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JOHN R. CLINE, PLLC
ATTORNEY AT LAW

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To: Clerk of the Board

Fax: 202-233-0121

From: John Cline

Direct: 804 - 746 - 4501

Date: July 29, 2011

Total pages including cover sheet: 3

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ENVIR. APPEALS BOARD

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July 29, 2011

Via FacsimileU. S. Environmental Protection Agency
Clerk of the Board, Environmental Appeals Board (MC 1103B)
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001Re: *In re Peabody Western Coal Company*, Appeal No. CAA 11-01;
Petitioner's Notice of Intent to File a Response to Motion of EPA
Region IX for Leave to File a Brief as *Amicus Curiae*

Dear Ms. Durr:

As counsel for Petitioner in the above-referenced proceeding, I filed with the Board on July 21, 2011 Peabody Western Coal Company's ["Peabody's"] Motion for Order Requesting EPA's Offices of Air and Radiation and General Counsel to File a Brief. I received today a document styled Reply to Peabody Western Coal Company's Motion for Order Requesting EPA to File a Brief and Motion of the United States Environmental Protection Agency, Region IX, for Leave to File a Brief as *Amicus Curiae* ("Region IX Reply" and "Region IX Motion"). In its reply, Region IX has opposed Peabody's aforementioned motion. In its motion, Region IX has sought the Board's approval to file a brief on the sole legal issue in this proceeding in place of a joint brief on that issue by EPA's Office of Air and Radiation and Office of General Counsel as requested in Peabody's aforementioned motion.

Notwithstanding Peabody's uncertainty regarding EPA Region IX's standing in this proceeding to reply to Peabody's aforementioned motion, I write to advise the Board that Peabody intends to file, on or before August 8, 2011, a motion for leave to respond to the Region IX Motion, along with the Company's proposed response in opposition to that motion.

Neither the regulations governing Part 71 permit appeals nor the Board's Practice Manual specifically provide for motions practice in the context of a permit appeal. See 40 C.F.R. § 71.11(l); The Environmental Appeals Board Practice Manual at V.C.1. The Board has recently held, however, that it has "broad discretionary authority to manage the permit appeal proceedings that arise from Part 71," which includes granting and denying motions. *In re BP America Production Co.*, Appeal No. CAA 10-04 (EAB Mar. 11, 2011) at 1 (Order Granting

Eurika Durr, Clerk of the Board

July 29, 2011

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Outstanding Motions) (internal citation omitted). To that end, Peabody respectfully requests the Board's consideration of the Company's pending response to the Region IX Motion before deciding whether to grant or deny that motion.

Please do not hesitate to contact me at (804) 746-4501 if you have any questions.

Sincerely,

Original signed by John R. Cline

John R. Cline