ICE MILLER LLP
LEGAL COUNSEL

November 28, 2012

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*Via Hand Delivery*
Ohio Environmental Protection Agency
Agency Division of Surface Water
Permits Processing Unit
50 W. Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

*Via Regular Mail*
Ohio Environmental Protection
Southeast District Office
2195 Front Street
Logan, Ohio 43138

***RE: NPDES Permit No. 0IL00159*AD***
***Public Notice No. OEPA 12-10-048 DFT (issued October 30, 2012)***
***American Energy Corporation – Century Mine***

Dear Sirs and Mesdames:

The attachment to this letter sets forth the comments of American Energy Corporation ("AEC") regarding the draft NPDES permit for the Century Mine / Bennoc Refuse Disposal Area located at 43521 Mayhugh Road, Washington Township, Belmont County. We appreciate Ohio EPA's diligence in promptly processing AEC's application.

As the issues raised in our comments will generate litigation between the parties if not amicably resolved, we suggest that a meeting be scheduled to discuss them prior to the permit being finalized. A propos of which, please be advised that, due to action recently taken by the Ohio Department of Natural Resources with respect to an existing refuse disposal area, the time frame for issuing the subject permit as a final action can be extended for a few months without adversely impacting AEC. This, hopefully, will allow the parties sufficient time to resolve their differences. We look forward to meeting with you at your earliest convenience.

AEC reserves the right to raise in an appeal of this permit assignments of error in addition to those issues that are the subject of comments.

If you have any questions regarding these comments, please feel free to contact me.

Sincerely,

ICE MILLER LLP

Stephen P. Samuels
Counsel for American Energy Corporation

c: Michael McKown
Crellin Scott
Katherine Wood-Pugh
Jon Nagel
Eric Nygaard (*via email*)

Comments of American Energy Corporation ("AEC")
Regarding NPDES Permit No. 0IL00159*AD
Public Notice No. OEPA 12-10-048 DFT (issued October 30, 2012)

1. AEC incorporates by reference its previous comments (and supporting documentation) regarding the draft permit, specifically, a letter dated September 15, 2012, from Jon Nagel to Bruce Goff.

2. Page 2, 4, and 12 – The sulfate limit is unlawful and unreasonable because it is, *inter alia*, (a) based on guidance rather than a promulgated water quality standard, (b) putatively derived to "protect" water quality in the unnamed tributaries below the treatment ponds instead of Piney Creek, (c) based on inaccurate and inappropriate flow and dilution assumptions, (d) not needed to protect the aquatic biota, (e) based on incorrect assumptions regarding the use and/or classification of the unnamed tributaries, (f) based on incorrect assumptions regarding background water quality.

3. Outfall 001 should be renumbered as Outfall 023; Outfall 002 should be renumbered as Outfall 024.

4. For both outfalls, the frequency of sampling should be reduced to no more frequently than 1/month for all parameters, except mercury (2/year is acceptable); selenium, chloride, sodium, and hardness (should be 1/quarter); flow (see comment 5 below); and precipitation (1/day is acceptable).

5. The requirement that "the treatment ponds be operated as controlled discharges," which are only permitted to discharge "during a single 48 hour period only once during a 7 day period…," is ill-defined, arbitrary, unreasonable, inconsistent with federal guidance, and not demonstrably linked to the protection of water quality or the aquatic ecosystem.