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ATTORNEY AT LAW

**FACSIMILE**

To: Clerk of the Board  
EPA Environmental Appeals Board

Fax: 202-233-0121

From: John Cline

Direct: 804 - 746 - 4501

Date: June 4, 2010

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June 4, 2010

Via Facsimile

U. S. Environmental Protection Agency  
Eurika Durr, Clerk of the Board  
Environmental Appeals Board (MC 1103B)  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460-0001

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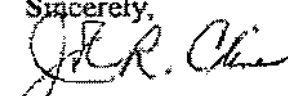
Re: *In re Peabody Western Coal Company*, CAA Appeal No. 10-01;  
Correction of June 2, 2010 Letter

Dear Ms. Durr:

On behalf of Peabody Western Coal Company, I notified your office in a letter dated June 2, 2010 that Peabody intended to respond to the **MOTION OF THE NAVAJO NATION EPA FOR VOLUNTARY REMAND AND MEMORANDUM IN SUPPORT OF MOTION** that was filed with the Environmental Appeals Board in the above-referenced matter on May 28, 2010. I write at this time to correct a material mistake contained in my June 2, 2010 letter.

In particular, the first sentence in the second paragraph of that June 2 letter begins as follows: "For proceedings under 40 C.F.R. part 70, such as the above-referenced matter, . . ." The letter should have stated: "For proceedings under 40 C.F.R. *part 71*, such as the above-referenced matter, . . ." (Emphasis added). Because permits issued under 40 C.F.R. part 70 are not "EPA-issued permits," the Board has no jurisdiction over part 70 permits. On the other hand, permits issued under 40 C.F.R. part 71, such as the permit in the above-referenced matter, constitute federal operating permits for which the Board does have jurisdiction.

I apologize for any confusion that the mistake in my June 2 letter may have caused. Should you have any questions, please contact me at (804) 746-4501.

Sincerely,  
  
John R. Cline