climate change is the single greatest environmental challenge facing the world today. Although climate change is a global problem, effective action at the national, regional, and state level is needed to achieve the necessary reductions in CO_2 emissions. Scientists overwhelmingly agree that the global community must reduce emissions of greenhouse gases, including CO_2, if we are to stabilize the climate at an acceptable level. And, according to the experts, this action is needed immediately. As the chairman of the United Nations Intergovernmental Panel on Climate Change recently declared: "If there's no action before 2012, that's too late. What we do in the next two to three years will determine our future."

To that end, many states have made the reduction of CO_2 emissions a priority. For example, ten northeastern states (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont) participate in the Regional Greenhouse Gas Initiative (RGGI), a mandatory cap-and-trade program to reduce CO_2 emissions from power plants, which collectively represent a major contributor to global warming. By 2019, the RGGI states will achieve a 10% reduction in CO_2 emissions, with a cumulative reduction below baseline of roughly 50 million tons. Similarly, California passed the Global Warming Solutions Act, AB 32, in 2006, which requires the state's utilities, oil refiners, cement makers, and other large industrial greenhouse gas emitters to reduce their CO_2 emissions to 1990 levels by 2020. California also enacted in 2006 California Public Utilities Code, section 8340 et seq., which precludes California utilities from entering contracts for electricity from high-emitting sources of CO_2, both inside and outside of California. Other states are considering or have adopted similar power plant performance standards.

Further, as you are no doubt aware, six Midwestern states just signed the Midwestern Regional Greenhouse Gas Reduction Accord committing to a regional cap-and-trade program for CO_2. Ohio has agreed to be an observer of the program. Along with the states participating in RGGI and the Western Climate Initiative, this new Midwestern accord brings the number of states committed to regional trading systems to 22.

In contrast to these efforts, the proposed AMP plant would substantially increase CO_2 emissions from Ohio sources. As proposed, the new 960 MW coal-fired plant would utilize traditional coal-burning technology, which emits massive amounts of CO_2. The proposed plant is projected to emit roughly 8 million tons of CO_2 per year, thereby seriously undermining the concerted efforts being undertaken by multiple states to address global warming. For instance, over the RGGI time frame, cumulative emissions from this plant would be more than 80 million tons CO_2, more than canceling the reductions relative to baseline resulting from RGGI. In fact, emissions from just one of the two proposed boilers would seriously undermine the RGGI reductions. With a lifetime of more than 50 years, this plant, if built as proposed, might well emit more than 400 million tons of CO_2 in total, thus significantly contributing to the public health and environmental damage associated with global warming.

We encourage you to explore alternatives that will allow Ohio to satisfy its need for energy without exacerbating global warming. As an initial matter, implementation of energy conservation measures and construction of non-polluting renewable energy sources could reduce, or even obviate, the need for new coal-fired power in Ohio. If a new power plant is still needed, we urge the state to consider fueling the plant with biomass or natural gas, or both, and to consider siting so as to allow for full-scale carbon capture and sequestration (CCS). Biomass and natural gas not only emit a fraction of the carbon dioxide compared to coal, and eliminate emissions of pollutants like mercury, sulfur dioxide, and other heavy metals, they also improve the efficiency of the production process, further reducing emissions of CO_2 pollution. Further, we encourage you to

consider Integrated Gasification Combined Cycle (IGCC) technology, an established and available production process.

State and federal laws require issuance of a Prevention of Significant Deterioration (PSD) air quality permit by Ohio EPA to AMP prior to construction of the plant. To obtain a PSD permit, AMP must demonstrate that the proposed Letart Falls project complies with the best available control technology (BACT). The BACT standard requires PSD applicants to consider other "production processes or available methods, systems, and techniques" including "innovative fuel combustion techniques" to achieve the "maximum degree of reduction for each pollutant subject to regulation" under the Clean Air Act (CAA). The plain language and the legislative history of the CAA make clear that Congress intended that the full range of production methodologies, including coal gasification, would be considered in a BACT analysis. (See e.g., 123 Cong. Rec. 18472 (1977).) Thus, a BACT analysis for the Letart Falls project must consider IGCC technology.

The PSD permit for the Letart Falls plant must include a BACT emission limit for CO_2 because CO_2 is a pollutant subject to regulation under the CAA. A BACT emission limit is required "for each pollutant subject to regulation under [the Act]." (42 U.S.C. § 7475(a)(4); see also 40 C.F.R. § 52.21(b)(50)(iv).) As the U.S. Supreme Court held in *Massachusetts v. EPA*, 127 S.Ct. 1438, 1460 (2007), CO_2 and other greenhouse gases are "pollutants" under the CAA. Given that the Letart Falls plant will be a major emitter of CO_2, AMP must demonstrate that the proposed technology for the plant is the best available control technology for CO_2 emissions. A full BACT analysis would inevitably lead to the conclusion that the Letart Falls proposal includes inadequate controls on CO_2 emissions.

Furthermore, Ohio EPA must consider the "energy, environmental, and economic impacts" of each unit as part of the BACT analysis. This analysis extends to the overall environmental impacts of the units. (See, e.g., In re North Country Resource Recovery Associates, 2 E.A.D. 229, 230, 1986 EPA App. LEXIS 14 (Adm'r 1986).) The detrimental environmental effects of the increased CO_2 emissions resulting from the proposed new plant must be considered under the "environmental impacts" prong of BACT, which in turn guides the selection of control technology.

We recognize the need for additional sources of energy, but urge Ohio EPA to fully consider whether efficiency improvements or non-polluting sources of electricity can meet increased demand for the next several years. If increased electricity-generating capacity beyond these options is nonetheless needed, we urge Ohio EPA to work with AMP to require that the plant be constructed so as to minimize emissions and sited so as to allow for CCS.

We thank you for considering our views on this important matter.

Sincerely,

EDMUND G. BROWN JR.
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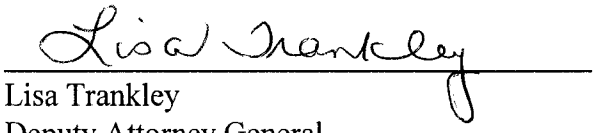

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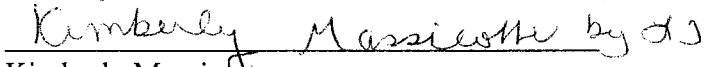

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