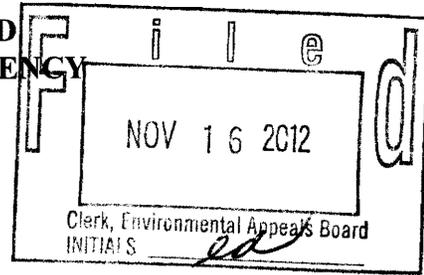


**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, DC**



\_\_\_\_\_)  
In re: )  
          ) Peabody Western Coal Co. )  
          ) )  
Permit No. NN-OP-08-010 )  
\_\_\_\_\_)

CAA Appeal No. 12-01

**ORDER GRANTING, IN PART, JOINT MOTION OF EPA AND NNEPA FOR  
EXTENSION OF TIME TO FILE RESPONSE TO PEABODY'S  
PETITION FOR REVIEW**

By motion dated November 13, 2012, the Navajo Nation Environmental Protection Agency ("NNEPA") and the U.S. Environmental Protection Agency, Office of General Counsel, and Region 9 (collectively, "EPA") jointly seek, by the November 27, 2012 due date this Board established, to file a response addressing only threshold procedural and jurisdictional matters raised in the petition filed in the above-captioned matter. Motion at 1; *see also* Letter from Eureka Durr to Stephen B. Etsitty, Executive Director, NNEPA, and Scott C. Fulton, General Counsel, Office of General Counsel, U.S. EPA (Oct. 12, 2012). Such a response would be stylized as a motion for summary disposition. Motion at 1. NNEPA and EPA further request that, should the Board deny the motion for summary disposition, the Board allow NNEPA and EPA to file a response addressing the merits of the petition no later than forty-five days after issuance of the order denying the motion for summary disposition. *Id.* at 1-2.

In support of their motion, NNEPA and EPA state that they “believe that an economy of resources will be enjoyed by the parties and this forum if these procedural and jurisdictional issues are fully vetted and ruled upon prior to the parties undertaking and the Board considering briefing of the substantive issues.” *Id.* at 2. In requesting to file a response addressing the merits of the petition no later forty-five days after any denial of a motion for summary dismissal, NNEPA and EPA state that their response will require intra- and inter-agency coordination. *Id.* at 3. According to NNEPA and EPA, “The Board’s granting of this extension of the filing date will ensure that the response filed by EPA and NNEPA will be fully informed and reflective of the positions of the agencies.” *Id.*

In considering petitions for review of permit decisions, the Board has evaluated first whether a petitioner has met threshold pleading requirements, and after determining that the petitioner has met those requirements, the Board has evaluated the merits of the petition. *E.g., In re Circle T Feedlot, Inc.*, NPDES Appeal Nos. 09-02 & 09-03, slip op. at 4-5 (EAB June 7, 2010), 14 E.A.D. \_\_\_\_\_. In the Board’s view, NNEPA and EPA’s request to first file a motion for summary disposition before addressing the merits of the petition furthers these previously-stated principles.<sup>1</sup>

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<sup>1</sup> Although Board precedent is in the context of permits issued pursuant to 40 C.F.R. part 124, “[i]n the Board’s judgment, the broad case management discretion found in part 124 cases naturally extends to part 71 cases, which unfold in accordance with procedures very closely parallel to those of part 124.” *In re Peabody W. Coal Co.*, CAA Appeal No. 10-01, slip op. at 8 (EAB Aug. 13, 2010), 14 E.A.D. \_\_\_\_ (citing Federal Operating Permits Program, 61 Fed. Reg. 34,202, 34,225(July 1, 1996)).

Accordingly, the Board **GRANTS, IN PART**, the motion for an extension of time to file a response to Peabody's petition. NNEPA and EPA may file a motion for summary disposition by no later than November 27, 2012. Upon consideration of the motion for summary disposition, the Board shall schedule any additional briefing addressing the merits of the petition as necessary.

So ordered.

Dated: **NOV 16 2012**

ENVIRONMENTAL APPEALS BOARD

By:   
Catherine R. McCabe  
Environmental Appeals Judge

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order Granting, in Part, Joint Motion of EPA and NNEPA for Extension of Time to File Response to Peabody's Petition for Review** in *In re Peabody Western Coal Co.*, CAA Appeal No. 12-01, were sent to the following persons in the manner indicated:

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Date: **NOV 16 2012**

  
Annette Duncan  
Secretary