

**JOHN R. CLINE, PLLC**  
*ATTORNEY AT LAW*

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ENVIR. APPEALS BOARD

To: Clerk of the Board

Fax: 202-233-0121

From: John Cline

Direct: 804 - 746 - 4501

Date: June 29, 2010

Total pages including cover sheet: 6

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ENVIR. APPEALS BOARD

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June 29, 2010

Via Facsimile and U.S. MailEurika Durr, Clerk of the Board  
Environmental Appeals Board (1103B)  
U. S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460-0001Re: *In re Peabody Western Coal Company*, CAA Appeal No. 10-01;  
Petitioner's Response to, and Conditional Support of, Respondent's  
Request for Extension of Time to File Response to Petition for Review

Dear Ms. Durr:

Yesterday, June 28, 2010, the undersigned counsel for Peabody Western Coal Company ("Peabody" or the "Company") received a copy of the MOTION OF NAVAJO NATION EPA FOR EXTENSION OF TIME TO FILE RESPONSE TO PEABODY WESTERN COAL COMPANY'S PETITION FOR REVIEW ("Motion"). Given the time-sensitive nature of Navajo Nation EPA's Motion, Peabody submits the enclosed Response, and five copies of same, which we hope will assist the Board's deliberation of whether, and under what conditions, to grant that Motion. In short, Peabody respectfully requests the Board to order a stay of the proceedings, as explained in the enclosed Response, which would incorporate the granting of Navajo Nation EPA's Motion.

Furthermore, in a letter dated June 24, 2010, I notified the Board that Peabody intended to file a response in opposition to the recently filed MOTION OF NAVAJO NATION EPA FOR LEAVE TO FILE A REPLY TO PEABODY WESTERN COAL COMPANY'S RESPONSE TO MOTION FOR VOLUNTARY REMAND, or in the alternative, a motion for leave to file a surreply, accompanied by a proposed surreply. However, in light of the Company's enclosed Response, Peabody no longer intends to make the submission referenced in that June 24 letter.

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

Sincerely,

  
John R. Cline

Enclosure

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

JUN 29 AM 10:15  
ENVIR. APPEALS BOARD

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

CAA Appeal No. 10-01

**PEABODY WESTERN COAL COMPANY'S RESPONSE TO, WITH  
CONDITIONAL SUPPORT OF, MOTION OF NAVAJO NATION EPA  
FOR EXTENSION OF TIME TO FILE RESPONSE TO PEABODY  
WESTERN COAL COMPANY'S PETITION FOR REVIEW**

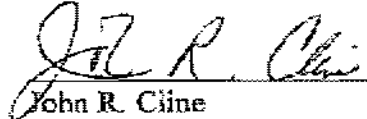
Yesterday, June 28, 2010, the undersigned counsel for Peabody Western Coal Company ("Peabody" or the "Company") received a copy of the MOTION OF NAVAJO NATION EPA FOR EXTENSION OF TIME TO FILE RESPONSE TO PEABODY WESTERN COAL COMPANY'S PETITION FOR REVIEW ("Motion"). That Motion requests that the Navajo Nation EPA's (NNEPA's) deadline for filing its response to Peabody's Petition for Review be extended for a sufficient time after the end of a Board-ordered stay of proceedings, as proposed in an *amicus curiae* brief that was recently filed with the Board in the above-referenced matter by the U.S. Environmental Protection Agency ("EPA"), Region IX. See UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION IX'S *AMICUS CURIAE* BRIEF MOVING FOR A STAY OF THE PROCEEDINGS, OR IN THE ALTERNATIVE, SEEKING THAT THE BOARD GRANT NAVAJO NATION ENVIRONMENTAL PROTECTION AGENCY'S MOTION FOR VOLUNTARY REMAND, 4-5 (filed June 24, 2010).

Peabody is greatly concerned with the delay in this proceeding that has occurred so far, and, as Peabody has expressed in previous filings with this Board, Peabody does not believe that further action by NNEPA will resolve the legal flaws in the permit on which Peabody bases its appeal. Fundamentally, NNEPA cannot include conditions that stem solely from Navajo law in a part 71 federal operating permit. Nevertheless, without waiving any of its positions, and because both NNEPA and EPA Region IX have represented to this Board that further action on the permit by NNEPA could narrow or eliminate the legal issues in this case, Peabody hereby notifies the Board of its concurrence with a stay of these proceedings as proposed by EPA Region IX and as addressed in NNEPA's Motion, so long as the Board's order of that stay includes the following specific conditions consistent with NNEPA's Motion:

1. NNEPA shall issue the final revised permit by no later than November 15, 2010 in keeping with the interim deadlines provided in paragraph 8 of NNEPA's Motion;
2. NNEPA's revisions to the permit will consist only of changes to those permit conditions that Peabody has contested in its Petition;
3. The stay shall automatically terminate on the date of NNEPA's issuance of the final revised permit;
4. No later than 30 days after service of the final revised permit, Peabody shall either withdraw its existing Petition for Review or file an Amended Petition for Review with the Board;
5. No later than 30 days after service of Peabody's Amended Petition for Review, NNEPA shall file its Response to that Amended Petition with the Board; and
6. In the event that one or more of the preceding conditions is not satisfied, Peabody may seek appropriate relief from the Board.

WHEREFORE, Peabody respectfully requests the Board to grant NNEPA's Motion as part of an order to stay the proceedings in accordance with the conditions specified above.

Respectfully submitted,



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ATTORNEYS FOR PETITIONER  
PEABODY WESTERN COAL COMPANY

**CERTIFICATE OF SERVICE**

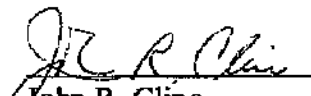
I hereby certify that a copy of the foregoing PEABODY WESTERN COAL COMPANY'S RESPONSE TO, WITH CONDITIONAL SUPPORT OF, MOTION OF NAVAJO NATION EPA FOR EXTENSION OF TIME TO FILE RESPONSE TO PEABODY WESTERN COAL COMPANY'S PETITION FOR REVIEW in the matter of *In re Peabody Western Coal Company*, CAA Appeal No. 10-01, was served by United States First Class Mail, postage prepaid, on each of the following persons this 29<sup>th</sup> day of June, 2010:

Jill E. Grant, Esq.  
Nordhaus Law Firm, LLP  
1401 K Street, N.W., Suite 801  
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John R. Cline  
Attorney for Petitioner

Date: June 29, 2010