

# Exhibit 5

## NOTICE OF PUBLIC HEARINGS

by the

U.S. Environmental Protection Agency  
Region 9, WTR-5  
75 Hawthorne Street  
San Francisco, CA 94105-3901

Public Notice #: AZ-10-W-001A  
Public Notice Date: January 20, 2010  
Comment Period Closes: March 1, 2010

The U.S. Environmental Protection Agency, Region IX (USEPA) is issuing a notice of proposed action under the Clean Water Act (CWA). The USEPA is proposing to reissue National Pollutant Discharge Elimination System (NPDES) permit NN0022179 to:

Peabody Western Coal Co, Black Mesa Complex, P.O. Box 650, Kayenta, AZ 86004.

The Black Mesa/Kayenta mine has operated since the early 1970s southwest of Kayenta, Arizona. The complex is located on approximately 65,000 acres of land leased within the boundaries of the Hopi and Navajo Indian Reservations. The permit allows for the discharge of treated stormwater generated from areas of the mine site to receiving waters Coal Mine Wash, Moenkopi Wash, Dinnebito Wash, Yellow Water Canyon and their tributaries.

EPA first proposed the permit on February 19, 2009 with a 30 day comment period. On August 5, 2009, EPA issued the final permit which was subsequently appealed. Among other issues, the appellants argued that EPA did not address the concerns of the community by not holding a public hearing on the proposed permit. Therefore, EPA has decided to withdraw the permit reissuance and re-open the public comment period. EPA will hold two public hearings on the permit conditions at the following locations:

- Kayenta, Arizona, February 23, 2010. 6:00 pm to 9:00 pm, at the Kayenta Chapter House, Highway 163.
- Kykotsmovi, Arizona, February 24, 2010. 6:00 pm to 9:00 pm, at the Veterans Memorial Center.

At the public hearing a court reporter will be present and any person may submit oral or written statements and data concerning the draft permit for inclusion in the public record. A Hopi translator will be present at the hearing in Kykotsmovi, AZ and a Navajo translator will be present at the hearing in Kayenta, AZ. Reasonable limits may be set upon the time allowed for oral statements. Persons seeking reasonable accommodations should contact the person listed below.

EPA is soliciting comments on the proposal. EPA will consider all comments received during comment period before taking final action. To submit comments, or to obtain additional information including the proposed permit and administrative record, please contact:

Contact: John Tinger. (415) 972-3518 or [Tinger.John@EPA.gov](mailto:Tinger.John@EPA.gov)  
Website: <http://www.epa.gov/region09/water/npdes/pubnotices.html>