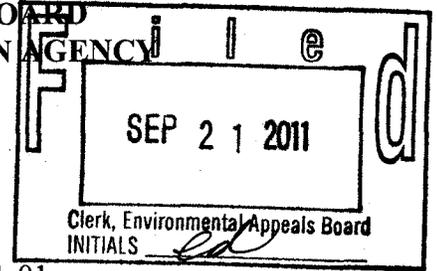


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



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

CAA Appeal No. 11-01

**ORDER GRANTING PEABODY WESTERN COAL COMPANY'S  
MOTION FOR LEAVE TO FILE A RESPONSE TO  
U.S. EPA REGION 9'S AMICUS CURIAE BRIEF**

On September 15, 2011, U.S. Environmental Protection Agency (“EPA”), Region 9 (“Region”) filed a brief as amicus curiae in the above-captioned matter. On September 19, 2011, Peabody Western Coal Co. (“Peabody”) moved for leave to file a response to Region 9’s brief. Peabody Motion for Leave to File a Response (“Motion”). In support of the motion, Peabody states that “its response is necessary to ensure that the [Environmental Appeals] Board’s focus in this proceeding is on the pertinent legal inquiry.” *Id.* at 3. If the motion is granted, Peabody indicates that it intends to refute the arguments made in the Region’s brief. *E.g., id.* at 4 (“Peabody therefore requests the opportunity to demonstrate that a delegate tribal agency may not use tribal law to modify a part 71 federal permit program without prior EPA rulemaking.”).

Peabody states that the Region “neither concurs nor will object to [Peabody’s] motion” and that NNEPA objects to Peabody’s request. *Id.* at 5.

After duly considering the matter, the Environmental Appeals Board grants Peabody leave to file a response brief. The response brief must not present matters that do not relate to the

Region's brief and must be filed on or before October 6, 2011.

So ordered.

Dated:

*September 21,  
2011*

ENVIRONMENTAL APPEALS BOARD

By:

*Anna L. Wolgast*

Anna L. Wolgast  
Environmental Appeals Judge

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order Granting Peabody Western Coal Company's Motion for Leave to File a Response** in *Peabody Western Coal Co.*, CAA Appeal No. 11-01, were sent to the following persons in the manner indicated:

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Annette Duncan  
Secretary