UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA, Plaintiff, v. AMERICAN MUNICIPAL POWER, INC., Defendant.	CIVIL ACTION NO. CONSENT DECREE

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APPENDIX A – ENVIRONMENTAL MITIGATION PROJECT

WHEREAS, Plaintiff, the United States of America ("the United States"), on behalf of the United States Environmental Protection Agency ("EPA") is concurrently filing a complaint for injunctive relief and civil penalties pursuant to Sections 113(b) and 167 of the Clean Air Act (the "Act"), 42 U.S.C. §§ 7413(b) and 7477, alleging that Defendant, American Municipal Power, Inc. ("AMP"), an Ohio nonprofit corporation owned and controlled by its over 125 member municipal electric systems located in Kentucky, Michigan, Ohio, Pennsylvania, Virginia, and West Virginia ("AMP Members"), has undertaken construction projects at a major emitting facility in violation of the Prevention of Significant Deterioration ("PSD") provisions of Part C of Subchapter I of the Act, 42 U.S.C. §§ 7470-7492, the Nonattainment New Source Review ("NSR") provisions of Part D of Subchapter I of the Act, 42 U.S.C. §§ 7501-7515, the New Source Performance Standards ("NSPS"), 42 U.S.C. § 7411, requirements of Title V of the Act, 42 U.S.C. § 7661, and the federally approved and enforceable Ohio State Implementation Plan ("SIP");

WHEREAS, in its complaint, the United States alleges, *inter alia,* that AMP failed to obtain the necessary permits and install the controls necessary under the Act to reduce sulfur dioxide ("SO_2"), oxides of nitrogen ("NO_x"), and particulate matter ("PM"), and that AMP failed to obtain an operating permit under Title V of the Act that reflects applicable requirements imposed under Subchapter I of the Act for its R.H. Gorsuch Generating Station ("Gorsuch Station") located near Marietta, Ohio;

WHEREAS, the complaint alleges claims upon which relief can be granted against AMP under Sections 113 and 167 of the Act, 42 U.S.C. §§ 7413 and 7477;

WHEREAS, the United States provided AMP and the State of Ohio actual notice of

alleged violations in accordance with Section 113(a)(1) and (b) of the Act, 42 U.S.C. § 7413(a)(1) and (b);

WHEREAS, the United States and AMP (collectively, the "Parties") have agreed that settlement of this action is in the best interest of the Parties and in the public interest, and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter;

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith and at arm's length and that this Consent Decree is fair, reasonable, consistent with the goals of the Act, and in the public interest;

WHEREAS, AMP has cooperated in the resolution of this matter;

WHEREAS, AMP denies the violations alleged in the complaint and associated notices of violation, maintains that it has been and remains in compliance with the Act and is not liable for civil penalties or injunctive relief, and states that it is agreeing to the obligations imposed by this Consent Decree solely to avoid the costs and uncertainties of litigation and to improve the environment, and nothing herein shall constitute an admission of liability;

WHEREAS, the Parties recognize that AMP generates and supplies steam and other utilities from the Gorsuch Station to neighboring businesses that rely on those utilities and that a source of replacement steam will need to be installed and operational before the Gorsuch Station shuts down to ensure an uninterrupted supply of steam and other utilities to those customers;

WHEREAS, the Parties anticipate that the requirements set forth in this Consent Decree, including the requirements to retire the Gorsuch Station and to perform an energy efficiency Environmental Mitigation Project, will achieve significant reductions in emissions and, thereby,

significantly improve air quality; and

WHEREAS, the Parties have consented to entry of this Consent Decree without trial of any issues;

NOW, THEREFORE, without any admission of fact or law, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this action, the subject matter herein, and the Parties consenting hereto, pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367, and pursuant to Sections 113 and 167 of the Act, 42 U.S.C. §§ 7413 and 7477. Venue is proper under Section 113(b) of the Act, 42 U.S.C. § 7413(b), and under 28 U.S.C. § 1391(b) and (c). Solely for the purposes of this Consent Decree and the underlying complaint, and for no other purpose, AMP waives all objections and defenses that it may have to the Court's jurisdiction over this action, to the Court's jurisdiction over AMP, and to venue in this district. AMP consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. Except as expressly provided for herein, this Consent Decree shall not create any rights in or obligations of any party other than the Parties to this Consent Decree. Except as provided in Section XXVI (Public Comment) of this Consent Decree, the Parties consent to entry of this Consent Decree without further notice.

II. APPLICABILITY

2. Upon the Effective Date, the provisions of this Consent Decree shall apply to, be binding upon, and inure to the benefit of the Parties, their successors and assigns, and upon AMP's

trustees, officers, employees, servants and agents solely in their capacities as such.

3. AMP shall provide a copy of this Consent Decree to all vendors, suppliers, consultants, contractors, agents, and any other company or other organization retained to perform the work required by this Consent Decree; provided, however, that to the extent such work pertains to the energy efficiency project required by Appendix A of this Consent Decree, AMP shall only be required to provide a copy of this Consent Decree to the primary contractor retained to implement the energy efficiency project. Notwithstanding any retention of contractors, subcontractors, or agents to perform any work required under this Consent Decree, AMP shall be responsible for ensuring that all work is performed in accordance with the requirements of this Consent Decree. In any action to enforce this Consent Decree, AMP shall not assert as a defense the failure of its officers, trustees, employees, servants, agents, or contractors to take actions necessary to comply with this Consent Decree, unless it is determined to be a Force Majeure Event as governed by Section XV of this Consent Decree.

III. DEFINITIONS

4. Every term expressly defined by this Section shall have the meaning given that term herein. Every other term used in this Consent Decree that is also a term used under the Act or in a federal regulation implementing the Act shall mean in this Consent Decree what such term means under the Act or those regulations.

5. "AMP" means American Municipal Power, Inc.

6. "Ohio SIP" means the Ohio State Implementation Plan, and any amendments thereto, as approved by EPA pursuant to Section 110 of the Act, 42 U.S.C. § 7410.

7. "CAMD" means EPA's Office of Air and Radiation's Clean Air Markets Division.

8. "CEMS" or "Continuous Emission Monitoring System," means, for obligations involving the monitoring of NO_x and SO_2 emissions under this Consent Decree, the devices defined in 40 C.F.R. § 72.2, the inlet SO_2 lb/mmBtu monitors, and the computer system for recording, calculating, and storing data and equations required by this Consent Decree.

9. "Clean Air Act" or "Act" means the federal Clean Air Act, 42 U.S.C. §§ 7401-7671q, and its implementing regulations.

10. "Consent Decree" means this Consent Decree and the Appendix hereto, which is incorporated into the Consent Decree.

11. "Day" means calendar day unless otherwise specified in this Consent Decree.

12. "Effective Date" shall have the meaning set forth in Section XXI hereof.

13. "Electrostatic Precipitator" or "ESP" means a device for removing particulate matter from combustion gases by imparting an electric charge to the particles and then attracting them to a metal plate or screen of opposite charge before the combustion gases are exhausted to the atmosphere.

14. "Environmental Mitigation Project" or "Project" shall have the meaning set forth in Section IX hereof.

15. "EPA" means the United States Environmental Protection Agency.

16. "Gorsuch Station" means AMP's Gorsuch Generating Station, consisting of four identical pulverized coal-fired boilers capable of generating approximately 650,000 lbs of steam per hour and approximately 53 megawatts ("MW") of electricity each.

17. "Gorsuch Members" shall have the meaning set forth in paragraph 27 hereof.

18. "lb/mmBtu" means one pound of a pollutant per million British thermal units of heat

input.

19. "Netting" shall mean the process of determining whether a particular physical change or change in the method of operation of a major stationary source results in a net emissions increase, as that term is defined at 40 C.F.R. § 52.21(b)(3)(i) and at Ohio Administrative Code (OAC) 3745-31-01(TTT) of the Ohio SIP.

20. "NO_x" means oxides of nitrogen, measured in accordance with the provisions of this Consent Decree.

21. "NO_x Allowance" means an authorization to emit a specified amount of NO_x that is allocated or issued under an emissions trading or marketable permit program of any kind that has been established under the Clean Air Act or the Ohio SIP. NO_x Allowance does not include offsets.

22. "Ownership Interest" means part or all of AMP's legal or equitable ownership interest in the Gorsuch Station.

23. "PM" means total filterable particulate matter, measured in accordance with the provisions of this Consent Decree.

24. "Parties" means the United States of America on behalf of EPA and AMP. "Party" means one of the named "Parties."

25. "Plant-wide Tonnage" means the sum of the tons of pollutant in question emitted from the Gorsuch Station including, without limitation, all tons of that pollutant during periods of startup, shutdown, and malfunction, in the designated calendar year.

26. "Prevention of Significant Deterioration" or "PSD" means the prevention of significant deterioration air quality program under Part C of Subchapter I of the Clean Air Act, 42 U.S.C. §§

7470 - 7492, and 40 C.F.R. § 52.21. It also includes the prevention of significant deterioration of air quality program as approved into the Ohio SIP, OAC 3745-31-11 to 3745-31-20.

27. "Project Dollars" means expenditures and payments of AMP and AMP Members who were participants in the Gorsuch Station Project through Power Sales Contracts dated as of January 1, 1988 ("Gorsuch Members"), incurred or made in carrying out the Project identified in Section IX (Environmental Mitigation Project) of this Consent Decree to the extent that such expenditures or payments both: (a) comply with the requirements set forth in Section IX and Appendix A of this Consent Decree, and (b) constitute AMP's or the Gorsuch Members' direct payments for such projects, or AMP's or the Gorsuch Members' external costs for contractors, vendors, equipment, and the like.

28. "Retire" means that AMP shall: (a) permanently shut down and cease to operate the Gorsuch Station as a coal-fired steam and/or electric generation plant, rendering the Gorsuch Station physically incapable of combusting coal and operating as a coal-fired electric generation plant; and (b) comply with any state and/or federal requirements applicable to the Gorsuch Station, and (c) relinquish all Clean Air Act permits for the Gorsuch Station. AMP shall amend any affected permits so as to reflect the permanent shutdown status of the Gorsuch Station as a coal-fired steam and/or electric generation plant.

29. "SO_2" means sulfur dioxide, measured in accordance with the provisions of this Consent Decree.

30. "SO_2 Allowance" means an authorization or credit to emit a specified amount of SO_2 that is allocated or issued under an emissions trading or marketable permit program of any kind that has been established under the Clean Air Act or the Ohio SIP. SO_2 Allowance does not include

offsets.

31. "State" means the State of Ohio.

32. "Super-Compliant Allowance" means a NO_x or SO_2 Allowance attributable to reductions beyond the requirements of this Consent Decree including, but not limited to, emission reductions attributable to curtailments of fuel use or operating hours.

33. "Surrender" means, with regard to SO_2 or NO_x Allowances, permanently surrendering so that such Allowances can never be used to meet any compliance requirement under the Clean Air Act or the Ohio SIP.

34. "Title V Permit" means the permit required of AMP's Gorsuch Station under Subchapter V of the Act, 42 U.S.C. §§ 7661-7661e.

35. "Unit" means each approximately 650,000 lb/hour steam flow capacity, pulverized coal-fired, boiler at the Gorsuch Station.

IV. RETIRE GORSUCH STATION

36. No later than December 31, 2012, AMP shall Retire the Gorsuch Station.

V. INTERIM NO_x EMISSION LIMITATIONS

A. NO_x Emission Reductions and Controls

1. Plant-Wide Tonnage Limitation and Monitoring for NO_x

37. Beginning with calendar year 2010 and continuing each calendar year until the end of 2012, AMP shall not exceed the following Plant-wide Tonnage limitations at the Gorsuch Station for NO_x:

Calendar Year	NO_x Limit
2010	2,600 tons
2011	2,300 tons
2012	2,100 tons

38. For purposes of calculating the Plant-wide Tonnage for NO_x when a Unit operates, AMP shall use CEMS in accordance with the procedures specified in 40 C.F.R. Part 75.

2. **Continuous Operation of NO_x Controls**

39. AMP shall continuously operate at the Gorsuch Station the existing low NO_x burners and the existing rotating overfire air systems that are at Units 2 and 3 at all times that the Unit the control serves is in operation, consistent with the technological limitations, manufacturers' specifications, and good engineering and maintenance practices for minimizing emissions to the extent practicable.

B. NO_x Allowance Surrender

40. Except as provided in Paragraph 45, AMP shall not sell, trade, or transfer any NO_x Allowances allocated to the Gorsuch Station that would otherwise be available for sale, trade, or transfer as a result of the actions taken by AMP to comply with the requirements of this Consent Decree.

41. Beginning with calendar year 2010, and continuing each calendar year thereafter, AMP shall surrender to EPA, or transfer to a non-profit third party selected by AMP for purposes of surrender, all NO_x Allowances allocated to AMP's Gorsuch Station for that calendar year that AMP does not need in order to meet its own federal and/or State Clean Air Act regulatory

requirements at AMP's Gorsuch Station.

42. AMP shall make its surrender of NO_x Allowances annually, within forty-five (45) days of notice from EPA regarding the NO_x Allowances deducted for compliance for the previous calendar year. Any surrender need not include the specific NO_x Allowances that were allocated to the Gorsuch Station, so long as AMP surrenders NO_x Allowances that are from the same year and that are equal to the number required to be surrendered under this Subsection.

43. If any NO_x Allowances required to be surrendered under this Consent Decree are transferred to a non-profit third party, AMP shall include a description of such transfer in the next report submitted to EPA pursuant to Section XII (Periodic Reporting) of this Consent Decree. Such report shall: (a) provide the identity of the non-profit third party recipient(s) of the NO_x Allowances and a listing of the serial numbers of the transferred NO_x Allowances; and (b) include a certification by the third-party recipient(s) stating that the recipient(s) will not sell, trade, or otherwise exchange any of the allowances and will not use any of the NO_x Allowances to meet any obligation imposed by any environmental law. No later than the third periodic report due after the transfer of any NO_x Allowances, AMP shall include a statement that the third-party recipient(s) surrendered the NO_x Allowances for permanent surrender to EPA in accordance with the provisions of Paragraph 44 within one year after AMP transferred the Allowances to them. AMP shall not have complied with the NO_x Allowance surrender requirements of this Paragraph until all third-party recipient(s) of AMP's NO_x Allowances designated for surrender shall have actually surrendered the transferred NO_x Allowances to EPA.

44. For all NO_x Allowances required to be surrendered to EPA, AMP or the third-party recipient(s) (as the case may be) shall first submit a NO_x Allowance transfer request form to

CAMD directing the transfer of such NO_x Allowances to the EPA Enforcement Surrender Account or to any other EPA account that EPA may direct in writing. As part of submitting these transfer requests, AMP or the third-party recipient(s) shall irrevocably authorize the transfer of these NO_x Allowances and identify – by name of account and any applicable serial or other identification numbers or station names – the source and location of the NO_x Allowances being surrendered

C. General NO_x Provisions

45. Provided that AMP is in compliance with all NO_x emission limitations established in this Consent Decree, nothing in this Consent Decree shall preclude AMP from using, selling, or transferring Super-Compliant NO_x Allowances that may arise as a result of achieving and maintaining annual NO_x emissions at the Gorsuch Station below the Plant-wide Tonnage limits required in this Consent Decree, so long as AMP timely reports the generation of such Super-Compliant NO_x Allowances in accordance with Section XII (Periodic Reporting) of this Consent Decree.

46. AMP shall not use NO_x Allowances to comply with any requirement of this Consent Decree, including by claiming compliance with any emission limitation required by this Consent Decree by using, tendering, or otherwise applying NO_x Allowances to offset any excess emissions (i.e., emissions above the limits specified in Paragraph 37).

47. Nothing in this Consent Decree shall prevent AMP from purchasing or otherwise obtaining, holding, carrying over from year to year, or selling or otherwise transferring NO_x Allowances allocated to a source other than the Gorsuch Station to the extent allowed by law.

48. The requirements in Paragraphs 40 through 44 of this Consent Decree pertaining to AMP's surrender of NO_x Allowances are permanent injunctions not subject to any termination provision of this Consent Decree.

VI. INTERIM SO_2 EMISSION LIMITATIONS

A. SO_2 Emission Reductions and Controls

1. SO_2 Tonnage Limitation and Monitoring

49. Beginning with calendar year 2010 and continuing until the end of 2012, AMP shall not exceed the following Plant-wide Tonnage limitations for SO_2:

Calendar Year	SO_2 Limit
2010	26,000 tons
2011	23,000 tons
2012	21,000 tons

50. For purposes of calculating the Plant-wide Tonnage of SO_2 when a Unit operates, AMP shall use CEMS in accordance with the procedures specified in 40 C.F.R. Part 75.

2. Continuous Operation of SO_2 Controls

51. AMP shall continuously operate all existing SO_2 control measures, including coal blending procedures, to reduce SO_2 emissions at all times that the Gorsuch Station is in operation, consistent with the technological limitations, manufacturers' specifications, and good engineering and maintenance practices.

B. Surrender of SO_2 Allowances

52. Except as provided in Paragraph 57, AMP shall not sell, trade, or transfer any SO_2 Allowances allocated to the Gorsuch Station that would otherwise be available for sale, trade, or transfer as a result of the actions taken by AMP to comply with the requirements of this Consent Decree.

53. Beginning with calendar year 2010, and continuing each calendar year thereafter, AMP shall surrender to EPA, or transfer to a non-profit third party selected by AMP for purposes of surrender, all SO_2 Allowances allocated to AMP for the Gorsuch Station for that calendar year that AMP does not need in order to meet its own federal and/or State Clean Air Act regulatory requirements at the Gorsuch Station.

54. AMP shall make its surrender of SO_2 Allowances annually, within forty-five (45) days of its receipt from EPA of the Annual Deduction Reports for SO_2. Any surrender need not include the specific SO_2 Allowances that were allocated to the Gorsuch Station, so long as AMP surrenders SO_2 Allowances that are from the same year and that are equal to the number required to be surrendered under this Subsection.

55. If any SO_2 Allowances are transferred directly to a non-profit third party for surrender to EPA, AMP shall include a description of such transfer in the next report submitted to EPA pursuant to Section XII (Periodic Reporting) of this Consent Decree. Such report shall: (i) provide the identity of the non-profit third-party recipient(s) of the SO_2 Allowances and a listing of the serial numbers of the transferred SO_2 Allowances; and (ii) include a certification by the non-profit third-party recipient(s) stating that the recipient(s) will not sell, trade, or otherwise exchange any of the SO_2 Allowances and will not use any of the SO_2 Allowances to meet any

obligation imposed by any environmental law. No later than the third periodic report due after the transfer of any SO_2 Allowances, AMP shall include a statement that the non-profit third-party recipient(s) surrendered the SO_2 Allowances for permanent surrender to EPA in accordance with the provisions of Paragraph 55 within one (1) year after AMP transferred the SO_2 Allowances to them. AMP shall not have complied with the SO_2 Allowance surrender requirements of this Subsection until all non-profit third-party recipient(s) of AMP's SO_2 Allowances designated for surrender shall have actually surrendered the transferred SO_2 Allowances to EPA.

56. For all SO_2 Allowances surrendered to EPA, AMP or the non-profit third-party recipient(s) (as the case may be) shall first submit an SO_2 Allowance transfer request form to CAMD directing the transfer of such SO_2 Allowances to the EPA Enforcement Surrender Account or to any other EPA account that EPA may direct in writing. As part of submitting these transfer requests, AMP or the non-profit third-party recipient(s) shall irrevocably authorize the transfer of these SO_2 Allowances and identify – by name of account and any applicable serial or other identification numbers or station names – the source and location of the SO_2 Allowances being surrendered.

C. General SO_2 Provisions

57. Provided that AMP is in compliance with all SO_2 emission limitations established in this Consent Decree, nothing in this Consent Decree shall preclude AMP from using, selling, or transferring Super-Compliant SO_2 Allowances that may arise as a result of achieving and maintaining annual SO_2 emissions at the Gorsuch Station below the Plant-wide Tonnage limits required in this Consent Decree, so long as AMP timely reports the generation of such Super-Compliant SO_2 Allowances in accordance with Section XII (Periodic Reporting) of this Consent

Decree.

58. AMP shall not use SO_2 Allowances to comply with any requirement of this Consent Decree, including by claiming compliance with any emission limitation required by this Consent Decree by using, tendering, or otherwise applying SO_2 Allowances to offset any excess emissions (i.e., emissions above the limits specified in Paragraph 49).

59. Nothing in this Consent Decree shall prevent AMP from purchasing or otherwise obtaining, holding, carrying over from year to year, selling or otherwise transferring SO_2 Allowances allocated to a source other than the Gorsuch Station to the extent allowed by law.

60. The requirements in Paragraphs 52 through 56 of this Consent Decree pertaining to AMP's surrender of SO_2 Allowances are permanent injunctions not subject to any termination provision of this Consent Decree.

VII. PM EMISSION REDUCTIONS

61. Beginning thirty (30) days after the Effective Date, and continuing thereafter, AMP shall operate each ESP at the Gorsuch Station at all times when the Units the ESP serves are in operation to maximize PM emission reductions, provided that such operation of the ESP is consistent with the technological limitations, manufacturers' specifications and good engineering and maintenance practices for the ESP. AMP shall, at a minimum, to the extent reasonably practicable: (a) fully energize each section of the ESP for each unit, and repair any failed ESP section at the next planned or unplanned Unit outage; (b) operate automatic control systems on each ESP to maximize PM collection efficiency; (c) maximize power levels delivered to the ESP consistent with manufacturers' specifications, the operational design of the unit, and good

engineering practices; (d) inspect for and repair during the next planned or unplanned unit outage of sufficient length any openings in ESP casings, ductwork and expansion joints to minimize air leakage; (e) and optimize the plate-cleaning and discharge-electrode-cleaning systems for the ESP by varying the cycle time, cycle frequency, rapper-vibrator intensity, and number of strikes per cleaning event.

VIII. PROHIBITION ON NETTING CREDITS OR OFFSETS

62. Emissions reductions at the Gorsuch Station that result from actions to be taken by AMP after entry of this Consent Decree to comply with the requirements of this Consent Decree shall not be considered as a creditable contemporaneous emission decrease for the purpose of obtaining a netting credit or offset under the Clean Air Act's Nonattainment New Source Review and PSD Programs.

63. Notwithstanding Paragraph 62, AMP may rely on emission reductions resulting from Retiring the Gorsuch Station, solely as offsets for purposes of Nonattainment New Source Review permitting as described in this Paragraph. AMP may rely on such emission reductions solely for the purpose of applying for a Nonattainment New Source Review Permit for a new natural gas fired steam and/or electricity generating station of up to 175 MW combined electric generating capacity from all new units ("new gas unit"), and up to 1600 mmBTU/hour, at the Gorsuch Station. Emission reductions resulting from Retiring the Gorsuch Station beyond those needed for purposes of offsets for permitting such new gas unit(s) shall be subject to the prohibition in Paragraph 62. The following additional limitations shall apply to the use of

emission reductions resulting from Retiring the Gorsuch Station for purposes of obtaining offsets:

a. Such emission reductions must be otherwise creditable under the Ohio SIP and AMP must satisfy all Clean Air Act and Ohio SIP criteria for generating offsets;

b. Construction of the permitted new gas unit(s) shall commence no later than five years after the Effective Date of this Consent Decree; and

c. Ohio EPA must determine that emissions from the new gas unit(s) at the Gorsuch Station will not interfere with "reasonable further progress" toward attainment of a National Ambient Air Quality Standard in accordance with Part D of the Clean Air Act.

Nothing in this Paragraph or this Consent Decree shall be construed as relieving AMP from its obligations to apply for appropriate New Source Review permits under the PSD and/or Nonattainment NSR programs for the construction and operation of the new gas unit(s) at the Gorsuch Station.

64. In addition to the limitations in Paragraph 63, AMP may not generate or use any offsets from the Retirement of the Gorsuch Station unless AMP certifies, pursuant to the requirements of Section XIII (Review and Approval of Submittals) that sufficient verified offsets are unavailable under Ohio's Emission Reduction Credit Banking Program, Ohio Admin. Code 3745-111. As part of such certification, AMP must determine the availability of Verified Emission Reduction Credits (Verified ERCs), as defined by OAC 3745-111-01(B), (I), and (J), as of the date it submits a construction permit application requiring offsets for any project otherwise allowed by Paragraph 63. If Verified ERCs are certified to be available, AMP must

purchase the available Verified ERCs before using any offsets generated at the Gorsuch Station that are available for use to permit the new gas unit(s) in accordance with Paragraph 63 herein. AMP shall include in its certification the number of Verified ERCs available, the number of Verified ERCs purchased, and the number of Gorsuch Station offsets to be used to permit the new gas unit(s).

65. Nothing in this Consent Decree is intended to preclude the emission reductions generated under this Consent Decree from being considered by the State or EPA as credible contemporaneous emission decreases for the purpose of attainment demonstrations submitted pursuant to Section 110 of the Act, 42 U.S.C. § 7410, or in determining impacts on National Ambient Air Quality Standards, PSD increment, or air quality related values, including visibility, in a Class I area.

IX. ENVIRONMENTAL MITIGATION PROJECT

66. AMP shall implement the Environmental Mitigation Project promoting energy efficiency described in Appendix A to this Consent Decree ("Project") in compliance with the terms of this Consent Decree. Since the Project will be implemented as part of a broad public power energy efficiency program funded in part by other sources unrelated to the Consent Decree, the Project will be considered complete when AMP and the Gorsuch Members spend a total of $15,000,000 in Project Dollars over the course of not more than four (4) calendar years, starting in 2010, unless EPA approves a fifth year for expenditures as set forth in Appendix A. AMP shall not include its internal personnel costs in overseeing the implementation of the Project as Project Dollars counting toward the $15,000,000 total spend requirement.

67. AMP shall maintain, and present to EPA upon request, all documents to substantiate the Project Dollars expended to implement the Project described in Appendix A, and shall provide these documents to EPA within thirty (30) days of a request for the documents.

68. All reports prepared by AMP pursuant to the requirements of this Section of the Consent Decree and required to be submitted to EPA shall be publicly available from AMP without charge, subject to the limitations in Paragraph 120.

69. AMP shall certify, as of the date AMP executes this Consent Decree, that AMP is not otherwise required by law to perform the Project described in Appendix A except for the force of local ordinances or resolutions of Gorsuch Members implementing the Project, that AMP is unaware of any other person who is required by law to perform the Project, and that AMP will not use the Project, or a portion thereof, to satisfy any obligations that it may have under other applicable requirements of law, including any applicable renewable or energy efficiency portfolio standards, except for the force of local ordinances or resolutions of Gorsuch Members implementing the Project.

70. AMP shall use good faith efforts to secure as much environmental benefit as possible for the Project Dollars expended, consistent with the applicable requirements and limits of this Consent Decree.

71. If AMP elects to undertake the Project described in Appendix A by contributing funds to another person or entity that will carry out the Project in lieu of AMP, but not including AMP's agents or contractors or the Gorsuch Members' agents or contractors, that person or instrumentality must, in writing: (a) identify its legal authority for accepting such funding; and (b) identify its legal authority to conduct the Project for which AMP contributes the funds.

Regardless of whether AMP elects to undertake the Project by itself or to do so by contributing funds to another person or instrumentality that will carry out the Project, AMP acknowledges that it will receive credit for the expenditure of such funds as Project Dollars only if AMP demonstrates that the funds have been actually spent by AMP, a Gorsuch Member, or by the person or instrumentality receiving them, and that such expenditures met all requirements of this Consent Decree.

72. AMP shall comply with the reporting requirements described in Appendix A.

73. In connection with initial communications to the Gorsuch Members regarding AMP's Project expenditures pursuant to this Consent Decree, AMP shall include prominently in the communication the information that the Project expenditures were required as part of a Clean Air Act consent decree.

74. Within one hundred eighty (180) calendar days following the completion of the Project portion of the energy efficiency program and the expenditure of all Project Dollars required under this Consent Decree, including any applicable periods of verification and benefit quantification from those expenditures, AMP shall submit to the United States in accordance with Paragraph 115 a report that documents the date that the Project was completed, AMP's results of implementing the Project, including the emission reductions or other environmental benefits achieved, and the Project Dollars expended by AMP in implementing the Project.

X. CIVIL PENALTY

75. Within thirty (30) calendar days after entry of this Consent Decree, AMP shall pay to the United States a civil penalty in the amount of $850,000. The civil penalty shall be paid by Electronic Funds Transfer ("EFT") to the United States Department of Justice, in accordance

with current EFT procedures, referencing USAO File Number 2010A48252 and DOJ Case Number 90-5-2-1-09886 and the civil action case name and case number of this action. The costs of such EFT shall be AMP's responsibility. Payment shall be made in accordance with instructions provided to AMP by the Financial Litigation Unit of the U.S. Attorney's Office for the Southern District of Ohio. Any funds received after 2:00 p.m. EDT shall be credited on the next business day. At the time of payment, AMP shall provide notice of payment, referencing the USAO File Number, the DOJ Case Number, and the civil action case name and case number, to the Department of Justice and to EPA in accordance with Section XIX (Notices) of this Consent Decree.

76. Failure to timely pay the civil penalty shall subject AMP to interest accruing from the date payment is due until the date payment is made at the rate prescribed by 28 U.S.C. § 1961, and shall render AMP liable for all charges, costs, fees, and penalties established by law for the benefit of a creditor or of the United States in securing payment.

77. Payments made pursuant to this Section are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and are not tax-deductible expenditures for purposes of federal law.

XI. RESOLUTION OF PAST CIVIL CLAIMS

78. Entry of this Consent Decree shall resolve all civil claims of the United States arising under Part C of Subchapter I of the Clean Air Act, 42 U.S.C. §§ 7470 to 7492, under Part D of Subchapter I of the Act, 42 U.S.C. §§ 7501-7515, under Section 111 of the Act, 42 U.S.C. § 7411, and under Subchapter V of the Clean Air Act, §§ 7661 to 7661f, that arose from

modifications that commenced at the Gorsuch Station prior to the date of lodging of this Consent Decree. Entry of this Consent Decree shall also resolve the civil claims of the United States for the opacity violations alleged in the Complaint filed in this action, and any additional opacity violations committed by AMP at the Gorsuch Station through the date of lodging of the Decree.

XII. PERIODIC REPORTING

79. After entry of this Consent Decree, AMP shall submit to the United States a periodic report, within sixty (60) days after the end of each half of the calendar year (January through June and July through December) until such time as the Gorsuch Station is Retired and the Project is completed as applicable. The report shall include the following information:

a. all information necessary to determine compliance with the requirements of the following Sections of this Consent Decree: Section IV concerning retiring the Gorsuch Station; Section V concerning NO_x emissions and the surrender of NO_x Allowances; Section VI concerning SO_2 emissions and the surrender of SO_2 Allowances; and Section VII concerning PM emissions;

b. all information relating to Super-Compliant Allowances that AMP claims to have generated in accordance with Paragraphs 45 and 57 through emission reductions beyond the requirements of this Consent Decree;

c. information relating to the number of offsets generated by Retiring the Gorsuch Station; the number of offsets used to permit a natural gas unit pursuant to Paragraph 63; and the number of offsets purchased in order to permit the natural gas unit pursuant to Paragraph 64.

d. for the Project, a summary of actions taken, funds expended during the reporting period, as well as cumulative expenditures, and energy efficiency and estimated environmental benefits achieved to date in satisfaction of the requirements of Section IX (Environmental Mitigation Project).

80. In any periodic report submitted pursuant to this Section, AMP may incorporate by reference information previously submitted under its Title V permitting requirements, provided that AMP attaches the Title V permit report (or the pertinent portions of such report) and provides a specific reference to the provisions of the Title V permit report that are responsive to the information required in the periodic report.

81. In addition to the reports required by Paragraph 79, if AMP violates or deviates from any provision of this Consent Decree, excluding late reports for which the report itself is sufficient notice of the deviation, AMP shall submit to the United States a report on the violation or deviation within ten (10) business days after AMP obtained knowledge of the event. In the report, AMP shall explain the cause or causes of the violation or deviation and any measures taken or to be taken by AMP to cure the reported violation or deviation or to prevent such violation or deviations in the future. If at any time, the provisions of this Consent Decree are included in Title V Permits, consistent with the requirements for such inclusion in this Consent Decree, then the deviation reports required under applicable Title V regulations may be submitted to the United States to satisfy all the requirements of this Paragraph.

82. Each AMP report shall be signed by AMP's Environmental Manager (or equivalent title), and shall contain the following certification: This information was prepared either by me or under my direction or supervision in accordance with a system designed to assure that qualified

personnel properly gather and evaluate the information submitted. Based on my evaluation, or the direction and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, I hereby certify under penalty of law that, to the best of my knowledge and belief, this information is true, accurate, and complete. I understand that there are significant penalties for submitting false, inaccurate, or incomplete information to the United States.

83. If any NO_x or SO_2 Allowances are surrendered to any non-profit third party pursuant to Paragraphs 43 and 55, the non-profit third party's certification shall be signed by a managing officer of the non-profit third party and shall contain the following language: I certify under penalty of law that _____ [name of non-profit third party] will not sell, trade, or otherwise exchange any of the allowances and will not use any of the allowances to meet any obligation imposed by any environmental law. I understand that there are significant penalties for making misrepresentations to or misleading the United States.

XIII. REVIEW AND APPROVAL OF SUBMITTALS

84. AMP shall submit each report or other submission required by this Consent Decree to EPA whenever such a document is required to be submitted for review or approval pursuant to this Consent Decree. EPA may approve the submittal or decline to approve it and provide written comments explaining the bases for declining such approval as soon as reasonably practicable. Within sixty (60) days of receiving written comments from EPA, AMP shall either: (a) revise the submittal consistent with the written comments and provide the revised submittal to EPA; or (b) submit the matter for dispute resolution, including the period of informal

negotiations, under Section XVI (Dispute Resolution) of this Consent Decree.

85. Upon receipt of EPA's final approval of the submittal, or upon completion of the submittal pursuant to dispute resolution, AMP shall implement the approved submittal in accordance with the schedule specified therein or another EPA-approved schedule.

XIV. STIPULATED PENALTIES

86. For any failure by AMP to comply with the terms of this Consent Decree, and subject to the provisions of Sections XV (Force Majeure) and XVI (Dispute Resolution), AMP shall pay, within thirty (30) days after receipt of written demand to AMP by the United States, the following stipulated penalties to the United States:

Consent Decree Violation	**Stipulated Penalty**
a. Failure to pay the civil penalty as specified in Section X (Civil Penalty) of this Consent Decree	$10,000 per day
b. Failure to Retire the Gorsuch Station pursuant to Section IV	$10,000 per day for first 30 days; $37,500 per day for violations thereafter. Each day of violation shall also require the surrender of three SO_2 allowances for each ton of SO_2 emitted and three NO_x allowances for each ton of NO_x emitted.
c. Failure to meet the Plant-wide Tonnage NO_x limitation required by Paragraph 37 (Interim NO_x Emissions Limitations)	$5,000 per ton for the first 100 tons over the limit; $10,000 per ton for each ton over 100 tons, plus the surrender of NO_x allowances in an amount equal to two times the number of tons by which the tonnage limitation was exceeded.

d. Failure to meet the Plant-wide Tonnage SO_2 limitation required by Paragraph 49 (Interim SO_2 Emissions Limitations)	$5,000 for the first 100 tons over the limit; $10,000 per ton for each ton over100 tons, plus the surrender of SO_2 allowances in an amount equal to two times the number of tons by which the tonnage limitation was exceeded.
e. Failure to surrender NO_x allowances pursuant to Paragraph 42.	(a) $37,500 per day plus (b) $1,000 per NO_x Allowance not surrendered
f. Failure to surrender SO_2 allowances pursuant to Paragraph 54	(a) $37,500 per day plus (b) $1,000 per SO_2 Allowance not surrendered
g. Failure to apply for any permit required by Section XVII (Permits)	$1,000 per day per violation
h. Failure to timely submit, modify, or implement as approved, the reports or other submittals required by this Consent Decree	$750 per day per violation during the first 10 days, $1,000 per day per violation thereafter
i. Failure to demonstrate the third-party surrender of an NO_x Allowance pursuant to Paragraphs 43 and 44	$2,500 per day per violation
j. Failure to demonstrate the third-party surrender of a SO_2 Allowance pursuant to Paragraphs 55 and 56	$2,500 per day per violation
k. Failure to undertake and complete the Environmental Mitigation Project in compliance with Section IX (Environmental Mitigation Project) of this Consent Decree and Appendix A	$1,000 per day per violation during the first 30 days, $5,000 per day per violation thereafter
l. Failure to operate the existing NO_x controls pursuant to Paragraph 39.	$5,000 per day per violation
m. Failure to operate the existing SO_2 control pursuant to Paragraph 51.	$5,000 per day per violation
n. Failure to operate the existing PM controls pursuant to Paragraph 61.	$5,000 per day per violation

o. Using, selling, or transferring NO_x Allowances, except as permitted by Paragraphs 41 through 47.	(a) four times the market value of the improperly used allowance, as measured at the time of the improper use, plus (b) the surrender, pursuant to the procedures set forth in Paragraphs 41 through 44 of this Decree, of NO_x Allowances in an amount equal to the NO_x Allowances used, sold, or transferred in violation of the Decree.
p. Using, selling, or transferring SO_2 Allowances, except as permitted by Paragraphs 53 through 59.	(a) four times the market value of the improperly used allowance, as measured at the time of the improper use, plus (b) the surrender, pursuant to the procedures set forth in Paragraphs 53 through 57 of this Decree, of SO_2 Allowances in an amount equal to the SO_2 Allowances used, sold, or transferred in violation of the Decree.
q. Any other violation of this Consent Decree	$1,000 per day per violation

87. All stipulated penalties shall begin to accrue on the day after the performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases, whichever is applicable. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree.

88. AMP shall pay all stipulated penalties to the United States within thirty (30) days of

receipt of written demand to AMP from the United States, and shall continue to make such payments every thirty (30) days thereafter until the violation(s) no longer continues, unless AMP elects within twenty (20) days of receipt of written demand to AMP from the United States to dispute the accrual of stipulated penalties in accordance with the provisions in Section XVI (Dispute Resolution) of this Consent Decree.

89. Stipulated penalties shall continue to accrue as provided in accordance with Paragraph 86 during any dispute, with interest on accrued stipulated penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

a. If the dispute is resolved by agreement, or by a decision of the United States pursuant to Section XVI (Dispute Resolution) of this Consent Decree that is not appealed to the Court, accrued stipulated penalties agreed or determined to be owing, together with accrued interest, shall be paid within thirty (30) days of the effective date of the agreement or of the receipt of the United States' decision;

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, AMP shall, within thirty (30) days of receipt of the Court's decision or order, pay all accrued stipulated penalties determined by the Court to be owing, together with interest accrued on such penalties determined by the Court to be owing, except as provided in Subparagraph c, below;

c. If the Court's decision is appealed by either Party, AMP shall, within fifteen (15) days of receipt of the final appellate court decision, pay all accrued stipulated penalties, together with interest accrued on such stipulated penalties determined to

be owing by the appellate court. If the appellate court remands the action to the District Court for a re-calculation of the amount of stipulated penalties, AMP shall pay all accrued stipulated penalties, together with interest accrued on such stipulated penalties, within fifteen (15) days of entry of the District Court's order. Notwithstanding any other provision of this Consent Decree, the accrued stipulated penalties agreed by the United States and AMP, or determined by the United States through Dispute Resolution, to be owing may be less than the stipulated penalty amounts set forth in Paragraph 86.

90. All stipulated penalties shall be paid in the manner set forth in Section X (Civil Penalty) of this Consent Decree.

91. Should AMP fail to pay stipulated penalties in compliance with the terms of this Consent Decree, the United States shall be entitled to collect interest on such penalties, as provided for in 28 U.S.C. § 1961.

92. The stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States by reason of AMP's failure to comply with any requirement of this Consent Decree or applicable law, except that for any violation of the Act for which this Consent Decree provides for payment of a stipulated penalty, AMP shall be allowed a credit for stipulated penalties paid against any statutory penalties also imposed for such violation.

XV. FORCE MAJEURE

93. For purposes of this Consent Decree, a "Force Majeure Event" shall mean an event that, despite AMP's best efforts to fulfill the obligation, has been or will be caused by circumstances

beyond the control of AMP, its contractors, or any entity controlled by AMP that delays compliance with any provision of this Consent Decree or otherwise causes a violation of any provision of this Consent Decree. "Best efforts to fulfill the obligation" include using the best efforts to anticipate any potential Force Majeure Event and to address the effects of any such event (a) as it is occurring and (b) after it has occurred, such that any adverse environmental effects of the delay or violation is minimized to the greatest extent possible.

94. Notice of Force Majeure Events. If any event occurs or has occurred that may delay compliance with or otherwise cause a violation of any obligation under this Consent Decree, as to which AMP intends to assert a claim of Force Majeure, AMP shall notify the United States in writing as soon as practicable, but in no event later than twenty-one (21) calendar days following the date AMP first knew, or by the exercise of due diligence should have known, that the event caused or may cause such delay or violation. In this notice, AMP shall reference this Paragraph of this Consent Decree and describe the anticipated length of time that the delay or violation may persist, the cause or causes of the delay or violation, all measures taken or to be taken by AMP to prevent or minimize the delay or violation, the schedule by which AMP proposes to implement those measures, and AMP's rationale for attributing a delay or violation to a Force Majeure Event. AMP shall adopt all reasonable measures to avoid or minimize such delays or violations and any resulting adverse environmental effects. AMP shall be deemed to know of any circumstance which AMP, its contractors, or any entity controlled by AMP knew or should have known.

95. Failure to Give Notice. If AMP fails to comply with the notice requirements of this Section, the United States may void AMP's claim for Force Majeure as to the specific event for

which AMP has failed to comply with such notice requirement.

96. United States' Response. The United States shall notify AMP in writing regarding AMP's claim of Force Majeure within twenty (20) business days of receipt of the notice provided under Paragraph 94. If the United States agrees that a delay in performance has been or will be caused by a Force Majeure Event, the United States and AMP shall stipulate to an extension of deadline(s) for performance of the affected compliance requirement(s) by a period equal to the delay actually caused by the event. In such circumstances, an appropriate modification shall be made pursuant to Section XXIII (Modification) of this Consent Decree.

97. Disagreement. If the United States does not accept AMP's claim of Force Majeure, or if the United States and AMP cannot agree on the length of the delay actually caused by the Force Majeure Event, the matter shall be resolved in accordance with Section XVI (Dispute Resolution) of this Consent Decree.

98. Burden of Proof. In any dispute regarding Force Majeure, AMP shall bear the burden of proving that any delay in performance or any other violation of any requirement of this Consent Decree was caused by or will be caused by a Force Majeure Event. AMP shall also bear the burden of proving that AMP gave the notice required by this Section and the burden of proving the anticipated duration and extent of any delay(s) attributable to a Force Majeure Event. An extension of one compliance date based on a particular event may, but will not necessarily, result in an extension of a subsequent compliance date.

99. Events Excluded. Unanticipated or increased costs or expenses associated with the performance of AMP's obligations under this Consent Decree shall not constitute a Force Majeure Event.

100. Potential Force Majeure Events. The Parties agree that, depending upon the circumstances related to an event and AMP's response to such circumstances, the kinds of events listed below are among those that could qualify as Force Majeure Events within the meaning of this Section: acts of God; acts of war or terrorism; and orders by a government official, government agency, other regulatory authority, or a regional transmission organization, acting under and authorized by applicable law, that directs AMP to supply electricity in response to a system-wide (state-wide or regional) emergency. Depending upon the circumstances and AMP's response to such circumstances, failure of a permitting authority to issue a necessary permit in a timely fashion may constitute a Force Majeure Event where the failure of the permitting authority to act is beyond the control of AMP and AMP has taken all steps available to it to obtain the necessary permit, including, but not limited to: submitting a complete permit application; responding to requests for additional information by the permitting authority in a timely fashion; and accepting lawful permit terms and conditions after expeditiously exhausting any legal rights to appeal terms and conditions imposed by the permitting authority.

101. As part of the resolution of any matter submitted to this Court under Section XVI (Dispute Resolution) regarding a claim of Force Majeure, the United States and AMP by agreement, or this Court by order, may in appropriate circumstances extend or modify the schedule for completion of work under this Consent Decree to account for the delay in the work that occurred as a result of any delay agreed to by the United States or approved by the Court. AMP shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule (provided that AMP shall not be precluded from making a further claim of Force Majeure with regard to meeting any such extended or

modified schedule).

XVI. DISPUTE RESOLUTION

102. The dispute resolution procedure provided by this Section shall be available to resolve all disputes arising under this Consent Decree, provided that the Party invoking such procedure has first made a good faith attempt to resolve the matter with the other Party.

103. The dispute resolution procedure required herein shall be invoked by one Party giving written notice to the other Party advising of a dispute pursuant to this Section. The notice shall describe the nature of the dispute and shall state the noticing Party's position with regard to such dispute. The Party receiving such a notice shall acknowledge receipt of the notice, and the Parties in dispute shall expeditiously schedule a meeting to discuss the dispute informally not later than fourteen (14) days following receipt of such notice.

104. Disputes submitted to dispute resolution under this Section shall, in the first instance, be the subject of informal negotiations between the Parties. Such period of informal negotiations shall not extend beyond thirty (30) calendar days from the date of the first meeting between the Parties' representatives unless they agree in writing to shorten or extend this period.

105. If the Parties are unable to reach agreement during the informal negotiation period, the United States shall provide AMP with a written summary of its position regarding the dispute. The written position provided by the United States shall be considered binding unless, within forty-five (45) calendar days thereafter, AMP seeks judicial resolution of the dispute by filing a petition with this Court. If AMP seeks judicial resolution, the United States' written summary shall be deemed its initial filing with this Court regarding the dispute. The United States may submit a response to the petition within forty-five (45) calendar days of filing.

106. The time periods set out in this Section may be shortened or lengthened upon motion to the Court of one of the Parties to the dispute, explaining the Party's basis for seeking such a scheduling modification.

107. This Court shall not draw any inferences nor establish any presumptions adverse to either Party as a result of invocation of this Section or the Parties' inability to reach agreement.

108. As part of the resolution of any dispute under this Section, in appropriate circumstances the Parties may agree, or this Court may order, an extension or modification of the schedule for the completion of the activities required under this Consent Decree to account for the delay that occurred as a result of dispute resolution. AMP shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule, provided that AMP shall not be precluded from asserting that a Force Majeure Event has caused or may cause a delay in complying with the extended or modified schedule.

109. The Court shall decide all disputes pursuant to applicable principles of law for resolving such disputes. In their filings with the Court under Paragraph 105, the Parties shall state their respective positions as to the applicable standard of law for resolving the particular dispute.

XVII. PERMITS

110. Unless expressly stated otherwise in this Consent Decree, in any instance where otherwise applicable law or this Consent Decree requires AMP to secure a permit to authorize construction or operation of any device, including all preconstruction, construction, and operating permits required under State law, AMP shall make such application in a timely manner. The United States will use its best efforts to expeditiously fulfill its role in reviewing all

permit applications submitted by AMP in order to meet the requirements of this Consent Decree.

111. When permits are required, AMP shall complete and submit applications for such permits to Ohio EPA to allow sufficient time for all legally required processing and review of the permit request, including requests for additional information by Ohio EPA. Any failure by AMP to submit a timely permit application for the Gorsuch Station shall bar any use by AMP of Section XV (Force Majeure) of this Consent Decree, where a Force Majeure claim is based on permitting delays.

112. Notwithstanding the reference to AMP's Title V permit for the Gorsuch Station in this Consent Decree, the enforcement of that permit shall be in accordance with its own terms and the Act. AMP's Title V permit for the Gorsuch Station shall not be enforceable under this Consent Decree, although any term or limit established by or under this Consent Decree shall be enforceable under this Consent Decree regardless of whether such term has or will become part of a Title V permit, subject to the terms of Section XXVII (Conditional Termination of Enforcement Under Consent Decree) of this Consent Decree.

113. Within thirty (30) days after entry of this Consent Decree, AMP shall amend any applicable Title V permit application, or apply for amendments of its Title V permit, to include a schedule to (1) Retire the Gorsuch Station; and (2) achieve all specific performance, operational, maintenance, and control technology requirements established by this Consent Decree including, but not limited to, the Plant-wide Tonnage limitations for NO_x and SO_2, and the requirements pertaining to the surrender of NO_x and SO_2 Allowances.

114. Within sixty (60) days after entry of this Consent Decree, AMP shall either apply to permanently include the requirements and limitations enumerated in this Consent Decree into a

federally enforceable permit, which is not a Title V permit and which is issued independently of Ohio's authority to issue a Title V permit, or request a site-specific amendment to the Ohio SIP to include the requirements and limitations enumerated in this Consent Decree. The federally enforceable permit, or the SIP as amended, shall include all new requirements applicable to that plant, including but not limited to, any applicable emission limit or Allowance surrender requirement.

115. Upon issuance of the permit or SIP amendment required by Paragraph 114 by the appropriate permitting authority, or in conjunction with the issuance of such permit or SIP amendment, AMP shall file any applications necessary to incorporate the requirements of the permit or SIP amendment into the Title V operating permit for the Facility.

116. AMP shall provide the United States with a copy of each application for a federally enforceable permit or Ohio SIP amendment, as well as a copy of any permit proposed as a result of such application, to allow for timely participation in any public comment opportunity.

117. If AMP sells or transfers to an entity unrelated to AMP ("Third Party Purchaser") part or all of its Ownership Interest covered under this Consent Decree, AMP shall comply with the requirements of Section XX (Sales or Transfers of Ownership Interests) of this Consent Decree with regard to that Ownership Interest prior to any such sale or transfer unless, following any such sale or transfer, AMP remains the holder of the permit for such facility.

XVIII. INFORMATION COLLECTION AND RETENTION

118. Any authorized representative of the United States, including its attorneys, enforcement officers, contractors, and consultants, upon presentation of credentials, shall have a right of entry

upon the premises of the Gorsuch Station at any reasonable time for the purpose of:

a. monitoring the progress of activities required under this Consent Decree;

b. verifying any data or information submitted to the United States in accordance with the terms of this Consent Decree;

c. obtaining samples and, upon request, splits of any samples taken by AMP or its representatives, contractors, or consultants; and

d. assessing AMP's compliance with this Consent Decree.

119. AMP shall retain, and instruct its contractors and agents to preserve, all non-identical copies of all records and documents (including records and documents in electronic form) now in its or its contractors' or agents' possession or control, and that directly relate to AMP's performance of its obligations under this Consent Decree for the following periods: (a) until December 31, 2020 for records concerning retirement of the Gorsuch Station, and (b) until December 31, 2017 for all other records. This record retention requirement shall apply regardless of any corporate document retention policy to the contrary.

120. All information and documents submitted by AMP pursuant to this Consent Decree shall be subject to any requests under applicable law providing public disclosure of documents unless (a) the information and documents are subject to legal privileges or protection or (b) AMP claims and substantiates in accordance with 40 C.F.R. Part 2 that the information and documents contain confidential business information.

121. Nothing in this Consent Decree shall limit the authority of the EPA to conduct tests and inspections at AMP's facilities under Section 114 of the Act, 42 U.S.C. § 7414, or any other applicable federal laws, regulations, or permits.

XIX. NOTICES

122. Unless otherwise provided herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States of America:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044-7611
DJ# 90-5-2-1-09886

and

Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Ariel Rios Building [2242A]
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

and

Director, Air and Radiation Division
U.S. EPA Region 5 (A-18J)
77 West Jackson Boulevard
Chicago, IL 60604

As to AMP:

Randy Meyer, Director of Environmental Affairs
American Municipal Power, Inc.
1111 Schrock Road
Columbus, Ohio 43229

John W. Bentine, General Counsel
American Municipal Power, Inc.
Chester, Willcox & Saxbe LLP
65 E. State St., Suite 1000
Columbus, Ohio 43215

123. All notifications, communications, or submissions made pursuant to this Section shall be sent either by: (a) overnight mail or overnight delivery service with signature required for delivery, or (b) certified or registered mail, return receipt requested. All notifications, communications, and transmissions (a) sent by overnight, certified, or registered mail shall be deemed submitted on the date they are postmarked, or (b) sent by overnight delivery service shall be deemed submitted on the date they are delivered to the delivery service.

124. Either Party may change either the notice recipient or the address for providing notices to it by serving the other Party with a notice setting forth such new notice recipient or address.

XX. SALES OR TRANSFERS OF OWNERSHIP INTERESTS

125. If AMP proposes to sell or transfer an Ownership Interest to another entity (a "Third Party Purchaser"), AMP shall advise the Third Party Purchaser in writing of the existence of this Consent Decree prior to such sale or transfer, and shall send a copy of such written notification to the United States pursuant to Section XIX (Notices) of this Consent Decree at least sixty (60) days before such proposed sale or transfer.

126. No sale or transfer of an Ownership Interest shall take place before the Third Party Purchaser and the United States have executed, and the Court has approved, a modification pursuant to Section XXIII (Modification) of this Consent Decree making the Third Party

Purchaser a party to this Consent Decree and jointly and severally liable with AMP for all the requirements of this Consent Decree that may be applicable to the transferred or purchased Ownership Interests.

127. This Consent Decree shall not be construed to impede the transfer of any Ownership Interests between AMP and any Third Party Purchaser so long as the requirements of this Consent Decree are met. This Consent Decree shall not be construed to prohibit a contractual allocation – as between AMP and any Third Party Purchaser of Ownership Interests – of the burdens of compliance with this Consent Decree, provided that both AMP and such Third Party Purchaser shall remain jointly and severally liable to the United States for the obligations of this Consent Decree applicable to the transferred or purchased Ownership Interests.

128. If the United States agrees, the United States, AMP, and the Third Party Purchaser that has become a party to this Consent Decree pursuant to Paragraph 126, may execute a modification that relieves AMP of its liability under this Consent Decree for, and makes the Third Party Purchaser liable for, all obligations and liabilities applicable to the purchased or transferred Ownership Interests. Notwithstanding the foregoing, however, AMP may not assign, and may not be released from, any obligation under this Consent Decree that is not specific to the purchased or transferred Ownership Interests, including the obligations set forth in Sections IX (Environmental Mitigation Projects) and X (Civil Penalty). AMP may propose and the United States may agree to restrict the scope of the joint and several liability of any purchaser or transferee for any obligations of this Consent Decree that are not specific to the transferred or purchased Ownership Interests, to the extent such obligations may be adequately separated in an enforceable manner.

XXI. EFFECTIVE DATE

129. The "Effective Date" of this Consent Decree shall be the date upon which this Consent Decree having been approved and signed by the Judge of the District Court, is entered in the civil docket by the Clerk pursuant to Fed. R. Civ. P. 79(a) ("Date of Entry").

XXII. RETENTION OF JURISDICTION

130. The Court shall retain jurisdiction of this case after entry of this Consent Decree to enforce compliance with the terms and conditions of this Consent Decree and to take any action necessary or appropriate for its interpretation, construction, execution, modification, or adjudication of disputes. During the term of this Consent Decree, either Party to this Consent Decree may apply to the Court for any relief necessary to construe or effectuate this Consent Decree.

XXIII. MODIFICATION

131. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by the United States and AMP. Where the modification constitutes a material change to any term of this Consent Decree, it shall be effective only upon approval by the Court.

XXIV. GENERAL PROVISIONS

132. This Consent Decree is not a permit. Compliance with the terms of this Consent Decree does not guarantee compliance with all applicable federal, state, or local laws or regulations. The

emission limitations set forth herein do not relieve AMP from any obligation to comply with other state and federal requirements under the Clean Air Act. The limitations and requirements set forth herein do not relieve AMP from any obligation to comply with other state and federal requirements under any applicable laws.

133. This Consent Decree does not apply to any claim(s) of alleged criminal liability.

134. In any subsequent administrative or judicial action initiated by the United States for injunctive relief or civil penalties relating to the Gorsuch Station as covered by this Consent Decree, AMP shall not assert any defense or claim based upon principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, or claim splitting, or any other defense based upon the contention that the claims raised by the United States in the subsequent proceeding were brought, or should have been brought, in the instant case; provided, however, that nothing in this Paragraph is intended to affect the validity of Section XI (Resolution of Past Civil Claims).

135. Except as specifically provided by this Consent Decree, nothing in this Consent Decree shall relieve AMP of its obligation to comply with all applicable federal, state, and local laws and regulations. Subject to the provisions in Section XI (Resolution of Past Civil Claims), nothing contained in this Consent Decree shall be construed to prevent or limit the rights of the United States to obtain penalties or injunctive relief under the Act or other federal, state, or local statutes, regulations, or permits.

136. Each limit and/or other requirement established by or under this Consent Decree is a separate, independent requirement.

137. Emissions limits set by or under this Consent Decree must be met in tons per year. Any

portion of a ton in excess of the Plant-wide Tonnage emissions limitations pursuant to Paragraphs 37 and 49 will be considered one (1) ton under this Consent Decree.

138. This Consent Decree does not limit, enlarge, or affect the rights of either Party to this Consent Decree as against any third parties.

139. This Consent Decree constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Decree, and supersedes all prior agreements and understandings between the Parties related to the subject matter herein. No document, representation, inducement, agreement, understanding, or promise constitutes any part of this Consent Decree or the settlement it represents, nor shall they be used in construing the terms of this Consent Decree.

140. Each Party to this action shall bear its own costs and attorneys' fees.

XXV. SIGNATORIES AND SERVICE

141. Each undersigned representative of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind to this document the Party he or she represents.

142. This Consent Decree may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.

143. Each Party hereby agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXVI. PUBLIC COMMENT

144. Both Parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the procedures of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and the right of the United States to withdraw or withhold consent if the comments disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. AMP shall not oppose entry of this Consent Decree by this Court or challenge any provision of this Consent Decree unless the United States has notified AMP, in writing, that the United States no longer supports entry of this Consent Decree.

XXVII. CONDITIONAL TERMINATION OF ENFORCEMENT UNDER CONSENT DECREE

145. Termination as to completed tasks. As soon as AMP completes the retirement of the Gorsuch Station or any other requirement of this Consent Decree that is not ongoing or recurring, AMP may, by motion to this Court, seek termination of the provision or provisions of this Consent Decree that imposed the requirement.

146. Conditional termination of enforcement through this Consent Decree. Subject to the provisions of Paragraph 147, after AMP:

a. has successfully completed all actions necessary to Retire the Gorsuch Station,

b. has obtained all the final permits required by Section XVII (Permits) of this Consent Decree covering the Gorsuch Station that include as federally

enforceable permit terms, all of the emissions limitations and other requirements specified in this Consent Decree;

then AMP may so certify these facts to the United States and this Court. If the United State does not object in writing with specific reasons within forty-five (45) days of receipt of AMP's certification, then, for any violations of this Consent Decree that occur after the filing of notice, the United States shall pursue enforcement of the requirements contained in the Title V permit through the applicable Title V permit and/or other enforcement authorities and not through this Consent Decree.

147. Resort to enforcement under this Consent Decree. Notwithstanding Paragraph 146, if enforcement of a provision in this Consent Decree cannot be pursued by the United States under the applicable Title V permit, or if a requirement of this Consent Decree was intended to be part of a Title V Permit and did not become or remain part of such permit, then such requirement may be enforced under the terms of this Consent Decree at any time.

XXVIII. FINAL JUDGMENT

148. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the United States and AMP.

SO ORDERED THIS 8th DAY OF October, 2010.

Michael R. Watson
United States District Judge

Signature Page for *United States of America v. American Municipal Power, Inc.* Consent Decree

FOR THE UNITED STATES DEPARTMENT OF JUSTICE

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FOR AMERICAN MUNICIPAL POWER, INC.

By: _____

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Date: 4-20-2010

By: _____

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APPENDIX A: ENVIRONMENTAL MITIGATION PROJECT

In compliance with and in addition to the requirements in Section IX of this Consent Decree (Environmental Mitigation Project), American Municipal Power, Inc. (AMP) shall comply with the requirements of this Appendix to ensure that the benefits of the $15 million in Environmental Mitigation are achieved.

I. Energy Efficiency Mitigation

A. Within forty-five (45) days from the Date of Entry, AMP shall submit to EPA for review and approval pursuant to Section XII of the Consent Decree (Review and Approval of Submittals), a proposed plan to spend a minimum of $15 million to provide energy efficiency services to all the member municipalities of the Gorsuch Station and the customers of such member municipalities (EE Project). Such energy efficiency services shall include, among other things, a program that provides financial incentives for the design and installation of energy efficiency building systems, and the removal and replacement of inefficient appliances. The energy efficiency services shall be designed to achieve a minimum reduction of 70,000 megawatt hours (MWhrs) in the Gorsuch community as well as other AMP members that may also voluntarily participate in the EE Project over a five (5) year period from date of approval of the EE Project plan.

B. The EE Project dollars will act as seed funding for the entire EE Project, which is expected to cost significantly more, which will enroll additional, non-Gorsuch, AMP member utilities and may extend the energy efficiency services for a period longer than required by this Appendix.

C. The Parties agree that AMP must spend at least $15 million in EE Project Dollars within the four (4)-year period commencing upon the date of approval of the EE Project plan, with a minimum of $10 million spent or obligated within the first three (3) years of the four (4)-year period. Upon approval by EPA, and adequate justification based on unexpected conditions, AMP may extend the four (4)-year payment period to five (5) years. AMP is not precluded from accelerating payments to better effectuate a proposed EE Project plan for the EE Project.

D. The proposed EE Project plan shall include the following:

(1) A plan for implementing the EE Project;
(2) A summary-level budget for the EE Project;
(3) A description of the roles of any third-parties involved in the EE Project;
(4) A time-line for implementation of the EE Project; and

(5) A description of the anticipated environmental benefits of the EE Project including an estimate of emission reductions (e.g., SO_2, NOx, PM, CO_2) expected to be realized.

E. The EE Project plan shall also:

(1) Provide energy efficiency services for the member municipalities of the Gorsuch Station and for other members who voluntarily participate in the EE Project for five (5) years from the date of approval of the EE Project plan ("Performance Period"). AMP, however, is not precluded from providing energy efficiency services for other member municipalities or for the member municipalities of the Gorsuch Station for longer than the Performance Period. AMP is also not precluded from achieving the Minimum Performance Amount, as described in Paragraph (5) below, in a shorter time period than the Performance Period;

(2) Involve all sectors including retail, residential, and new and existing commercial and industrial buildings;

(3) Describe the energy efficiency services offered. AMP shall focus on services that are long-term in nature (for example, designing and constructing energy efficient HVAC systems in new buildings). AMP shall also specifically provide a variety of options for energy efficiency services that are designed to benefit lower income customers of member municipalities of the Gorsuch Station;

(4) Provide an estimate of the total electricity savings (measured as MWhrs saved) during the Performance Period. AMP shall also provide the calculations and assumptions associated with such estimate;

(5) Include mechanisms to ensure achievement of at least 70% of the estimated MWhrs stated in Paragraph I(A) above ("Minimum Performance Amount");

a. Include a mechanism for calculating "Alternative Mitigation Project Dollars" if AMP fails to achieve the 70 % Minimum Performance Amount described in Paragraph (5) above. The amount of such Alternative Mitigation Project Dollars shall be determined by subtracting the actual MWhrs savings achieved during the five-year Performance Period from the Minimum Performance Amount and multiplying the resulting value by the average cost per MWhr for the energy efficiency services during the five (5)-year Performance Period;

b. AMP shall direct all Alternative Mitigation Project Dollars to an Alternative Mitigation Project as described in Section II of this Appendix.

(6) Provide for independent third-party auditing and verification of efficiency gains and electricity savings (measured as MWhrs saved); and

(7) To the extent possible, describe the estimated anticipated change to the electric grid and dispatch order of generation resources in the region, as a result of estimated electricity savings from the EE Project.

F. Upon approval of the plan for the EE Project required by this Appendix by EPA, AMP shall complete the approved EE Project according to the approved plan.

G. Commencing with the first progress report due pursuant to Section XII (Periodic Reporting) of the Consent Decree, and continuing annually thereafter until completion of the EE Project, AMP will include in the progress report information describing the progress of the EE Project and the EE Project Dollars expended on the EE Project.

H. In accordance with the requirements of Section IX (Environmental Mitigation Project) and Section XIII (Review and Approval of Submittals), within sixty-six (66) months from the date of approval of the EE Project plan, AMP shall submit to EPA for approval, a report that documents:

(1) The results of the first five (5) years of implementation of the EE Project, including the estimated emission reductions and associated environmental benefits achieved (including calculations and assumptions relevant to the estimates); and
(2) The EE Project Dollars incurred by AMP in implementing the EE Project during the five (5) year Performance Period.

II. Alternative Mitigation Project- Clean Diesel Retrofit Project

A. Any and all Alternative Mitigation Project Dollars, as described in Section I(E)(5) of this Appendix, shall be directed to a clean diesel retrofit project ("Clean Diesel Project"). If AMP achieves the Minimum Performance Amount so that no Alternative Mitigation Project Dollars are generated, AMP is not required to meet any of the Alternative Mitigation Project obligations under this Section II.

B. Within one hundred eighty (180) days of the end of the five (5)-year Performance Period (if required by Section II.A above), AMP shall submit to EPA for review and approval pursuant to Section XIII (Review and Approval of Submittals), a plan to retrofit in-service diesel engines with emission control equipment further described in this Section, designed to reduce emissions of particulates and/or ozone precursors and fund the operation and maintenance of the retrofit equipment for the time-period described below. Eligible vehicles, engines and equipment must be owned or operated by or on behalf of a public entity. Preference shall be given to school buses. This Clean Diesel Project shall include, where necessary, techniques, administration and infrastructure needed to support the Clean Diesel Project. AMP shall complete the retrofit projects required by this

paragraph within two years of the date of EPA approval of the Clean Diesel Project plan. The parties may, by agreement, extend the deadline to complete these projects by up to one (1) year.

C. The plan shall also satisfy the following criteria:

1. Involve vehicles based in, and equipment located, in AMP's members' service territories;

2. Provide for the retrofit of diesel engines with EPA- verified emissions control technologies to achieve the greatest measurable mass reductions of particulates and/or ozone precursors for the fleet that participate(s) in this Clean Diesel Project. The retrofit diesel engines must achieve emission reductions of particulates and/or ozone precursors by 30%-90%, as measured from the pre-retrofit emissions for the particular diesel engine, depending upon the particular EPA verified emissions control technology selected;

3. Describe the process AMP will use to determine the most appropriate emissions control technology for each diesel engine that will achieve the greatest mass reduction of particulates and/or ozone precursors. In making this determination, AMP must take into account the particular operating criteria required for the EPA verified emissions control technology to achieve the verified emissions reductions;

4. Provide for the retrofit of diesel engines with either: (a) diesel particulate filters, (b) diesel oxidation catalysts and closed crankcase ventilation systems, or (c) EPA-verified idling reduction technologies; cleaner fuel use; EPA-verified aerodynamics technologies and low rolling resistance tires; and engine re-powering (i.e., replacing older engines with newer, cleaner engines);

5. Describe the process AMP will use to notify fleet operators and owners that their fleet may be eligible to participate in the Clean Diesel Project and to solicit their interest in participating in the Clean Diesel Project.

6. Describe the process and criteria AMP will use to select the particular fleet to participate in this Clean Diesel Project, consistent with the requirements of this Appendix;

7. For each of the recipient fleet owners and operators, describe the amount of Clean Diesel Project dollars that will cover the costs associated with: (a) purchasing the verified emissions control technology; (b) installation of the verified emissions control technology (including data logging); and (c) training costs associated with repair and maintenance of the verified emissions control technology (including technology cleaning and proper disposal of waste generated from cleaning). This Clean Diesel Project shall not include costs for normal repair or operation of the retrofit diesel fleet;

8. Describe the process AMP will use for determining which diesel engines in a particular fleet will be included in the Clean Diesel Project with the verified emissions control technology, consistent with the criteria specified in Section II.C.2 above;

9. Ensure that recipient fleet owners and/or operators, or their funders, do not otherwise have a legal obligation to reduce emissions through the retrofit of diesel engines;

10. For any outside party with whom AMP might contract to carry out this Clean Diesel Project, establish minimum standards that include prior experience in a Clean Diesel Project and a record of prior ability to interest and organize fleets and community groups to join a clean diesel program;

11. Ensure that the recipient fleets comply with local, state, and federal requirements for the disposal of the waste generated from the verified emissions control technology; and

12. Include a schedule and budget for completing each portion of the Clean Diesel Project.

D. In accordance with the requirements of Section XIII (Review and Approval of Submittals), within sixty (60) days of completion of the Clean Diesel Project, AMP shall submit a report to EPA that describes:

   i. the fleet owner/operator; where it implemented this Clean Diesel Project;
   ii. the particular types of verified emissions control technology (and the number of each type) that it installed pursuant to this Clean Diesel Project;
   iii. the type, year, and horsepower of each retrofit; an estimate of the number of citizens affected (if applicable) by this Clean Diesel Project, and the basis for this estimate; and
   iv. an estimate of the emission reductions for each Project or engine, as appropriate (using the manufacturer's estimated reductions for the particular verified emissions control technology), including particulates, hydrocarbons, carbon monoxide, and nitrogen oxides.

E. Upon EPA's approval of the plan, AMP shall complete the Clean Diesel Project according to the approved plan and schedule.