

Vacant, **Chairman**
Vacant, **Vice Chairman**

P.O. Box 123, Kykotsmovi, AZ 86039

June 12, 2009

John Tinger
EPA (wtr-5)
75 Hawthorne St.
San Francisco, CA 94105

Subject: CWA 401 Water Quality Certification for the **Black Mesa Complex - National Pollutant Discharge Elimination System Permit No. NN0022179** impacting Coal Mine Wash, Moenkopi Wash, Dinnebito Wash, Yellow Water Canyon and tributaries

National Pollutant Discharge Elimination System Permit No.: **NN0022179**
Hopi Tribe Water Resources Program 401 Certification No.: **HWRP-401-20090612**

Dear Mr. Tinger,

The Hopi Tribe Water Resources Program (WRP) has reviewed your request for certification pursuant to section 401 of the Clean Water Act (CWA) under National Pollutant Discharge Elimination System (NPDES) Permit No. NN0022179. This letter shall serve as such certification. Your acceptance of this certification confirms your recognition of your responsibility to ensure all activities performed under this NPDES permit are done in accordance with the permit and the conditions below.

NPDES Permit Description

NPDES permit no. NN0022179 regulates the discharge of water from active mine areas, coal preparation plant areas, and reclamation areas, that are part of the Black Mesa Complex.

Certification

We hereby grant 401 Certification for NPDES permit no. NN0022179 with the following conditions:

1. Monitoring for the following effluent parameters are added to tables A-1, A-2, and A-4a of section A (Effluent Limitations and Monitoring Requirements) of the permit to ensure compliance with the following Hopi Tribe's Water Quality Standards.

Effluent Parameters*	Monitoring Frequency	Sampling Type
Arsenic	1/day	Discrete
Cadmium	1/day	Discrete
Chromium (total as Cr)	1/day	Discrete
Lead	1/day	Discrete
Mercury	1/day	Discrete
Selenium	1/day	Discrete

* Dissolved concentrations.

2. Water discharged under this permit shall not contain settleable materials or suspended materials in concentrations greater than or equal to ambient concentrations present in the receiving stream that cause nuisance or adversely affect beneficial uses. Activities conducted under this permit shall not result in the violation of any narrative and numeric criteria established in the Hopi Tribe's Water Quality Standards.
3. If there are any substantive changes in this NPDES permit that may affect water quality, you shall notify the Hopi Tribe Water Resources Program, immediately. Failure to do so will result in revocation of this certification.

The point of contact for this certification at the Hopi Tribe is Jon Mason. Please contact Mr. Mason at (928) 527-4242 ex. 114 or at jpmason60@gmail.com.

Sincerely,



Sharon Masek Lopez
Acting Director
Hopi Tribe Water Resources Program

Cc: Gary Wendt, Environmental Manager
Black Mesa Complex
Peabody Western Coal Company
P.O. Box 650
Kayenta, AZ 86033



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

In response, reply to WTR-5

December 30, 2008

Mr. Patrick Antonio
Navajo Nation EPA
P.O. Box 339
Window Rock, AZ 86515

RE: Request for Certification under section 401 of the Clean Water Act for Peabody Western Coal Company- Black Mesa Complex; NPDES Permit NN0022179

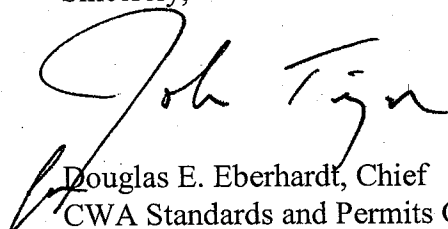
Dear Mr. Antonio:

In accordance with section 401 of the Clean Water Act ("CWA"), the U.S. Environmental Protection Agency ("EPA") requests a water quality certification of the enclosed draft National Pollutant Discharge Elimination System ("NPDES") permit for the discharge of pollutants from Peabody Western Coal Company- Black Mesa Complex; NPDES Permit NN0022179 located in Navajo County, Arizona. Pursuant to 40 C.F.R. § 124.53, EPA cannot issue or deny a permit until the certifying State (or Territory) agency has granted or denied certification under 40 C.F.R. § 124.55, or waived its right to certify. As specified in 40 C.F.R. § 124.53(c)(3), the certifying State agency will be deemed to have waived its right to certify unless that right is exercised within a specified reasonable time **not to exceed sixty (60) days from the date of this letter**, unless the Regional Administrator finds that unusual circumstances require a longer time. EPA has determined that Navajo Nation EPA must exercise its right to certify by March 1, 2009 which is sixty (60) days from the date of this letter.

According to 40 C.F.R § 124.53, State certification of the draft permit must be in writing and must include: 1) conditions which are necessary to assure compliance with the applicable provisions of the Clean Water Act sections 208(e), 301, 302, 303, 306, and 307, and appropriate requirements of state law; 2) any conditions more stringent than those in the draft permit which the state finds necessary to meet the requirements under the CWA or other appropriate state law; and 3) a statement of the extent to which each condition of the draft permit can be made less stringent without violating the requirements of state law, including state Water Quality Standards. For each more stringent condition, the certifying state agency shall cite the CWA or State law references upon which that condition is based. Failure to provide such a citation waives the right to certify with respect to that condition. For each less stringent condition, failure to provide a statement for any condition waives the right to certify or object to any less stringent condition which may be established during the EPA permit issuance process.

If you have any questions regarding this matter, please contact John Tinger at (415) 972-3518 or Tinger.John@epa.gov.

Sincerely,


Douglas E. Eberhardt, Chief
CWA Standards and Permits Office

Enclosures (2)
Fact Sheet
Draft Permit



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

In response, reply to WTR-5

February 19, 2009

Ms. Sharon Masek Lopez
Director, Water Resources Program
The Hopi Tribe
P.O. Box 123
Kykotsmovi, AZ 86039

RE: Request for Certification under section 401 of the Clean Water Act for Peabody Western Coal Company- Black Mesa Complex; NPDES Permit NN0022179

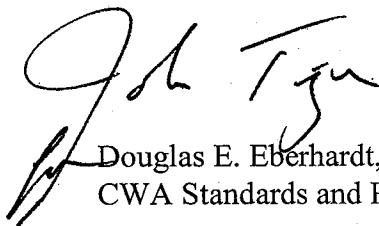
Dear Ms. Masek Lopez:

In accordance with section 401 of the Clean Water Act ("CWA"), the U.S. Environmental Protection Agency ("EPA") requests a water quality certification of the enclosed draft National Pollutant Discharge Elimination System ("NPDES") permit for the discharge of pollutants from Peabody Western Coal Company- Black Mesa Complex; NPDES Permit NN0022179 located in Navajo County, Arizona. Pursuant to 40 C.F.R. § 124.53, EPA cannot issue or deny a permit until the certifying State (or Territory) agency has granted or denied certification under 40 C.F.R. § 124.55, or waived its right to certify. As specified in 40 C.F.R. § 124.53(c)(3), the certifying State agency will be deemed to have waived its right to certify unless that right is exercised within a specified reasonable time not to exceed sixty (60) days from the date of this letter, unless the Regional Administrator finds that unusual circumstances require a longer time.

According to 40 C.F.R § 124.53, State certification of the draft permit must be in writing and must include: 1) conditions which are necessary to assure compliance with the applicable provisions of the Clean Water Act sections 208(e), 301, 302, 303, 306, and 307, and appropriate requirements of state law; 2) any conditions more stringent than those in the draft permit which the state finds necessary to meet the requirements under the CWA or other appropriate state law; and 3) a statement of the extent to which each condition of the draft permit can be made less stringent without violating the requirements of state law, including state Water Quality Standards. For each more stringent condition, the certifying state agency shall cite the CWA or State law references upon which that condition is based. Failure to provide such a citation waives the right to certify with respect to that condition. For each less stringent condition, failure to provide a statement for any condition waives the right to certify or object to any less stringent condition which may be established during the EPA permit issuance process.

If you have any questions regarding this matter, please contact John Tinger at (415) 972-3518 or Tinger.John@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "John Tinger", is written over the typed name of Douglas E. Eberhardt.

Douglas E. Eberhardt, Chief
CWA Standards and Permits Office

Enclosures
Pre-publication Public notice
Draft Permit
Fact Sheet

CC: Mr. Jon Mason, Hopi Tribe (w/o enclosure)



NAVAJO NATION ENVIRONMENTAL PROTECTION AGENCY
SURFACE & GROUND WATER PROTECTION DEPARTMENT

P.O. Box 339, Window Rock, AZ 86515
Tel. (928) 871-7701 Fax. (928) 871-7599



Joe Shirley, Jr.
PRESIDENT

Ben Shelly
VICE-PRESIDENT

February 25, 2009

Douglas E. Eberhardt, Chief (WTR-5)
CWA Standards and Permits Office
U.S. Environmental Protection Agency – Region IX
75 Hawthorne Street
San Francisco, CA 94105

**RE: Navajo Nation Certification (Project ID No. 2009-0030WR)
NPDES Permit No. NN0022179
Peabody Western Coal Company – Black Mesa Complex**

Dear Mr. Eberhardt:

Navajo EPA's Water Quality/NNPDES Program has examined the NPDES permit application for the Peabody Western Coal Company – Black Mesa Complex in Navajo County, AZ. Compliance with the terms and conditions of the permit will provide reasonable assurance that the permitted activities will be conducted in a manner that will not violate applicable water quality standards.

The Navajo Nation certifies that the discharge will comply with the applicable provisions of the Clean Water Act Sections 301, 302, 303, 306, and 307 and with appropriate requirements of Navajo Nation law. In order to meet the requirements of Navajo Nation law, including water quality standards, each of the conditions cited in the draft permit and the Navajo Nation certification shall not be made less stringent.

If you have any questions concerning this certification, please contact Patrick Antonio at (928) 871-7185.

Sincerely,

S. Deb Misra

S. Deb Misra, P.E., Director
Surface and Ground Water Protection Department
Navajo Nation Environmental Protection Agency

xc: Gary Wendt, Environmental Program Manager, PWCC