

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In the Matter of:)	
)	
Peabody Western Coal Company)	CAA Appeal No. 12-01
Title V Permit No. NN-OP 08-010)	
)	

EXHIBITS

- A. Letter dated May 21, 2012, from Navajo Nation EPA to Peabody Western Coal Company.
- B. Letter dated July 5, 2012, from Peabody Western Coal Company to Navajo Nation EPA.
- C. Letter dated August 21, 2012, from Navajo Nation EPA to Peabody Western Coal Company.
- D. Administrative Permit Amendment, dated August 31, 2012.

EXHIBIT A

Letter dated May 21, 2012, from Navajo Nation EPA to Peabody Western Coal Company.

THE NAVAJO NATION



BEN SHELLY PRESIDENT
REX LEE JIM VICE PRESIDENT

Navajo Nation Environmental Protection Agency – Office of the Executive Director
Post Office Box 339, Window Rock, AZ 86515 • Bldg # 2695 Window Rock Blvd
Telephone (928) 871-7692, Fax (928) 871-7996
www.navajonationepa.org

G. Bradley Brown, President
Peabody Western Coal Company
3001 West Shamrell Boulevard
Flagstaff, AZ 86011

Re: Final Permit Decision on Title V Operating Permit for the Peabody Western Coal Company – Kayenta Complex, NN-OP 08-010

Dear Mr. Brown:

Pursuant to 40 C.F.R. § 71.11(D)(5) and the Part 71 Delegation Agreement between US EPA Region IX and Navajo Nation EPA, this letter constitutes notice of the final permit decision by Navajo Nation EPA regarding Title V Operating Permit No. NN-OP 08-010, issued by Navajo Nation EPA to Peabody Western Coal Company on April 14, 2011.

As you are aware, Peabody's petition for review of Conditions III(B), IV(C), IV(D), IV(E), IV(G), IV(H), IV(I), IV(K), IV(L), and IV(Q) of the permit was denied by the Environmental Appeals Board ("EAB") on March 13, 2012. On April 17, 2012, the EAB denied Peabody's motion for reconsideration of the EAB's decision. The motion for reconsideration did not state the effective date of the final order, see 40 C.F.R. § 71.11(D)(6). Therefore, the permit conditions at issue became effective on March 13, 2012. All other provisions of the permit became effective on April 14, 2011.

If you have any questions or comments regarding this action, please contact Anoop Sukumaran at 928-729-4094 or asukumaran@navajo-nsn.gov.

MAY 21 2012

Date

A handwritten signature in black ink, appearing to read "Stephen B. Etsitty".

Stephen B. Etsitty, Executive Director
Navajo Nation Environmental Protection Agency

cc: Deborah Jordan, Director, EPA Region IX Air Division
Geoffrey Glass, EPA Region IX Air Division
Ivan Lieben, Asst. Regional Counsel, EPA Region IX
Noah Smith, EPA Region IX ORC

EXHIBIT B

Letter dated July 5, 2012, from Peabody Western Coal Company to Navajo Nation EPA.



Peabody Western Coal Company

July 5, 2012

Via FEDX 2nd Day Mail

Ms. Charlene Nelson
Air Quality Control Operating Permit Program
Navajo Nation Environmental Protection Agency
Route 112 North, Bldg. #2837
P. O. Box 529
Fort Defiance, AZ 86504



Re: Final Permit Decision on Title V Operating Permit for Peabody Western Coal Company – Kaventa Complex, NN-OP 08-010

Dear Ms. Nelson:

Per my phone conversation with you on June 26, 2012, Peabody Western Coal Company (PWCC) hereby notifies the Navajo Nation Environmental Protection Agency (NNEPA) that PWCC never received a hard copy of the Title V Operating Permit #NN-OP 08-010 as specified in your May 21, 2012 email (Enclosure 1). Per your June 26, 2012 email (Enclosure 2), you confirmed the NNEPA had not sent a hard copy of this announcement and permit to PWCC, but that it was now being mailed promptly. PWCC received this permit package on June 28, 2012 (Enclosure 3).

As a matter of record, I also take this time to point out the following mistakes in NNEPA's May 21, 2012 transmittal letter that accompanied the Title V Permit document that PWCC received on June 28, 2012.

- PWCC's original renewal permit was issued on December 7, 2009 and became effective 30 days later on January 6, 2010.
- PWCC challenged ten conditions based on the Navajo Nation Operating Permit Regulations (NNOPR), thereby staying only the effectiveness of those 10 NNOPR-based conditions. Therefore, all other permit conditions, including those same 10 conditions that are also based on Part 71, became effective on January 6, 2010 and have remained effective ever since. This is counter to the April 14, 2011 date specified in NNEPA's May 21, 2012 letter.
- Finally, PWCC does not concur with your statement that "the permit conditions at issue became effective on March 13, 2012. Contrary to your analysis, 40 CFR 71.11(I)(6) speaks to the effective date of the Board's final order and not to the date of the final permit decision.

Should NNEPA require any further details from PWCC at this time, please do not hesitate to contact me at (928) 913-9230.

Respectfully,

Gary W. Wendt
Manager Permits SW

Enclosures (3)

C: B. Dunfee (PIC)
M. Shepherd (PWCC-KC)

EXHIBIT C

Letter dated August 21, 2012, from Navajo Nation EPA to Peabody Western Coal Company.



Navajo Nation Environmental Protection Agency - Office of The Executive Director

P.O. Box 339 Window Rock, AZ 86515 • Bldg # 2695 Window Rock Blvd.

Tel: 928.871.7692 Fax: 928.871.7996

Email Address: www.navajonavajoepa.org

August 21, 2012

Mr. Gary W. Wendt
Manager Permits SW
Peabody Western Coal Co.
P.O. Box 650
Kayenta, AZ 86033

Re: Peabody Western Coal Co. - Kayenta Complex, NN-OP 08-010

Dear Mr. Wendt:

Thank you for your letter of July 5, 2012, regarding the final Part 71 permit for Peabody Western Coal Company ("PWCC") - Kayenta Complex (NN-OP 08-010). It appears there may be some misunderstandings about the permit which we would like to clarify.

Your letter states that you did not receive a copy of the permit along with the letter we emailed to you on May 21, 2012. NNEPA had already sent a copy of the permit to PWCC by letter dated April 14, 2011, which letter advised PWCC of NNEPA's revised final permit decision following the remand of the original permit by the EPA Environmental Appeals Board ("EAB") in *Peabody Western Coal Co.*, CAA Appeal No. 10-01, 14 E.A.D. __ (Aug. 13, 2010). See 40 C.F.R. § 71.11(l)(5)(iii).

NNEPA's May 21, 2012 letter notified PWCC of NNEPA's final permit decision following the EAB's denials of PWCC's petition for review and motion for reconsideration regarding the final revised permit issued on April 14, 2011. See 40 C.F.R. § 71.11(l)(5)(i); *Peabody Western Coal Co.*, CAA Appeal No. 11-01, 15 E.A.D. __ (March 13, 2012); *id.* (motion for reconsideration denied April 17, 2012). Since the EAB denied both PWCC's petition for review and its motion for reconsideration concerning various conditions of the revised final permit, the permit issued on April 14, 2011 did not change and there was no reason or obligation for NNEPA to send you another copy of the permit. (We did, however, send another copy of the permit to you as a courtesy on June 26, 2012, as you acknowledge.)

Regarding the effective date of the permit, although the permit was first issued on December 7, 2009 it was subsequently remanded "in its entirety" by the EAB pursuant to NNEPA's request for a voluntary remand. *Peabody Western Coal Co.*, No., CAA Appeal No.

Mr. Gary W. Wendt
August 21, 2012
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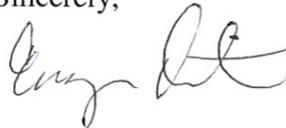
10-01, 14 E.A.D. ___ (Aug. 13, 2010), slip op. at 14. The EAB found that the permit would not be final and effective until NNEPA issued a final permit decision upon completion of the remand proceedings pursuant to 40 C.F.R. § 71.11(l)(5)(iii), *see* slip op. at 14 (referencing the *amicus curiae* brief of EPA Region 9 at 4-5), and stated that PWCC could file a new petition for review (which could reassert objections made in CAA Appeal No. 10-01 as well as asserting new objections regarding any changes made to the permit) following issuance of the revised final permit decision on remand. Therefore, the effective date of the PWCC permit, other than the contested conditions, is May 14, 2011, 30 days after service of NNEPA's notice of the revised final permit decision. 40 C.F.R. § 71.11(l)(2). We apologize for any confusion on this issue caused by NNEPA's letters.

The effective date of the contested permit conditions is less clear. The relevant Part 71 regulations are 40 C.F.R. § 71.11(l)(2), (5)(i), and (6), and there appears to be some ambiguity as to how these provisions should be read together, resulting in different effective dates. The latest possible effective date, however, would have been June 20, 2012 (30 days after service of the notice of decision pursuant to 40 C.F.R. § 71.11(l)(2) and (5)(i)), and therefore, under any possible interpretation of the regulations, the conditions are now effective.

Finally, it is NNEPA's position that the challenged permit conditions were stayed in their entirety pursuant to 40 C.F.R. § 71.11(2)(ii), not just the portions of them relating to the Navajo Nation Operating Permit Regulations. It would be too burdensome administratively for a permitting authority to have to determine which parts of a permit term or condition were being challenged and which were not.

If you have any further questions regarding this permit, please feel free to contact Anoop Sukumaran at (928)-729-4094 or asukumaran@navajo-nsn.gov.

Sincerely,



Eugenia Quintana
Environmental Department Manager
Air & Toxics Department
Navajo Nation Environmental Protection Agency

cc: Deborah Jordan, Director, EPA Region 9 Air Division
Geoffrey Glass, EPA Region 9 Air Division
Ivan Lieben, Assistant Regional Counsel, EPA Region 9

EXHIBIT D

Administrative Permit Amendment, dated August 31, 2012.

THE NAVAJO NATION



BEN SHELLY PRESIDENT
REX LEE JIM VICE PRESIDENT

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TITLE V PERMIT TO OPERATE

<u>PERMIT #:</u>	<u>FACILITY NAME:</u>	<u>LOCATION:</u>	<u>COUNTY:</u>	<u>STATE:</u>
NN-OP 08-010	PEABODY WESTERN COAL COMPANY – KAYENTA COMPLEX	KAYENTA	NAVAJO	AZ
<u>ISSUE DATE:</u>	<u>EXPIRATION DATE:</u>	<u>AFS PLANT ID:</u>	<u>PERMITTING AUTHORITY:</u>	
04/14/2011	04/14/2016	04-017-NAV01	NNEPA	

ACTION/STATUS: ADMINISTRATIVE AMENDMENT

G. Bradley Brown, President
Peabody Western Coal Company
3001 West Shamrell Boulevard
Flagstaff, Arizona 86001
(928) 913-9201

Re: Administrative Permit Amendment to Clean Air Act Title V Operating Permit
for Peabody Western Coal Company – Kayenta Complex; NN-OP 08-010

Dear Mr. Brown:

We are issuing an administrative amendment to the Clean Air Act Title V Operating Permit for Peabody Western Coal Company – Kayenta Complex to correct the Permit Issuance and Expiration Dates in light of the EPA Environmental Appeal Board's decision in *Peabody Western Coal Co.*, CAA Appeal No. 11-01, and to change the Tribal and EPA Permit Contact information listed in Section I. NNEPA has made this administrative amendment pursuant to NNOPR § 405(C).

We have enclosed the Table of Contents and Section I of the amended permit for your information. Please note that the changes made in the permit will not affect the permit terms and conditions that became effective April 14, 2011 and expire on April 14, 2016. A copy of this administrative permit amendment is also being provided to EPA Region IX, pursuant to NNOPR § 405(C) and 40 C.F.R. § 71.7(d). If you have any questions regarding this matter, please contact Anoop Sukumaran at (928) 729-4094 or asukumaran@navajo-nsn.gov.

AUG 3 1 2012

Date

A handwritten signature in black ink, appearing to read "Stephen B. Etsitty", is written over a horizontal line.
Stephen B. Etsitty
Executive Director
Navajo Nation Environmental Protection Agency



Navajo Nation Environmental Protection Agency – Air Quality Control/Operating Permit Program
Post Office Box 529, Fort Defiance, AZ 86504 • Rt.112 North, Bldg # 2837
Telephone (928) 729-4096, Fax (928) 729-4313, Email airquality@navajo-nsn.gov
www.navajonationepa.org/airquality.html

TITLE V PERMIT TO OPERATE

<u>PERMIT #:</u>	<u>FACILITY NAME:</u>	<u>LOCATION:</u>	<u>COUNTY:</u>	<u>STATE:</u>
NN-OP 08-010	PEABODY WESTERN COAL COMPANY -- KAYENTA COMPLEX	KAYENTA	NAVAJO	AZ

<u>ISSUE DATE:</u>	<u>EXPIRATION DATE:</u>	<u>AFS PLANT ID:</u>	<u>PERMITTING AUTHORITY:</u>
04/14/2011	04/14/2016	04-017-NAV01	NNEPA

ACTION/STATUS: FINAL PART 71 OPERATING PERMIT

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Abbreviations and Acronyms

Administrator	Administrator of US EPA
AR	Acid Rain
ARP	Acid Rain Program
CAA	Clean Air Act [42 U.S.C. § 7401 et seq.]
CAM	Compliance Assurance Monitoring
CFR	Code of Federal Regulations
EIP	Economic Incentives Program
gal	gallon
HAP	Hazardous Air Pollutant
hp	horse power
hr	hour
Id. No.	Identification Number
ISO	International Standards Organization
kg	kilogram
lb	pound
MMBtu	million British Thermal Units
mo	month
NESHAP	National Emission Standards for Hazardous Air Pollutants
NNEPA	Navajo Nation Environmental Protection Agency
NNOPR	Navajo Nation Operating Permit Regulations
NNADCR	Navajo Nation Acid Deposition Control Regulations
NO _x	Nitrogen Oxides
NSPS	New Source Performance Standards
NSR	New Source Review
PM	Particulate Matter
PM-10	Particulate matter less than 10 microns in diameter
ppm	parts per million
PSD	Prevention of Significant Deterioration
PTE	Potential to Emit
psia	pounds per square inch absolute
RMP	Risk Management Plan
SNAP	Significant New Alternatives Program
SO ₂	Sulfur Dioxide
TPY	tons per year
TSP	Total Suspended Particulate
USEPA	United States Environmental Protection Agency
VOC	Volatile Organic Compounds

I. Source Identification

- Parent Company Name: Peabody Holding Company, LLC
- Parent Company Mailing Address: 701 Market Street
St. Louis, Missouri 63101-1826
- Plant Name: Peabody Western Coal Company – Kayenta Complex
- Plant Location: 20 miles SSW of Kayenta, Arizona
- County: Navajo, Arizona
- EPA Region: 9
- Reservation: Navajo Nation
- Tribe: Navajo & Hopi
- Company Contact: Gary Wendt Phone: (928) 677-5130
- Responsible Official: G. Bradley Brown Phone: (928) 913-9201
- EPA Contact: Geoffrey Glass Phone: (415) 972-3498
- Tribal Contact: Anoop Sukumaran Phone: (928) 729-4094
- SIC Code: 1221
- AFS Plant Identification Number: 04-017-NAV01
- Description of Process: The facility is a surface coal mining operation.
- Significant Emission Units:

Unit ID	Unit Description	Maximum Capacity	Construction Date	Control Method
J-28 Coal Processing Area at Kayenta Mine				
J28D	Two (2) bulldozing operations	4,500 hrs/yr	1984-1986	N/A
J28	One (1) truck hopper	2,600 tons/hr*	1984-1986	Sprays and rain birds.
Belt #1-N and Belt #1-S	Two (2) conveyors, from the stockpile K-5 truck hopper to the primary crusher	2,600 tons/hr (each)	1984-1986	Enclosure and sprays.
J28	One (1) high sulfur reclaim hopper	2,600 tons/hr*	1984-1986	Sprays and rain birds.
Belt #8	One (1) conveyor, from the stockpiles K-6 and K-6A truck hopper to the crusher	2,600 tons/hr	1984-1986	Enclosure and sprays.
J28PC	Two (2) primary crushers	2,600 tons/hr*(each)	1984-1986	Enclosure and sprays.
Belt #2	One (1) conveyor, from the primary crusher to the screen	2,600 tons/hr	1984-1986	Enclosure and sprays.
J28S	One (1) double deck screen	2,600 tons/hr*	1984-1986	Enclosure and sprays.