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

AUTHORIZATION TO DISCHARGE UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

NPDES PERMIT NO. NN 0022179

In compliance with the provisions of the Clean Water Act ("CWA") (Public Law 92-500, as amended, 33 U.S.C. 1251 et seq.), the following discharger is authorized to discharge from the identified facility at the outfall location(s) specified below, in accordance with the effluent limits, monitoring requirements, and other conditions set forth in this permit:

Discharger Name	Peabody Western Coal Company
Discharger Address	P.O. Box 650
	Kayenta, AZ 86033
Facility Name	Black Mesa Complex
Facility Location	Route 41
Address	Kayenta, AZ 86033
Facility Rating	Major

Outfall Number	General Type of Waste Discharged	Outfall Latitude	Outfall Longitude	Receiving Water
Over 100 Outfalls listed in Appendix A -C	Alkaline Mine Drainage, Coal Preparation Areas, Western Alkaline Reclamation,	Over 100 Outfalls listed in Appendix A -C	Over 100 Outfalls listed in Appendix A -C	Coal Mine Wash, Moenkopi Wash, Dinnebito Wash, Yellow Water Canyon and tributaries

This permit was issued on:	August 5th, 2009.
This permit shall become effective on:	October 1st, 2009.
This permit shall expire at midnight on:	September 30th, 2014.
In accordance with 40 CFR 122.21(d), the discharger shall submit a new application for a permit at least 180 days before the expiration date of this permit, unless permission for a date no later than the permit expiration date has been granted by the Director.	

Signed this 5th day of August, 2009, for the Regional Administrator.

Alexis Strauss, Director
Water Division

SECTION A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. Alkaline Mine Drainage Outfalls

During the period beginning on the effective date of this permit and lasting through the date of expiration, the permittee is authorized to discharge mine drainage from the Outfall Numbers listed in Appendix A – "Alkaline Mine Drainage" to the receiving waters listed in Appendix A – "Alkaline Mine Drainage. Such discharges shall be limited and monitored by the permittee as specified below. Samples shall be collected prior to mixing with other waste source stream and/or discharge to surface waters.

Table A-1: Alkaline Mine Drainage Effluent Limitations and Monitoring Requirements

Effluent Parameter	Units	Monthly Average	Maximum For any 1 day	Monitoring Frequency [1]	Sampling Type
Flow	MGD	- -	- -	Continuous	Calculated[2]
TSS	mg/L	35	70	1/day[1]	Discrete
Iron, total	mg/L	3.5	7.0	1/day[1]	Discrete
pH	Std. units	between 6.5 to 9.0		1/day[1]	Discrete
Arsenic [3][4]	ug/L	Monitor	Monitor	1/day[1]	Discrete
Cadmium [3][4]	ug/L	Monitor	Monitor	1/day[1]	Discrete
Chromium (total as Cr)[4]	ug/L	Monitor	Monitor	1/day[1]	Discrete
Lead [3][4]	ug/L	Monitor	Monitor	1/day[1]	Discrete
Mercury [3][4]	ug/L	Monitor	Monitor	1/day[1]	Discrete
Selenium [3][4]	ug/L	Monitor	Monitor	1/day[1]	Discrete

NOTES:

(1) Samples shall be taken once during each occurrence or once every 24 hours if the duration of the occurrence is greater than 24 hours.

(2) To determine total flow in gallons for each discharge and duration of discharge.

(3) Dissolved.

(4) Monitoring applies to all Outfalls located on the Hopi Reservation. No set limit at this time. Results will be evaluated for reasonable potential to exceed Hopi Tribe Water Quality Standards.

2. Coal Preparation Plants, Storage Areas, and Ancillary Area Runoff Outfalls

During the period beginning on the effective date of this permit and lasting through the date of expiration, the permittee is authorized to discharge runoff from the Outfall Numbers listed in Appendix B – "Coal Preparation & Associated Areas" to the receiving waters listed in Appendix B – "Coal Preparation & Associated Areas". Such discharges shall be limited and monitored by the permittee as specified below. Samples shall be collected prior to mixing with other waste source stream and/or discharge to surface waters.

Table A-2: Coal Preparation Areas Effluent Limitations and Monitoring Requirements

Effluent Parameter	**Units**	**Monthly Average**	**Maximum For any 1 day**	**Monitoring Frequency** [1]	**Sampling Type**
Flow	MGD	- -	- -	Continuous	Calculated[2]
TSS	mg/L	35	70	1/day[1]	Discrete
Oil and Grease	mg/L	15	---	1/day[1]	Discrete
Iron, total	mg/L	3.5	7.0	1/day[1]	Discrete
pH	Std. units	between 6.5 to 9.0		1/day[1]	Discrete
Arsenic [3][4]	ug/L	Monitor	Monitor	1/day[1]	Discrete
Cadmium [3][4]	ug/L	Monitor	Monitor	1/day[1]	Discrete
Chromium (total as Cr)[4]	ug/L	Monitor	Monitor	1/day[1]	Discrete
Lead [3][4]	ug/L	Monitor	Monitor	1/day[1]	Discrete
Mercury [3][4]	ug/L	Monitor	Monitor	1/day[1]	Discrete
Selenium [3][4]	ug/L	Monitor	Monitor	1/day[1]	Discrete

NOTES:

(1) Samples shall be taken once during each occurrence or once every 24 hours if the duration of the occurrence is greater than 24 hours.

(2) To determine total flow in gallons for each discharge and duration of discharge.

(3) Dissolved.

(4) Monitoring applies to all Outfalls located on the Hopi Reservation. No set limit at this time. Results will be evaluated for reasonable potential to exceed Hopi Tribe Water Quality Standards.

3. Western Alkaline reclamation, brushing and grubbing, topsoil stockpiling, and regraded area Outfalls.

During the period beginning on the effective date of this permit and lasting through the date of expiration, the permittee is authorized to discharge runoff from the Outfall Numbers listed in Appendix C – "Western Alkaline Reclamation Areas" to the receiving waters listed in Appendix C – "Western Alkaline Reclamation Areas".

Such discharges shall be limited and monitored by the permittee as specified below. The permittee must:

a) submit a site-specific Sediment Control Plan for EPA approval demonstrating that implementation of the Sediment Control Plan will result in average annual sediment yields that will not be greater than the sediment yield levels from pre-mined, undisturbed conditions. The Sediment Control Plan shall, at a minimum, identify Best Management Practices (BMPs), including design specifications, construction specifications, maintenance schedules, criteria for inspection, and expected performance and longevity of the BMPs.

b) demonstrate using watershed models that the implementation of the Sediment Control Plan will result in average annual sediment yields that will not be greater than the sediment yield levels from pre-mined, undisturbed conditions. The watershed model must be the same model that is being used to acquire the permittee's SMCRA permit.

c) design, implement, and maintain the BMPs in the manner specified in the approved Sediment Control Plan throughout the term of this permit.

d) revise the Sediment Control Plan to incorporate new areas. As existing outfalls defined in this permit as "alkaline mine drainage" are reclaimed, the approved Sediment Control Plan shall be updated to incorporate the newly reclaimed outfalls into this subpart. A revised Sediment Control Plan and revised watershed model must be submitted to EPA and approved by EPA before it becomes effective. Revisions to the Sediment Control Plan must meet all requirements contained at 40 CFR Part 434.82, and 100% of the drainage area to an outfall that has been disturbed by mining must meet the definition of "western alkaline reclamation, brushing and grubbing, topsoil stockpiling, and regraded areas" (as defined at 40 CFR 434.80) to be considered for coverage. EPA's approval of an updated Sediment Control Plan and reclassification of an existing outfall from "alkaline mine drainage" to a reclaimed area will be considered a minor modification to the permit as described in Section C of this permit.

4. Discharges resulting from precipitation events

a) The permittee is authorized to discharge runoff from Outfall Numbers listed in Appendix A – "Alkaline Mine Drainage" and Appendix B – "Coal Preparation & Associated Areas" resulting from precipitation events less than or equal to a 10-year, 24-hour precipitation event (1.80 inches within a 24 hour period)

During the period beginning on the effective date of this permit and lasting through the date of expiration, the permittee is authorized to discharge runoff from all Outfalls resulting from precipitation events less than or equal to a 10-year, 24-hour precipitation event (1.80 inches within a 24 hour period).

Such discharges shall be limited and monitored by the permittee as specified below. Samples shall be collected prior to mixing with other waste source stream and/or discharge to surface waters.

During precipitation events, samples may be collected from a sampling point representative of the type of discharge, rather than from each point of discharge. At no time shall less than 20% of discharges be sampled. If samples are collected from a representative point, the permittee shall specify the Outfalls being represented in the quarterly report narrative.

Table A-4-a: Discharges from precipitation events less than 10-yr, 24-hr event.

Effluent Parameter	Units	Monthly Average	Maximum For any 1 day	Monitoring Frequency (1)	Sampling Type
Flow	MGD	- -	- -	Continuous	Calculated(2)
Settleable Solids	mL/L	- -	0.5	1/day(1)	Discrete
pH	Std. units	between 6.5 to 9.0		1/day(1)	Discrete
Arsenic (3)(4)	ug/L	Monitor	Monitor	1/day(1)	Discrete
Cadmium (3)(4)	ug/L	Monitor	Monitor	1/day(1)	Discrete
Chromium (total as Cr)(4)	ug/L	Monitor	Monitor	1/day(1)	Discrete
Lead (3)(4)	ug/L	Monitor	Monitor	1/day(1)	Discrete
Mercury (3)(4)	ug/L	Monitor	Monitor	1/day(1)	Discrete
Selenium (3)(4)	ug/L	Monitor	Monitor	1/day(1)	Discrete

NOTES:
(1) Samples shall be taken once during each occurrence or once every 24 hours if the duration of the occurrence is greater than 24 hours.
(2) To determine total flow in gallons for each discharge and duration of discharge.
(3) Dissolved.
(4) Monitoring applies to all Outfalls located on the Hopi Reservation. No set limit at this time. Results will be evaluated for reasonable potential to exceed Hopi Tribe Water Quality Standards.

b) Discharges resulting from precipitation events great than a 10-year, 24-hour precipitation event (1.80 inches within a 24 hour period)

During the period beginning on the effective date of this permit and lasting through the date of expiration, the permittee is authorized to discharge runoff from all Outfalls resulting from precipitation events greater than a 10-year, 24-hour precipitation event (1.80 inches within a 24 hour period).

Such discharges shall be limited and monitored by the permittee as specified below. Samples shall be collected prior to mixing with other waste source stream and/or discharge to surface waters.

During precipitation events, samples may be collected from a sampling point representative of the type of discharge, rather than from each point of discharge. At no time shall less than 20% of discharges be sampled. If samples are collected from a representative point, the permittee shall specify the Outfalls being represented in the quarterly report narrative.

Table A-4-b: Discharges from precipitation events greater than 10-yr, 24-hr event.

Effluent Parameter	**Units**	**Maximum For any sample**	**Monitoring Frequency** (1)	**Sampling Type**
Flow	MGD	- -	Continuous	Calculated(2)
pH	std. units	between 6.5 to 9.0	1/day(1)	Discrete

NOTES:

(1) Samples shall be taken once during each occurrence or once every 24 hours if the duration of the occurrence is greater than 24 hours.

(2) To determine total flow in gallons for each discharge and duration of discharge.

5. Seepage study

Peabody Western Coal Company shall continue to implement the Seep Monitoring and Management plan designed to identify and characterize seeps; to identify those seeps that may pose a threat to water quality; and to establish Best Management Practices at seeps determined to pose a threat to water quality.

The plan shall be modified to address the construction of new impoundments, and shall include:

a. Identification of all seeps located within 100 meters downgradient of sediment impoundments including a record of the location, date, time, flow, proximity to waters of the United States, and accessibility by livestock.

b. Sampling (or summary of current data if sufficient and valid) of seepages identified in 5.a. for pH, Selenium (Total and Dissolved) and Nitrates. If Peabody submits past data, sampling techniques shall be described in order to determine validity of data. EPA, upon reviewing all data submitted, shall determine whether additional sampling should be performed.

c. Hydrogeologic modeling or studies in order to determine if the source the seeps are the impoundments and, if so, which impoundments.

d. Determination of source of Selenium and Nitrates, where data indicates that seepages have a reasonable potential to violate water quality standards.

The plan shall continue to be implemented as described in the "Interim Final Report – Seepage Monitoring and Management Report" April 1, 2008 and as approved by EPA .

The study results shall be submitted yearly to EPA.

EPA, upon reviewing the results of the study, may reopen the permit for the imposition of numerical limits and/or additional monitoring.

6. Gaging Stations

For the purpose of this permit, the gauge stations used to monitor rainfall for specific discharge points shall be:

Peabody Gauge No.		Discharge Points
1.	(ARG1)	048, 049, 050, 051, 052, 069, 070, 071, 087, 088, 089, 090, 147, 163, 169, 170, 171, 172, 173
5.	(ARG2R)	017, 018, 026, 027, 047, 086, 098, 105, 141, 142, 149, 178
7.	(ARG7R	008, 009, 013, 014, 016, 081, 094, 159, 160, 161, 162, 164, 165
8.	(ARG6R	024, 025, 030, 031, 032, 033, 039, 043, 103, 104, 127, 130, 133, 168
9.	(ARG9)	001, 002, 003, 005, 010, 012, 021, 022, 037, 045, 082, 083, 099, 139, 140, 150, 151, 153, 157
10.	(ARG3R)	054, 095, 106, 107, 118, 126, 136, 137, 143, 144, 152, 167, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194
11.	(ARG200)	079, 148, 174, 175, 176, 177, 179, 195
12.	(ARG12)	180, 181, 182, 183

SECTION B. GENERAL DISCHARGE SPECIFICATIONS

All Waters of the Navajo Nation shall be free from pollutants in amounts or combinations that, for any duration:

1. Cause injury to, are toxic to, or otherwise adversely affect human health, public safety, or public welfare.
2. Cause injury to, are toxic to, or otherwise adversely affect the habitation, growth, or propagation of indigenous aquatic plant and animal communities or any member of these communities; of any desirable non-indigenous member of these communities; of waterfowl accessing the water body; or otherwise adversely affect the physical, chemical, or biological conditions on which these communities and their members depend.
3. Settle to form bottom deposits, including sediments, precipitates and organic materials, that cause injury to, are toxic to, or otherwise adversely affect the habitation, growth or propagation of indigenous aquatic plant and animal communities or any member of these communities; of any desirable non-indigenous member of these communities; of waterfowl accessing the water body; or otherwise adversely affect the physical, chemical, or biological conditions on which these communities and their members depend.
4. Cause physical, chemical, or biological conditions that promote the habitation, growth, or propagation of undesirable, non-indigenous species of plant or animal life in the water body.
5. Cause solids, oil, grease, foam, scum, or any other form of objectionable floating debris on the surface of the water body; may cause a Elm or iridescent appearance on the surface of the water body; or that may cause a deposit on a shoreline, on a bank, or on aquatic vegetation.
6. Cause objectionable odor in the area of the water body.
7. Cause objectionable taste, odor, color, or turbidity in the water body.
8. Cause objectionable taste in edible plant and animal life, including waterfowl, that reside in, on, or adjacent to the water body.

The following General Standards apply to all surface and ground waters of the Hopi Tribe:

1. Stream Bottom Deposits: Surface waters shall be free from contaminants from other than natural causes that may settle and have a deleterious effect on the aquatic biota or that will significantly alter the physical or chemical properties of the water or the bottom sediments.

2. Floating Solids, Oil, and Grease: Surface waters shall be free from objectionable oils, scum, foam, grease, and other floating materials and suspended substances of a persistent nature

resulting from other than natural causes (including visible films of oil, globules of oil, grease, or solids in or on the water, or coatings on stream banks). As a guideline, oil and grease discharged into surface waters shall not exceed 10 mg/liter average or 15 mg/liter maximum.

3. Color: Surface waters shall be free from the true color-producing materials (other than those resulting from natural causes) that create an aesthetically undesirable condition. Color shall not impair the designated and other attainable uses of a water body. Color-producing substances from other than natural sources are limited to concentrations equivalent to 70 color units (CU).

4. Odor and Taste: Contaminants from other than natural causes are limited to concentrations that do not impart unpalatable flavor to fish, that do not result in offensive odor or taste arising from the water, and that do not otherwise interfere with the designated and other attainable uses of a water body. Taste and odor-producing substances from other than natural origins shall not interfere with the production of a potable water supply by modern treatment methods. Nuisance Conditions: Plant nutrients or other substances stimulating algal growth from other than natural causes shall not be present in concentrations that produce objectionable algal densities or nuisance aquatic vegetation, or that result in a dominance of nuisance species instream, or that cause nuisance conditions in any other fashion. Phosphorus and nitrogen concentrations shall not be permitted to reach levels that result in man-induced eutrophication problems. As a guideline, total phosphorus shall not exceed 100 µg/L instream or 50 µg/L in lakes and reservoirs, except in waters highly laden with natural silts or color that reduces the penetration of sunlight needed for plant photosynthesis, or in other waters where it can be demonstrated that algal production will not interfere with or adversely affect designated and other attainable uses. Alternative or additional nutrient limitations for surface waters may be established by the Hopi Tribe and incorporated into water quality management plans.

5. Pathogens: Waters shall be free from pathogens. Waters used for irrigation of table crops (e.g., lettuce) shall be free of salmonella and shigella species.

6. Turbidity: Turbidity attributable to other than natural causes shall not reduce light transmission to a point at which aquatic biota are inhibited or to a point that causes an unaesthetic and substantial visible contrast with the natural appearance of the water. Specifically, turbidity shall not exceed 5 nephelometric turbidity units (NTU, a measure of turbidity in water) over background when background turbidity is 50 NTU or less, with no more than a 10-percent increase when background turbidity is more than 50 NTU.

7. Temperature: The introduction of heat by other than natural causes shall not increase the temperature in a stream, outside a mixing zone, by more than 2.7EC (5EF), based upon the monthly average of the maximum daily temperatures measured at mid-depth or 3 feet

(whichever is less) outside the mixing zone. In lakes, the temperature of the water column or epilimnion (if thermal stratification exists) shall not be raised more than 1.7EC (3EF) above that which existed before the addition of heat of artificial origin, based upon the average of temperatures taken from the surface to the bottom of the lake, or surface to the bottom of the epilimnion (if stratified). The normal daily and seasonal variations that were present before the addition of heat from other than natural sources shall be maintained. In no case shall manintroduced heat be permitted when the maximum temperature specified for the reach (20EC/68EF for cold water fisheries and 32.2EC/90EF for warm water fisheries) would thereby be exceeded. High water temperatures caused by unusually high ambient air temperatures are not violations of these standards.

8. Salinity/Mineral Quality (total dissolved solids, chlorides, and sulfates): Existing mineral quality shall not be altered by municipal, industrial, and instream activities, or other waste discharges, so as to interfere with the designated or attainable uses for a water body. An increase of more than one-third over naturally occurring levels shall not be permitted.

9. pH: The following water quality standards for pH, expressed in standard units, shall not be violated by other than natural causes: Maximum 9.0; Minimum 4.5 ; Maximum change due to discharge: 0.5

10. Dissolved oxygen: If a stream or other water body is capable of supporting aquatic biota, the dissolved oxygen standard will be a minimum of 6 mg/L.

11. Fecal coliform: The following water quality standards for fecal coliform, expressed in colony forming units per 100 milliliters of water (cfu/100 mL), shall not be exceeded:
30-day geometric mean: (5 sample minimum): 200
10% of samples for a 30-day: 400
Single sample maximum: 800

12. Toxic Substances: Toxic substances shall not be present in receiving waters in quantities that are toxic to human, animal, plant, or aquatic life, or in quantities that interfere with the normal propagation, growth, and survival of the sensitive indigenous aquatic biota. Within the mixing zone, there shall be no acute toxicity.

13. Water discharged under this permit shall not contain settleable materials or suspended materials in concentrations great than or equal to ambient concentrations present in the receiving stream that cause nuisanc or adversely affect beneficial uses.

14.Activities conducted under this permit shall not result in the violations of any narrative and numeric criteria established in the Hopi Tribe's Water Quality Standards.

SECTION C. PERMIT REOPENER

Should any of the monitoring indicate that the discharge causes, has the reasonable potential to cause, or contributes to excursions above water quality criteria, the permit may be reopened for the imposition of water quality based limits and/or whole effluent toxicity limits. Also, this permit may be modified, in accordance with the requirements set forth at 40 CFR Parts 122.44 and 124.14, to include appropriate conditions or limits to address demonstrated effluent toxicity based on newly available information, or to implement any EPA-approved new Tribal water quality standards.

This permit authorizes the discharge of wastewater from over 110 outfalls in 3 distinct subcategories. Throughout the permit term, as mine operations continue in a linear fashion, new outfall locations may become necessary to treat runoff and other outfalls may need to be authorized under a different subcategory. Therefore, EPA may modify the list of Outfalls in the Appendixes during the permit term to add, terminate or reclassify a discharge that occurs during the anticipating course of the existing mining activities. This will be accomplished thru a minor modification of the permit in accordance with 40 CFR Part 122.63. The permit may be reopened to authorize new outfalls for an area not currently being mined through a major modification to the existing permit 40 CFR Part 122.63.

SECTION D. MONITORING AND REPORTING

1. Reporting of Monitoring Results

a. Monitoring results shall be reported on Discharge Monitoring Report ("DMR") forms (EPA No. 3320-1) to be supplied by the EPA Regional Administrator, to the extent that the information reported may be entered on the forms. Results of the Seep Monitoring and Management Plan shall be reported in a separate format, as specified in Section A.5 of the permit, and shall be submitted yearly to EPA.

Monitoring results obtained during the previous three (3) months shall be summarized for each month and submitted on forms to be supplied by the EPA Regional Administrator, to the extent that the information reported may be entered on the forms. Monitoring results obtained from sampling any discharge shall be entered directly on the DMR forms. In cases where No Discharge has occurred, monitoring results may be reported in narrative format due the large number (over 100) of outfalls permitted.

The results of all monitoring required by this permit shall be submitted in such a format as to allow direct comparison with the limitations and requirements of the permit. Unless otherwise specified, discharge flow shall be reported in terms of the average

flow over that 30 day period. These reports are due January 28, April 28, July 28, and October 28 of each year. Duplicate signed copies of these, and all other reports required herein, shall be submitted to the Regional Administrator at the following addresses:

NPDES Compliance Office
Environmental Protection Agency (WTR-1)
75 Hawthorne Street
San Francisco, CA 94105
Telephone: (415) 972-3519

Navajo Nation Environmental Protection Agency
Navajo Nation EPA
P.O. Box 339
Window Rock, AZ 86515
Telephone: (928) 871-7185

Hopi Tribe Department of Natural Resources
Water Resources Office
P.O. Box 123
Kykotsmovi, AZ 86039
Telephone: (928) 734-2441

b. For effluent analyses, the permittee shall utilize an EPA-approved analytical method with a Method Detection Limit (MDL) that is lower than the effluent limitations (or lower than applicable water quality criteria if monitoring is required but no effluent limitations have been established.) MDL is the minimum concentration of an analyte that can be detected with 99% confidence that the analyte concentration is greater than zero, as defined by the specific laboratory method listed in 40 CFR Part 136. The procedure for determination of a laboratory MDL is in 40 CFR Part 136, Appendix B.

c. If all published MDLs are higher than the effluent limitations (or applicable criteria concentrations), the permittee shall utilize the EPA-approved analytical method with the lowest published MDL.

d. The permittee shall develop a Quality Assurance (QA) Manual/QA Plan. The purpose of the QA Manual is to assist in planning for the collection and analysis of samples and explaining data anomalies if they occur. As appropriate and applicable,

the QA Manual shall include the details enumerated below. The QA Manual shall be retained on the permittee's premises and be available for review by USEPA or Navajo Nation EPA upon request. The permittee shall review its QA Manual annually and revise it when appropriate. Throughout all field sampling and laboratory analyses, the permittee shall use quality assurance/quality control (QA/QC) procedures as documented in their QA Manual.

i. Project Management including roles and responsibilities of the participants; purpose of sample collection; matrix to be sampled; the analytes or compounds being measured; applicable technical, regulatory, or program-specific action criteria; personnel qualification requirements for collecting samples.

ii. Sample collection procedures; equipment used; the type and number of samples to be collected including QA/QC samples (i.e., background samples, duplicatives, and equipment or field blanks); preservatives and holding times for the samples (see 40 CFR Part 136.3).

iii. Identification of the laboratory to be used to analyze the samples; provisions for any proficiency demonstration that will be required by the laboratory before or after contract award such as passing a performance evaluation sample; analytical method to be used; required QC results to be reported (e.g., matrix spike recoveries, duplicate relative percent differences, blank contamination, laboratory control sample recoveries, surrogate spike recoveries, etc.) and acceptance criteria; and corrective actions to be taken by the permittee or the laboratory as a result of problems identified during QC checks.

iv. Discussion of how the permittee will perform data review and requirements for reporting of results to USEPA or Navajo Nation EPA to include resolving of data quality issues and identifying limitations on the use of the data.

e. Sample collection shall be performed as stated in the QA Manual. The QA Manual shall include a discussion on the preservation and handling, preparation and analysis of samples as described in the most recent edition of 40 CFR Part 136.3, unless otherwise specified in this permit.

2. Monitoring and Records

Records of monitoring information shall include:

a. Date, exact location, and time or sampling or measurements performed, preservatives used;
b. Individual(s) who performed the sampling or measurements;
c. Date(s) analyses were performed;
d. Laboratory(ies) which performed the analyses;
e. Analytical techniques or methods used;
f. Any comments, case narrative or summary of results produced by the laboratory. These should identify and discuss QA/QC analyses performed concurrently during sample analyses and should specify whether they met project and 40 CFR Part 136 requirements. The summary of results must include information on initial and continuing calibration, surrogate analyses, blanks, duplicates, laboratory control samples, matrix spike and matrix spike duplicate results, sample receipt condition, holding times, and preservation.
g. Summary of data interpretation and any corrective action taken by the permittee.
h. Effluent limitations for analytes/compounds being analyzed.

3. Twenty Four-Hour Reporting of Noncompliance

The permittee shall report any non-compliance which may endanger human health or the environment. This information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances to the following persons or their offices:

CWA Compliance Office Manager
U.S. EPA Region 9
(415) 972-3577

Navajo Nation EPA
Attn: Patrick Antonio
(928) 871-7185

If the permittee is unsuccessful in contacting the persons above, the permittee shall report by 9 a.m. on the first business day following the noncompliance. A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including dates and times, and, if the noncompliance has not been corrected, the time it is expected to continue; and steps or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

SECTION E. INSPECTION AND ENTRY

The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and such other documents as may be required by law, to perform inspections under authority of Section 10: Inspection and Entry of the EPA Region 9 "Standard Federal NPDES Permit Conditions," dated June 3, 2002, as attached.

SECTION F. DEFINITIONS

The following definitions shall apply unless otherwise specified in the permit:

1. "Discrete sample" means any individual sample collected in less than 15 minutes.

2. "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar for purposes of sampling. For pollutants with limitations expressed in terms of mass, the "daily discharge" is calculated as the total mass of the pollutant discharges over the sampling day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the sampling day. "Daily discharge" determination of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the "daily discharge" determination of concentration shall be the arithmetic average (weighted by flow value) of all samples collected during that sampling day.

3. "Daily average" discharge limitation means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

4. "Daily maximum" concentration means the measurement made on any single discrete sample of composite sample.

5. "Daily maximum" mass limit means the highest allowable "daily discharge" by mass during any calendar day.

6. A "composite sample" means, for flow rate measurements, the arithmetic mean of no fewer than 4 individual measurements taken at equal intervals for one hour or for the duration of discharge, whichever is shorter. A composite sample means, for other than

flow rate measurements, a combination of 4 individual portions obtained at equal time intervals for 4 hours or for the duration of the discharge, whichever is shorter. The volume of each individual portion shall be directly proportional to the discharge flow rate at the time of sampling. The sampling period shall coincide with the period of maximum discharge flow.

7. A "monthly or weekly average" concentration limitation means the arithmetic mean of consecutive measurements made during a calendar month or weekly period, respectively.

8. A "monthly or weekly average" mass limitation means the total discharge by mass during a calendar monthly or weekly period, respectively, divided by the number of days in the period that the facility was discharging. Where less than daily sampling is required by this permit, the monthly or weekly average value shall be determined by the summation of all the measured discharges by mass divided by the number of days during the monthly or weekly period when the measurements were made.

APPENDIX A – "Alkaline Mine Drainage"

Serial Number/ Outfall Number	Latitude Deg.Min.Sec.	Longitude Deg.Min.Sec.	Receiving Water
005/N5-A	36-31-15	110-24-45	Coal Mine Wash
008/N10-A1	36-32-45	110-22-30	Coal Mine Wash
010/J3-A	36-28-45	110-25-00	Coal Mine Wash Trib.
012/N6-E	36-30-30	110-25-15	Coal Mine Wash Trib.
013/N10-B	36-33-00	110-22-15	Coal Mine Wash Trib.
018/J3-D	36-28-15	110-24-00	Moenkopi Tributary
024/N14-F	36-30-30	110-18-30	Moenkopi Tributary
025/N14-G	36-30-30	110-18-15	Moenkopi Tributary
026/MW-A	36-27-30	110-23-45	Moenkopi Wash
027/MW-B	36-27-30	110-23-45	Moenkopi Wash
030/J16-D	36-30-00	110-18-30	Moenkopi Tributary
031/J16-E	36-30-00	110-18-30	Moenkopi Tributary
032/J16-F	36-30-00	110-18-45	Moenkopi Tributary
033/J16-G	36-29-45	110-19-00	Moenkopi Tributary
039/N14-H	36-30-45	110-17-30	Moenkopi Tributary
045/WW-6	36-30-00	110-22-15	Moenkopi Tributary
048/J7-G	36-25-00	110-24-15	Red Peak Valley
052/J7-K	36-24-30	110-23-00	Sagebrush Wash
069/J7-I	36-24-45	110-24-30	Yucca Flat Wash Trib.
070/J7-J	36-24-30	110-24-30	Yucca Flat Wash Trib.
071/J7-M	36-24-15	110-24-15	Yucca Flat Wash Trib.
079/J21-A	36-26-15	110-14-45	Dinnebito Wash
081/N1-O	36-32-00	110-24-00	Coal Mine Wash
082/N5-E	36-31-15	110-25-00	Coal Mine Wash
086/WW-4	36-26-45	110-24-45	Moenkopi Wash
087/WW-9	36-23-45	110-24-45	Yucca Flat Wash Trib.
088/WW-9A	36-23-45	110-24-45	Yucca Flat Wash Trib.
089/WW-9B	36-23-45	110-24-45	Yucca Flat Wash Trib.
090/WW-9C	36-24-15	110-24-30	Yucca Flat Wash Trib.
141/J3-F	36-28-00	110-25-15	Coal Mine Wash Trib.
142/J3-G	36-28-00	110-25-15	Coal Mine Wash Trib.
143/N7-D	36-32-30	110-25-45	Yellow Water Canyon Trib.
144/N7-E	36-32-30	110-25-30	Yellow Water Canyon
147/J7-A	36-25-30	110-23-30	Red Peak Valley
148/J21-C	36-26-00	110-15-30	Dinnebito Wash
150/N6-G	36-29-30	110-23-00	Coal Mine Wash
151/N6-H	36-29-30	110-23-00	Coal Mine Wash
153/N6-I	36-31-45	110-24-15	Coal Mine Wash
157/N6-J	36-31-45	110-24-00	Coal Mine Wash
159/N11-A	36-32-20	110-22-40	Coal Mine Wash
160/N11-C	36-32-25	110-22-35	Coal Mine Wash
161/N11-E	36-32-35	110-22-25	Coal Mine Wash

162/N11-G	36-32-30	110-21-40	Coal Mine Wash

APPENDIX A – "Alkaline Mine Drainage" - Continued

163/J7-B1	36-25-10	110-23-58	Red Peak Valley
164/N6-L	36-31-58	110-23-58	Coal Mine Wash
165/N6-M	36-32-12	110-23-27	Coal Mine Wash
168/N14-T	36-30-20	110-18-20	Moenkopi Tributary
169/J7-R	36-24-05	110-24-00	Moenkopi Tributary
170/J7-S	36-24-05	110-23-50	Yucca Flat Wash
171/J7-T	36-24-00	110-23-40	Yucca Flat Wash
172/J7-U	36-24-10	110-23-30	Yucca Flat Wash
173/J7-V	36-24-10	110-23-20	Yucca Flat Wash
176/J21-F	36-25-23	110-16-00	Dinnebito Wash
177/J21-G	36-24-44	110-16-40	Dinnebito Wash
178/J27-RC	36-27-08	110-23-02	Moenkopi Tributary
179/J7-JR	36-26-13	110-19-52	Red Peak Valley Wash
180/J19-A	36-27-28	110-19-24	Reed Valley Wash
181/J19-B	36-27-16	110-20-10	Red Peak Valley Wash
182/J19-D	36-26-50	110-19-55	Red Peak Valley Wash
183/J19-E	36-26-42	110-19-55	Red Peak Valley Wash
184/N9-A	36-34-49	110-23-56	Yellow Water Canyon
185/N9-B	36-33-49	110-24-13	Yellow Water Canyon
186/N9-C	36-33-23	110-24-49	Yellow Water Canyon
187/N9-D	36-33-18	110-25-02	Yellow Water Canyon
188/N9-E	36-32-56	110-25-24	Yellow Water Canyon
189/N9-F	36-32-44	110-25-31	Yellow Water Canyon
190/N9-G	36-33-27	110-25-51	Yazzie Wash
191/N9-H	36-33-58	110-25-46	Yazzie Wash
192/N9-I	36-34-13	110-25-32	Yazzie Wash
193/N9-J	36-34-25	110-25-24	Yazzie Wash
194/N9-K	36-33-43	110-25-57	Yazzie Wash
194/J21-H	36-24-29	110-17-04	Dinnebito Wash

APPENDIX B – "Coal Preparation & Associated Areas"

Serial Number/ Outfall Number	Latitude Deg.Min.Sec.	Longitude Deg.Min.Sec.	Receiving Water
001/N1-F	36-31-45	110-24-45	Coal Mine Wash
002/N1-L	36-31-45	110-24-15	Coal Mine Wash
003/N1-M	36-32-45	110-24-15	Coal Mine Wash
009/N10-C	36-32-00	110-24-00	Coal Mine Wash
014/N10-D	36-32-30	110-23-00	Coal Mine Wash Trib.
016/N12-C	36-32-15	110-23-15	Coal Mine Wash Trib.
017/BM-A1	36-26-30	110-24-00	Moenkopi Tributary
043/N14-Q	36-30-00	110-19-15	Moenkopi Tributary
047/J7-DAM	36-25-30	110-23-30	Red Peak Valley
054/N1-AC	36-32-00	110-25-45	Yellow Water Canyon
083/N5-F	36-31-15	110-25-00	Coal Mine Wash
094/N10-B1	36-33-00	110-22-15	Coal Mine Wash Trib.
095/KM-D	36-31-30	110-25-15	Coal Mine Wash Trib.
098/BM-SS	36-27-00	110-23-45	Moenkopi Tributary
099/J3-E	36-28-45	110-23-30	Moenkopi Tributary
103/N14-B	36-31-00	110-20-30	Moenkopi Tributary
104/N14-C	36-30-00	110-19-15	Moenkopi Tributary
105/BM-B	36-26-45	110-24-00	Moenkopi Tributary
106/KM-A3	36-31-45	110-26-00	Yellow Water Canyon
107/KM-B	36-31-30	110-26-00	Yellow Water Canyon
118/TPC-A	36-33-00	110-29-15	Long House Valley Trib.
126/TS-A	36-33-45	110-31-00	Klethla Valley
127/J16-A	36-30-00	110-18-15	Moenkopi Tributary
130/N14-P	36-31-00	110-20-30	Moenkopi Tributary
133/J16-L	36-30-45	110-19-30	Reed Valley
136/KM-TPB	36-31-15	110-28-00	Yellow Water Canyon Trib.
137/KM-TPB1	36-33-00	110-28-00	Yellow Water Canyon Trib.
139/KM-E	36-31-15	110-25-30	Coal Mine Wash Trib.
140/J2-A	36-29-00	110-25-45	Wild Ram Valley
149/J27-A	36-27-15	110-23-15	Moenkopi Tributary
152/TS-B	36-33-30	110-31-15	Klethla Valley
167/TPF-E	36-32-00	110-26-02	Yellow Water Canyon

APPENDIX C – "Western Alkaline Reclamation Areas"

Serial Number/ Outfall Number	Latitude Deg.Min.Sec.	Longitude Deg.Min.Sec.	Receiving Water
021/N6-C	36-29-30	110-22-45	Moenkopi Tributary
022/N6-D	36-29-15	110-23-00	Moenkopi Tributary
037/N6-F	36-30-45	110-22-30	Moenkopi Tributary
049/J7-CD	36-24-45	110-22-15	Sagebrush Wash
050/J7-E	36-24-45	110-22-30	Sagebrush Wash
051/J7-F	36-24-30	110-22-30	Sagebrush Wash
174/J21-D	36-25-39	110-15-37	Dinnebito Wash
175/J21-E	36-25-32	110-15-49	Dinnebito Wash

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

CWA STANDARDS AND PERMITS OFFICE (WTR-5)

STANDARD FEDERAL NPDES PERMIT CONDITIONS

Updated as of June 3, 2002
Reference: CFR 40 Parts 100 to 135, July 1, 2001

1. DUTY TO REAPPLY [40 CFR 122.21 (d)]

The permittee shall submit a new application 180 days before the existing permit expires. 122.2(c)(2) POTW's with currently effective NPDES permits shall submit with the next application the sludge information listed at 40 CFR 501.15(a)(2).

2. APPLICATIONS [40 CFR 122.22]

(a) All permit applications shall be signed as follows:

(1) For a corporation. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or

(ii) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

(b) All reports required by permits, and other information requested by the Director shall be signed by a person described in paragraph (a) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in paragraph (a) of this section;

(2) The authorization specifies either an individual or position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position

having overall responsibility for environmental matters for the company, (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) and,

(3) The written authorization is submitted to the Director.

(c) Changes to authorization. If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) Certification. Any person signing a document under paragraph (a) or (b) of this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

3. DUTY TO COMPLY [40 CFR 122.41(a)]

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

(1) The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.

(2) The Clean Water Act provides that any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed $25,000 per day for each violation. The Clean Water Act provides that any person who negligently violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of $2,500 to $25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than $50,000 per day of violation, or by imprisonment of not more than 2 years, or both. Any person who knowingly violates such sections, or such conditions or limitations is subject to criminal penalties of $5,000 to $50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than $100,000 per day of violation, or imprisonment of not more than 6 years, or both. Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318, or 405 of the Act, or any permit condition of limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than $500,000 or by imprisonment of not more than 30 years, or both.

An organization, as defined in section 309(c)(3)(B)(iii) of the CWA, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than $1,000,000 and can be fined up to $2,000,000 for second or subsequent convictions.

(3) Any person may be assessed an administrative penalty by the Administrator for violating section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act. Administrative penalties for Class I violations are not to exceed $10,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed $25,000. Penalties for Class II violations are not to exceed $10,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed $125,000.

4. NEED TO HALT OR REDUCE ACTIVITY NOT A DEFENSE [40 CFR 122.41(c)]

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

5. DUTY TO MITIGATE [40 CFR 122.41(d)]

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

6. PROPER OPERATION AND MAINTENANCE [40 CFR 122.41(e)]

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

7. PERMIT ACTIONS [40 CFR 122.41(f)]

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

8. PROPERTY RIGHTS [40 CFR 122.41(g)]

This permit does not convey any property rights of any sort, or any exclusive privilege.

9. DUTY TO PROVIDE INFORMATION [40 CFR 122.41(h)]

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Director upon request, copies of records required to be kept by this permit.

10. INSPECTION AND ENTRY [40 CFR 122.41(i)]

The permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

(1) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must kept under the conditions of this permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

11. MONITORING AND RECORDS [40 CFR 122.41(j)]

(1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(2) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR part 503), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

(3) Records of monitoring information shall include:

(i) The date, exact place, and time of sampling or measurements;

(ii) The individual(s) who performed the sampling or measurements;

(iii) The date(s) analyses were performed;

(iv) The individual(s) who performed the analyses;

(v) The analytical techniques or methods used; and

(vi) The results of such analyses.

(4) Monitoring results must be conducted according to test procedures approved under 40 CFR part 136 or, in the case of sludge use or disposal, approved under 40 CFR part 136 unless otherwise specified in 40 CFR part 503, unless other test procedures have been specified in the permit.

(5) The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

12. SIGNATORY REQUIREMENT [40 CFR 122.41(k)]

(1) All applications, reports, or information submitted to the Director shall be signed and certified. [See 40 CFR 122.22]

(2) The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

13. REPORT REQUIREMENTS [40 CFR 122.41(l)]

(1) Planned changes. The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(i) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in Sec. 122.29(b); or

(ii) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Sec. 122.42(a)(1).

(iii) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan;

(2) Anticipated noncompliance. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(3) Transfers. This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Clean Water Act. (See Sec. 122.61; in some cases, modification or revocation and reissuance is mandatory.)

(4) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(i) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices.

(ii) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136 or, in the case of sludge use or disposal, approved under 40 CFR part 136 unless otherwise specified in 40 CFR part 503, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.

(iii) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.

(5) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

(6) Twenty-four hour reporting.

(i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(ii) The following shall be included as information which must be reported within 24 hours under this paragraph.

(a) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See Sec. 122.41(g).)

(b) Any upset which exceeds any effluent limitation in the permit.

(c) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within 24 hours. (See Sec. 122.44(g).)

(iii) The Director may waive the written report on a case-by-case basis for reports under paragraph (l)(6)(ii) of this section if the oral report has been received within 24 hours.

(7) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (l) (4), (5), and (6) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (l)(6) of this section.

(8) Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

14. BYPASS [40 CFR 122.41(m)]

(1) Definitions.

(i) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

(ii) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (m)(3) and (m)(4) of this section.

(3) Notice.

(i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph (l)(6) of this section (24-hour notice).

(4) Prohibition of bypass.

(i) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(c) The permittee submitted notices as required under paragraph (m) (3) of this section.

(ii) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph (m)(4)(i) of this section.

15. UPSET [40 CFR 12241(n)]

(1) Definition. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (n)(3) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(3) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An upset occurred and that the permittee can identify the cause(s) of the upset;

(ii) The permitted facility was at the time being properly operated; and

(iii) The permittee submitted notice of the upset as required in paragraph (1)(6)(ii)(b) of this section (24 hour notice).

(iv) The permittee complied with any remedial measures required under paragraph (d) of this section.

(4) Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

16. EXISTING MANUFACTURING, COMMERCIAL, MINING, AND SILVICULTURAL DISCHARGERS [40 CFR 122.42(a)]

In addition to the reporting requirements under Sec. 122.41(1), all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Director as soon as they know or have reason to believe:

(1) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(i) One hundred micrograms per liter (100 <greek-m> g/l);

(ii) Two hundred micrograms per liter (200 <greek-m> g/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 <greek-m> g/l) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Sec. 122.21(g) (7); or

(iv) The level established by the Director in accordance with Sec. 122.44(f).

(2) That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(i) Five hundred micrograms per liter (500 <greek-m> g/l);

(ii) One milligram per liter (1 mg/l) for antimony;

(iii) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with Sec. 122.21(g)(7).

(iv) The level established by the Director in accordance with Sec. 122.44(f).

17. PUBLICLY OWNED TREATMENT WORKS [40 CFR 122.42(b)]

This section applies only to publicly owned treatment works (POTWs) as defined at 40 CFR 122.22.

(a) All POTWs must provide adequate notice to the Director of the following:

(1) Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to section 301 or 306 of CWA if it were directly discharging those pollutants; and

(2) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

(3) For purposes of this paragraph, adequate notice shall include information on (i) the quality and quantity of effluent introduced into the POTW, and (ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

(b) [The following condition has been established by Region 9 to enforce applicable requirements of the Resource Conservation and Recovery Act] Publicly owned treatment works may not receive hazardous waste by truck, rail, or dedicated pipe except as provided under 40 CFR 270. Hazardous wastes are defined at 40 CFR 261.31 - 261.33. The Domestic Sewage Exclusion (40 CFR 261.4) applies only to wastes mixed with domestic sewage in a sewer leading to a publicly owned treatment works and not to mixtures of hazardous wastes and sewage or septage delivered to the treatment plant by truck.

(c) Municipal separate storm sewer systems. The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Director under Sec. 122.26(a)(1)(v) of this part must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall include:

(1) The status of implementing the components of the storm water management program that are established as permit conditions;

(2) Proposed changes to the storm water management programs that are established as permit condition. Such proposed changes shall be consistent with Sec. 122.26(d)(2)(iii) of this part; and

(3) Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under Sec. 122.26(d)(2)(iv) and (d)(2)(v) of this part;

(4) A summary of data, including monitoring data, that is accumulated throughout the reporting year;

(5) Annual expenditures and budget for year following each annual report;

(6) A summary describing the number and nature of enforcement actions, inspections, and public education programs;

(7) Identification of water quality improvements or degradation;

(d) Storm water discharges. The initial permits for discharges composed entirely of storm water issued pursuant to Sec. 122.26(e)(7) of this part shall require compliance with the conditions of the permit as expeditiously as practicable, but in no event later than three years after the date of issuance of the permit.

18. REOPENER CLAUSE [40 CFR 122.44(c)]

For any permit issued to a treatment works treating domestic sewage (including "sludge-only facilities"), the Director shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under section 405(d) of the CWA. The Director may promptly modify or revoke and reissue any permit containing the reopener clause required by this paragraph if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or controls a pollutant or practice not limited in the permit.

19. PRIVATELY OWNED TREATMENT WORKS [40 CFR 122.44(m)]

For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this part. Alternatively, the Director may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The Director's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits, or to require separate applications, and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works.

20. TRANSFERS BY MODIFICATION
[40 CFR 122.61(a)]

Except as provided in paragraph (b) of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under Sec. 122.62 (b)(2)), or a minor modification made (under Sec.122.63(d)), to identify the new permittee and incorporate such other requirements as may be necessary under CWA.

21. AUTOMATIC TRANSFERS
[40 CFR 122.61(b)]

As an alternative to transfers under paragraph (a) of this section, any NPDES permit may be automatically transferred to a new permittee if:

(1) The current permittee notifies the Director at least 30 days in advance of the proposed transfer date in paragraph (b)(2) of this section;

(2) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

(3) The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. A modification under this subparagraph may also be a minor modification under Sec. 122.63. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph (b)(2) of this section.

22. MINOR MODIFICATIONS OF PERMITS
[40 CFR 122.63]

Upon the consent of the permittee, the Director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of part 124. Any permit modification not processed as a minor modification under this section must be made for cause and with part 124 draft permit and public notice as required in Sec. 122.62. Minor modifications may only:

(a) Correct typographical errors;

(b) Require more frequent monitoring or reporting by the permittee;

(c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or

(d) Allow for a change in ownership or operational control of a facility where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director.

(e) (1) Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge under Sec. 122.29.

(2) Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

(f) [Reserved]

(g) Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in 40 CFR 403.11 (or a modification thereto that has been approved in accordance with the procedures in 40 CFR 403.18) as enforceable conditions of the POTW's permits.

23. TERMINATION OF PERMITS
[40 CFR 122.64]

(a) The following are causes for terminating a permit during its term, or for denying a permit renewal application:

(1) Noncompliance by the permittee with any condition of the permit;

(2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;

(3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or

(4) A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW).

24. AVAILABILITY OF REPORTS
[Pursuant to Clean Water Act Section 308]

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Regional Administrator. As required by the Act, permit applications, permits, and effluent data shall not be considered confidential.

25. REMOVED SUBSTANCES
[Pursuant to Clean Water Act Section 301]

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters.

26. SEVERABILITY
[Pursuant to Clean Water Act Section 512]

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and remainder of the permit, shall not be affected thereby.

27. CIVIL AND CRIMINAL LIABILITY
[Pursuant to Clean Water Act Section 309]

Except as provided in permit conditions on "Bypass" (Section 14) and "Upset" (Section 15), nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

28. OIL AND HAZARDOUS SUBSTANCE LIABILITY
[Pursuant to Clean Water Act Section 311]

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act.

29. STATE OR TRIBAL LAW
[Pursuant to Clean Water Act Section 510]

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the operator from any responsibilities, liabilities, or penalties established pursuant to any applicable State or Tribal law or regulation under authority preserved by Section 510 of the Clean Water Act.

FACT SHEET
Peabody Western Coal Company - Black Mesa Complex
NPDES Permit No. NN0022179

Final
(August, 2009)

Applicant address:	Peabody Western Coal Company Black Mesa Complex P.O. Box 650 Kayenta, AZ 86033
Applicant contact:	Gary Wendt, Environmental Manager (928)677-5130 gwendt@peabodyenergy.com
Facility Address:	P.O. Box 650 Kayenta, AZ 86004
Facility Contact:	Gary Wendt

I. Status of Permit

EPA re-issued the current National Pollutant Discharge Elimination System Program ("NPDES") Permit (No. NN0022179) for the discharge of treated wastewater to the Peabody Western Coal Company (PWCC), Black Mesa/Kayenta Mine Complex on December 29 2000. On August 3, 2005 PWCC filed a timely renewal of its NPDES permit for discharge of wastewater into waters of the United States. EPA has administratively continued the permit since its expiration on February 1, 2006. PWCC also has coverage under the federal Multi-Sector General Permit for stormwater (AZR05A80F). During the past permit term, EPA has modified the permit several times to incorporate new outfalls and to eliminate expired outfalls due to the ongoing mining activities.

This proposed permit incorporates new regulatory requirements for the Western Alkaline Coal Mining Subcategory for reclamation areas (promulgated January 2002) and incorporates revisions to the Seep Monitoring and Management Plan that was required in the last permit. Additionally, several new outfall locations have been added and several have been eliminated due to the ongoing mining activities. Several changes to the requirements for conducting a seep management monitoring plan in the previous permit have been revised to reflect results of the monitoring study. No other significant changes have been made to the permit.

II. Background

The Black Mesa/Kayenta mine has operated since the early 1970s southwest of Kayenta, Arizona. The complex is located on approximately 64,858 acres of land leased within the boundaries of the Hopi and Navajo Indian Reservations primarily located in Navajo County, Arizona. About 25,000 acres of the lease area mineral rights are owned exclusively by the Navajo Nation, and 40,000 are owned jointly by the Navajo and Hopi Tribes. The Kayenta mining operation is the sole supplier of coal to the Navajo Generation Station, located near Page, Arizona. The Black Mesa mining operation was the sole supplier of coal to the Mojave Generating Station, located in Laughlin, Nevada. Coal supplied to the Mojave Generating Station was supplied via a 273 mile long pipeline thru which coal was slurried. The Mojave Generating Station ceased production in December 2005, and mining operations at the Black Mesa Mine have been temporarily suspended.

On February 17, 2004 PWCC filed a Life of Mine permit revision application to the Office of Surface Mining Reclamation and Enforcement (OSMRE) proposing several revisions to the Life of Mine Permit. The Life of Mine permit authorizes PWCC to mine coal and is a separate permitting activity from the NPDES permit which authorizes PWCC to discharge treated wastewater. EPA was a Cooperating Agency on the Environmental Impact Analysis conducted for the Life of Mine Permit. OSMRE published a draft Environmental Impact Statement in November 2006 (DOI DES 06-48). PWCC submitted a revised Life of Mine application to OSM in July, 2008. OSMRE Published the Final EIS in November 2008 (DOI FES 08-49) and issued the Life-of-Mine Permit on December 22, 2008.

III. Receiving Water

Discharges from the Black Mesa Complex are to receiving waters located on the Navajo and Hopi Indian Reservations. Receiving waters are comprised of two principal drainages within the Black Mesa Complex, and include Moenkopi Wash and Dinnebito Wash, both of which are ephemeral washes with short intermittent reaches that drain southwest to the Little Colorado River system. There are five large washes that are tributaries to the Moenkopi Wash, and include Coal Mine, Yellow Water Canyon, Yucca Flat, Red Peak Valley, and Reed Valley Washes.

The Navajo Nation Surface Water Quality Standards ("NNSWQS") were originally approved by the Resources Committee of the Navajo Nation Council on November 9, 1999. Amendments to the NNSWQS were approved by the Resources Committee on July 30, 2004. The Navajo Nation received "Treatment as a State" for the purposes of §106 and § 303 of the CWA. EPA approved the Navajo Nation's water quality standards in March, 2006. Therefore, this permit incorporates limits and standards for the protection of receiving waters in accordance with NNSWQS. The Hopi Tribe approved Surface Water Quality Standards in August 29, 1997.

The Hopi Tribe has received "Treatment as a State" for the purposes of §106 and § 303 of the CWA. Therefore, this permit incorporates limits and standards for the protection of receiving waters in accordance with the Hopi Tribe Surface Water Quality Standards.

The designated uses of the receiving waters for the Moenkopi Wash and its tributaries and Dinnebito Wash are Secondary Human Contact (ScHC), Ephemeral Warm Water Habitat (EphWWhbt), and Livestock and Wildlife Watering (L&W).

IV. Description of Discharge

The discharge includes runoff from active mine areas, coal preparation plant areas, and reclamation areas. The discharge meets the definition of "alkaline mine drainage", defined at 40 CFR Part 434 as having a pH > 6.0 and total iron < 10 mg/L prior to treatment.

During the previous permit term, there have been several discharges from the Black Mesa Mine Complex, most in response to precipitation events. A limited number of discharges have occurred as a result of lagoon dewatering.

Additionally, the permittee has conducted a Seepage Monitoring and Management Report in compliance with the previous permit. The permittee regularly inspected outfall ponds for seeps, and documented seep discharge volumes and sampling results, which was submitted in an annual report each year. A complete discussion of the Seep Monitoring results is presented in Section VI of this fact sheet.

V. Regulatory Basis of Proposed Effluent Limits

Section 301(a) of the Clean Water Act provides that the discharge of any pollutant to waters of the United States is unlawful except in accordance with an NPDES permit. Section 402 of the Act establishes the NPDES program. The program is designed to limit the discharge of pollutants into waters of the U.S. from point sources (40 CFR 122.1 (b)(1)) through a combination of various requirements including technology-based and water quality-based effluent limitations.

Technology-based effluent limitations

Under 40 CFR Part 125.3(c)(2), Technology based treatment requirements may be imposed on a case-by-case basis under Section 402(a)(1) of the Act, to the extent that EPA promulgated effluent limitations are inapplicable, i.e., the regulation allows the permit writer to consider the appropriate technology for the category or class of point sources and any unique factors relating to the applicant.

The discharge of wastewater from coal mines is subject to 40 CFR Part 434: Coal Mining Point Source Category BPT, BAT, BCT Limitations and New Source Performance Standards. The Black Mesa Complex has the potential to discharge wastewater from

separate sources that are subject to separate subcategories of Part 434. These include:

A. Appendix A Outfalls – "Alkaline Mine Drainage"

These outfalls meet the definition of "alkaline, mine drainage" in 40 CFR Part 434.11(c). Therefore, the proposed permit sets limits for these outfalls in accordance with the requirements of "Subpart D - Alkaline Mine Drainage" for BPT, BCT, and BAT regulations that apply to such discharges. The proposed permit sets discharge limits for these outfalls for Iron (3.5 mg/l daily average and 7.0 mg/l daily maximum), Total Suspended Solids (TSS)(35 mg/l daily average and 70 mg/l daily maximum), and pH (no less than 6.0 or greater than 9.0 standard pH units). Flow volumes, iron, TSS and pH monitoring is required during any event. These requirements are consistent with those of the previous permit.

B. Appendix B Outfalls – "Coal Preparation & Associated Areas"

These outfalls meets the definition in 40 CFR 434.11(e), (f) and (g) for "coal preparation plant", "coal preparation plant and associated areas", and "coal preparation plant water circuit", respectively. Therefore, the proposed permit sets limits for the outfall in accordance with "Subpart B - Coal Preparation Plants and Coal Preparation Plant Associated Areas" for BPT, BCT, and BAT regulations that apply to such discharges. The requirements for the Outfalls listed in Appendix B are the same as those for "alkaline, mine drainage", with the addition of limitations and monitoring requirements for manganese (2.0 mg/l daily average and 4.0 mg/l daily maximum). The permit retains the monitoring and effluent limits for oil and grease in the previous permit. These requirements are consistent with those of the previous permit.

C. Appendix C Outfalls – "Western Alkaline Reclamation Areas"

These outfalls meet the definition of "Subpart H- Western Alkaline Coal Mining", which applies to "alkaline mine drainage at western coal mining operations from reclamation areas, brushing and grubbing areas, topsoil stockpiling areas, and regraded areas." (40 CFR Part 434.81). In accordance with the requirements established in Subpart H; the operator has:

1) submitted a site-specific Sediment Control Plan to EPA incorporating the minimum requirements of 40 CFR Part 434.82,

2) demonstrated that implementation of the Sediment Control Plan will result in average annual sediment yields that will not be greater than the sediment yield levels from pre-mined, undisturbed conditions.

The operator submitted these materials to EPA in a letter and attachments on September 24, 2008. These materials are part of the Administrative Record for the

proposed permit and are available for public review.

Therefore, EPA proposes to approve the Sediment Control Plan consistent with the requirements of Subpart H. Additionally, in accordance with Subpart H, the proposed permit requires that the approved Sediment Control Plan be incorporated into the permit as an effluent limit, and requires that the permittee design, implement, and maintain the BMPs in the manner specified in the Sediment Control Plan.

EPA Region IX and the Office of Surface Mining Reclamation and Enforcement (OSMRE) entered a Memorandum of Understanding on December 19, 2003: "Process for Obtaining A NPDES Permit Under Subpart H - Western Alkaline Mine Drainage Category". Working through the process outlined in the MOU, OSM is conducting a technical review of the Sediment Control Plan submitted by the Permittee. EPA has concluded that the Sediment Control Plan has been submitted in accordance with the requirements of 40 CR Part 434, and that the Sediment Control Plan meets the minimum requirements to demonstrate that the average annual sediment yields that will not be greater than the sediment yield levels from pre-mined, undisturbed conditions.

OSMRE completed a technical review (January 28, 2009 letter from Dennis Winterringer, OSMRE to Gary Wendt, PWCC) of PWCC's 9/24/08 application to revise the Black Mesa SMCRA permit and categorization of Western Alkaline Reclamation Areas for the NPDES permit. OSMRE and EPA have jointly reviewed these materials for the respective permits pursuant to the MOA discussed above. OSMRE concluded that PWCCs' Sediment Control Plan contained text, appendices, surface water modeling results for the applicable areas, methodology for pond removal, and sediment control traps consistent with the requirements of SMRCA and the Clean Water Act. EPA has also concluded that the contents of the Sediment Control Plan comply with the Clean Water Act Requirements at 40 CFR Part 434.81 regarding Western Alkaline Reclamation Areas. However, OSMRE expressed concerns with the seep management results (documented in Section VI of this fact sheet) for Outfalls 031 and 032 (Ponds J16-E and J16-F, respectively). As a result of this review and EPA's continuation of the revised seep management plan, EPA has decided that Outfalls 031/J16-E and 032/J16-F will remain classified as "Alkaline Mine Drainage" and will not be categorized as "Western Alkaline Reclamation Areas" until PWCC addresses the concerns raised in OSMRE's technical evaluation. As described in Section VI of this fact sheet, EPA will require continued monitoring and BMPs for the seeps identified in the final permit.

As existing outfalls defined in this permit as "alkaline mine drainage" are reclaimed, the Sediment Control Plan may be updated to incorporate additional outfalls. A revised Plan must be submitted to EPA and approved by EPA before it becomes effective. The revised plan will also be reviewed by OSMRE prior to EPA approving the revisions. Revisions to the Sediment Control Plan must meet all requirements contained at 40 CFR Part 434.82, and 100% of the drainage areas to an outfall that has been

disturbed by mining must meet the definition of Subpart H to be considered for coverage under Subpart H. EPA's approval of an updated Sediment Control Plan and reclassification of an existing outfall from "alkaline mine drainage" to Subpart H requirements will be considered a minor modification to this permit.

Water Quality-Based Effluent Limitations

Sections 402 and 301(b)(1)(C) of the Clean Water Act require that the permit contain effluent limitations that, among other things, are necessary to meet water quality standards. 40 CFR 122.44(d) provides that an NPDES permit must contain:

"Water quality standards and State requirements: any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under sections 301, 304, 306, 307, 318 and 405 of CWA necessary to:
(1) Achieve water quality standards established under section 303 of the CWA, including State narrative criteria for water quality."

40 CFR 122.44 (d)(1)(i) states:
"Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality."

40 CFR 122.44 (d) (1) (ii) states:
"When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard, the permitting authority shall use procedures which account for existing controls on point and non-point sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity) and where appropriate, the dilution of the effluent in the receiving water."

40 CFR122.44 (d)(1) (iii) states:
"When the permitting authority determines using the procedures in paragraph (d)(1)(ii) of this section, that a discharge causes, has the reasonable potential to cause or contributes to an in-stream excursion above the allowable ambient concentration of a State numeric criteria within a State water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant."

Guidance for the determination of reasonable potential to discharge toxic pollutants is included in both the Technical Support Document for Water Quality-Based Toxics Control (TSD) - Office

of Water Enforcement and Permits, U.S. EPA, dated March 1991 and the U.S.EPA NPDES Permit Writers Manual - Office of Water, U.S. EPA, dated December 1996. EPA's technical support document contains guidance for determining the need for permit limits. In doing so, the regulatory authority must satisfy all the requirements of 40 CFR 122.44(d)(1)(ii). In determining whether the discharge causes, has the reasonable potential to cause or contributes to an excursion of a numeric or narrative water quality criterion for individual toxicants, the regulatory authority must consider a variety of factors. These factors include the following:

- Dilution in the receiving water,
- Existing data on toxic pollutants,
- Type of industry,
- History of compliance problems and toxic impacts,
- Type of receiving water and designated use.

Based on an analysis of factors at the Black Mesa Complex operations and projected wastewater quality data provided in the application, EPA concluded there continues to be no "reasonable potential" to cause or contribute to an exceedance of water quality standards. This is consistent with the previous permit.

The proposed permit sets general conditions based on narrative water quality standards contained in Section 203 of the NNSWQS and Chapter 3 (General Standards) of the Hopi Water Quality Standards (August 29, 1997). These standards are set forth in Section B ("General Discharge Specifications") of the permit.

VI Special Conditions- Seep Monitoring and Management Plan

Section A.5 of the previous permit required that PWCC conduct a Seepage Monitoring and Management Plan. The permit required the PWCC design and conduct a study plan to determine the source of, and pollutants in, seepages below impoundments. PWCC was required to:

- identify all seeps located within 100 meters downgradient of sediment impoundments,
- conduct sampling (or summary of current data if sufficient and valid) of seepages identified for pH, Iron (Total and Dissolved), Dissolved Oxygen, Selenium (Total and Dissolved) and Nitrates,
- conduct hydrogeologic modeling or studies in order to determine if the source the seeps are the impoundments and, if so, which impoundments, and
- determine the source of Selenium and Nitrates if data indicates that seepages have a reasonable potential to violate water quality standards.

There are over 230 impoundments on the Black Mesa Complex, many are internal impoundments for treatment and storage and which do not discharge to water of the U.S. There are currently 111 ponds that discharge to waters of the U.S. and which therefore are listed as NPDES outfalls in compliance with this permit. Seeps have been identified at 33 of these

impoundments.

PWCC has been conducting seep monitoring and characterization of seeps since 1999. During each year, PWCC identified the following number of seeps with an identifiable flow where sampling was conducted:

1999 – 11 seeps sampled
2000 – 9 seeps sampled
2001 – 7 seeps sampled
2002 – 12 seeps sampled
2003 – 16 seeps sampled
2004 – 14 seeps sampled
2005 – 12 seeps sampled
2006 – 16 seeps sampled
2007 – 14 seeps sampled

Based on the results of the Seep Monitoring and Management Plan, EPA and PWCC have evaluated each of the seep locations.

Additionally, the permittee has conducted a Seepage Monitoring and Management Report in compliance with the previous permit. The permittee regularly inspected outfall ponds for seeps, and documented seep discharge volumes and sampling results, which was submitted in an annual report each year.

Peabody submitted an "Interim Final Report" on April 1, 2008 summarizing the data collected at each of the seeps, including a description of the following information :

- Number of seep inspections;
- Number of flows observed;
- Range of flows observed;
- Number of samples taken;
- Exceedances of Livestock standards;
- Exceedances of acute standards, exceedances of chronic standards
- Current use of pond (e.g., outfall location; internal pond; treatment for reclaimed, active, shop areas, etc.);
- Final use of pond, including an estimation if pond can be removed;
- BMPs utilized (e.g., vegetation, fencing, dewatering);
- Potential BMPs to be evaluated (e.g., pond removal, vegetation, passive pH treatment, clay lining, dewatering, other);

Based on this summary, EPA and PWCC established a prioritization to address seeps including 1) reclaim as many ponds as possible 2) eliminate monitoring requirements for seeps not causing problems 3) continue monitoring where data is inconclusive 4) establish a permanent fix for problem areas and 5) explore if regulatory variances may be applicable for certain non-

bioaccumulative parameters.

Based on this assessment, EPA has concluded that PWWC will continue the seep management plan. Several ponds where water quality problems in the seeps have been identified will be removed. At several other ponds, PWWC will install Best Management Practices to treat the seep, and monitoring will continue. In addition, EPA will explore the feasibility of granting a water quality variance for aluminum, TDS and sulfate as appropriate if their presence is due to naturally occurring conditions and at levels not exceeding background concentrations. A summary of the pond results is included below where EPA evaluated the risk level to water quality and assessed applicable BMPs. Water Quality Risk Levels:
Level 1: Generally contains: very low flows, few instances of observed seeps, seep meets WQS, seep may have one sample slightly above WQS.
Level 2: Generally contains: Medium flows, seeps detected at higher frequencies, multiple samples may be above WQS, samples above WQS are only slightly above WQS. No samples significantly above WQS. No bioaccumulative toxic pollutant above WQS.
Level 3: May be one or a combination of: High flows, high occurrence of seeps, multiple samples above WQS, or any sample significantly above WQS. Any sample of bioaccumulative toxic pollutant above WQS.

POND	Does Seep Characterization meet WQS ?	Risk Level	Type	Existing BMPS	Notes	Peabody Conclusion for Revised Seep Management Plan	EPA Assessment for Continued Monitoring & Management
BM-A1	No. Low pH, Nitrate, Aluminum.	2	Temporary		Pond treats process areas & cannot be removed	Install passive treatment. Remove pond eventually. Continue monitoring.	OK
J2-A	Yes Few seeps present	1	Permanent			Permanent Discontinue inspections.	OK
J3-D	No, Chloride. TDS. Aluminum, sulfate. Selenium (1/5 @ 67)	3	Permanent			Permanent Pursue Variance for Alum, TDS & sulfate	Selenium potential concern. Explore remove this pond and /or mitigation.
J3-E	Generally Yes Few seeps Alum, pH slightly above	1	Permanent		Drains shop area	Permanent Discontinue inspections	OK

J7-A	No TDS, Sulfate	1	Temporary		Will remove ~2011	Pond Removal ~2011 Pursue Variance for TDS, Sulfate	OK. Continue monitoring.
J7-CD	No Alum, TDS, sulfate, chromium	3	Temporary		Drains reclaimed mining areas	Remove Pond	OK. Remove ASAP
J7-Dam	No. Historically, TDS, Sulfate, pH. Se (4/16 @ 51-64)	3	Permanent	Artificial wetland. Fenced	Has met all standards over past 3 years. Levels decreasing.	Permanent. Increase wetland treatments. Continue annual monitoring	OK
J7-JR	No but very low flows [<0.01 gpm] TDS, Sulfate, Alum	2	Permanent		Drains Active mining areas	Permanent Pursue Variance for TDS, Sulfate, Alum	OK. Continue monitoring.
J16-A	No. TDS, sulfate	2	Permanent		Drains coal prep areas	Permanent Pursue Variance for TDS, sulfate	OK. Continue monitoring.
J16-E	No. pH. Se (5/5 @ 71-160)	3	Temporary		Drains reclaimed mining areas	Remove ~ 2009	PWCC must mitigate / document pre-existing seep.
J16-L	No seeps found	1	Permanent			Permanent Discontinue monitoring	OK
J19-D	No. TDS , sulfate	2	Temporary		New. Will treat stormwater for active areas for some time	Continue monitoring Pursue Variance for TDS, sulfate	OK. Continue monitoring.
J21-C	No. Aluminum	2	Permanent			Variance for Alum	OK. Continue monitoring.
J27-A	No. (1 sample) TDS, chloride	1	Temporary			Pursue Variance for TDS, chloride	OK. Continue monitoring.
J27-RC	No. (1 of 10 samples). TDS Sulfate	1	Permanent			Pursue Variance for TDS, sulfate	OK. Continue monitoring.
N6-C	No. 1 seep, 1 sample TDS, sulfate	1	temporary			Remove Pond	OK
N6-F	No. Low pH . high Alum	3	temporary			Remove Pond	OK
N14-B	No. Sulfate, TDS, Alum (1 sample > chronic)	2	temporary		Treats conveyor areas	Pursue Variance for TDS, sulfate, Alum	OK. (Temp pond.) Continue monitoring
N14-H	No. Sulfate (1 sample)	1	Permanent			Pursue Variance for sulfate	OK. Continue monitoring.

N14-P	No Sulfate, TDS, pH (5.3), Cadmium, Aluminum	2	temporary			Continue Monitoring Pursue Variance for TDS, sulfate, Aluminum	OK (Temp pond). Continue monitoring.
WW-9	No. sulfate, TDS, Aluminum	1	temporary			Continue monitoring Pursue Variance for TDS, sulfate, Aluminum	OK. Continue monitoring.

Based on this assessment, EPA has included requirements for the continuation of the revised seep management plan in the permit.

VII. Monitoring Requirements

The proposed permit requires discharge data obtained during the previous three months to be summarized and reported quarterly. If there is no discharge for the quarter, indicate "Zero Discharge". These reports are due January 28, April 28, July 28, and October 28 of each year. Duplicated signed copies of these, and all other reports required herein, shall be submitted to the Regional Administrator, the Navajo Nation EPA, and the Hopi Tribe Water Resources Office.

VIII. Threatened and Endangered Species

EPA has determined that the discharge in compliance with this permit will have no effect on threatened or endangered species. EPA has determined that due to the frequency of the discharge, effluent released in accordance with this permit will have no effect on any threatened or endangered species that may be present in the area. No requirements specific to the protection of endangered species are proposed in the permit. A copy of the permit and fact sheet is being sent to the U.S. Fish and Wildlife Service for review during the public comment period.

IX. Permit Reopener

The permit contains a reopener clause to allow for modification of the permit if reasonable potential is demonstrated during the life of the permit.

X. Standard Conditions

Conditions applicable to all NPDES permits are included in accordance with 40 CFR, Part 122.

XI. Administrative Information

Public Notice (A.A.C. R18-9-A907)

The public notice is the vehicle for informing all interested parties and members of the general public of the contents of a draft NPDES permit or other significant action with respect to an NPDES permit or application. The basic intent of this requirement is to ensure that all interested parties have an opportunity to comment on significant actions of the permitting agency with respect to a permit application or permit. This permit will be public noticed in a local newspaper after a pre-notice review by the applicant and other affected agencies.

Public Comment Period (A.A.C. R18-9-A908)
Rules require that permits be public noticed in a newspaper of general circulation within the area affected by the facility or activity and provide a minimum of 30 calendar days for interested parties to respond in writing to EPA. After the closing of the public comment period, EPA is required to respond to all significant comments at the time a final permit decision is reached or at the same time a final permit is actually issued.

Public Hearing (A.A.C R18-9-A908(B))
A public hearing may be requested in writing by any interested party. The request should state the nature of the issues proposed to be raised during the hearing. A public hearing will be held if the Director determines there is a significant amount of interest expressed during the 30-day public comment period, or if significant new issues arise that were not considered during the permitting process.

XII. Additional Information

Additional information relating to this proposed permit may be obtained from the following locations:

U.S. Environmental Protection Agency, Region IX
CWA Standards & Permits Office Mail Code: WTR-5
75 Hawthorne Street
San Francisco, California 94105-3901
Telephone: (415) 972-3518
Attn: John Tinger or email: Tinger.John@EPA.gov

XIII. Information Sources

While developing effluent limitations, monitoring requirements and special conditions for the draft permit, the following information sources were used:

1. EPA Technical Support Document for Water Quality-based Toxics Control dated March 1991.

2. U.S. EPA NPDES Basic Permit Writers Manual (December 1996).

3. 40 CFR Parts 122, 131, and 133.

4. NPDES permit application forms 2A and 2S, provided in letter from Mr. Gary Wendt, PWCC, August 3, 2005.

5. Memorandum of Understanding: "Process for Obtaining A NPDES Permit Under Subpart H - Western Alkaline Mine Drainage Category", EPA Region IX and the Office of Surface Mining Reclamation and Enforcement Office (OSM), dated December 19, 2003.

6. Annual Seep Monitoring Reports, PWCC.

7. Technical Evaluation of Permit Revisions, OSRME, January 28, 2009. Letter from Dennis Winterringer, OSMRE to Gary Wendt, PWCC.

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

In reply, refer to WTR-5

Certified Mail: 7008 3230 0000 3863 1710

AUG 05 2009

Mr. Gary Wendt
Manager, Environmental Affairs
Peabody Western Coal Company
P.O. Box 605
Navajo Route 41
Kayenta, AZ 86033

Re: Re-issuance of NPDES Permit NN0022179; Black Mesa Complex

Dear Mr. Wendt:

Please find enclosed the final National Pollutant Discharge Elimination System (NPDES) permit renewal for the Black Mesa Complex, along with the final Fact Sheet and Comment Response Document. EPA issued a public notice of proposed action in the *Navajo Times* on February 19th, 2009. During the comment period, EPA received comments from one interested party, on behalf of several additional parties.

Within 33 days of this notice, any person who filed comments on the proposed permit conditions may petition the Environmental Appeals Board (EAB) to review the conditions of the permit. The petition shall include a statement of the reasons supporting that review, including a demonstration that any issues being raised were raised during the public comment period and a showing that the condition in question is based on: (1) a finding of fact or conclusion of law which is clearly erroneous, or (2) an exercise of discretion or an important policy consideration which the EAB should, in its discretion, review. See 40 C.F.R. §§ 124.19(a) and 124.20(d).

40 C.F.R. § 124.60 (b)(1) states that, as provided in 40 C.F.R. § 124.16 (a), if an appeal of an initial permit decision is filed under Section 124.19 of this Part, the force and effect of the contested conditions of the final permit shall be stayed until final agency action under 40 C.F.R. § 124.19 (f). In accordance with 40 C.F.R. § 124.16 (a)(1), "[i]f the permit involves a . . . new source, new discharger or a recommencing discharger, the applicant shall be without a permit for the proposed new . . . source or discharger pending final agency action." Please review 40 C.F.R. § 124 and the revisions at 65 Fed. Reg. 30886 for a complete description of the requirements regarding appeal of NPDES permits.

If you have any questions regarding the procedures outlined above, or if you would like to review or request any documents from the Administrative Record, please contact me at (415) 972- 3420 or contact John Tinger of my staff at (415) 972-3518 or e-mail at Tinger.John@epa.gov.

Sincerely,

Douglas E. Eberhardt, Chief
NPDES Permits Office

Enclosures (3):
Final Permit
Final Fact Sheet
Comment Response Document

CC: w/attachments
Mr. Dennis Winterringer
Office of Surface Mining Reclamation and Enforcement
P.O. Box 46667
Denver, CO 80201-6667

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

The Hopi Tribe
Water Resources Office
P.O. Box 123
Kykotsmovi, AZ 86039

Mr. Brad A. Bartlett
Energy Minerals Law Center
1911 Main Ave, Suite 238
Durango, CO 81301

CC: w/o attachments:
All materials available at http://www.epa.gov/region09/water/npdes/permits.html
Ms. Carrie Marr
U.S. Fish and Wildlife Service
2321 West Royal Palm Road, Suite 103
Phoenix, AZ 85021-4951

Ms. Rita Whitehorse-Larsen
The Navajo Nation
Department of Fish & Wildlife
P. O. Box 1480
Window Rock, Arizona

Mr. Mike Eisenfeld
San Juan Citizens Alliance
108 North Behrend, Suite I
Farmington, NM 87402

Ms. Lori Goodman
Diné Care
1022 Main Avenue
Durango, CO 81302

Comment Response Document
Peabody Western Coal Company - Black Mesa Complex
NPDES Permit No. NN0022179
August 3, 2009

COMMENT: Request for Public Hearing

Pursuant to 40 C.F.R. §124.12, Commenters respectfully request a public hearing be held within sixty (60) days of receipt of this letter to address the very serious and substantial issues and concerns raised herein. The public hearing should be held in Kayenta, Arizona.

Many of the people directly impacted by EPA's permit issuance are Navajo and Hopi tribal members who, if they speak English at all, speak English primarily as a second language. Many Native American communities in the Black Mesa area bear a disproportionate share of Peabody's ongoing discharge of numerous pollutants onto tribal lands. These communities often lack the political agency and economic leverage required for effective participation in environmental decision-making processes. Further, EPA owes a trust obligation to indigenous people and therefore needs to ensure that tribal people and lands are not being disproportionately impacted by Peabody's massive mining operation and ongoing discharge of pollutants.

At the public hearing, we respectfully request that the agency make available in a culturally sensitive format and for public review and consumption: (1) copies of the proposed NPDES permit; (2) a 2-3 page fact sheet or executive summary; (3) Peabody's application and all other related material; (4) copies of any and all relevant National Environmental Policy Act ("NEPA") documentation for this proposal; (4) detailed –and large size-- maps of the area and the discharges covered by the permit; (5) any other relevant information that, in particular, discusses Peabody's current violations of Water Quality Standards "(WQS") and any "compliance schedule" being proposed by EPA to rectify such violations. Commenters respectfully request that, in addition to allowing public comment, EPA provide a detailed presentation using an interpreter as well as answer any questions put to the agency by members of the public.

Commenters also request a site visit of the outfalls (and in particular the J-7 dam and BMA-1) the day prior to the public hearing as well as the ability to conduct grab samples of any discharges.

Notice of EPA's public hearing should be provided at least 30-days in advance and published in tribal newspapers and announced on tribal radio. Additionally, EPA should directly contact impacted tribal members including, but not limited to, tribal members who hold grazing permits in areas affected by Peabody's outfalls. The Administrative Record suggests that multiple sites (some of which are highly contaminated) are currently being used for livestock watering. Lastly, the U.S. Army Corp of Engineers, the Federal Office of Surface Mining Control and Enforcement and U.S. Fish and Wildlife Service staff should be present at the hearing to answer any related questions.

RESPONSE: EPA has decided not to hold a public hearing. EPA has received only one comment requesting a hearing on the proposed permit, from the Energy Minerals Law Center, located in Durango, Colorado. EPA has not received any other requests to hold a public hearing. EPA has the discretion to hold a public hearing if the Director finds, on the basis of requests, a significant degree of public interest. [40 CFR 124.12].

EPA notes that numerous public hearings were held as part of the EIS conducted for the Life of Mine permit revision application to the Office of Surface Mining

Reclamation and Enforcement (OSMRE) which afforded the public opportunity to comment on many of the issues raised for the community as part of the mine site. EPA was present at several of the scoping meetings and public hearings in order to receive comments from the public related to water quality issues. EPA was present at the meetings held during the second week of January, 2005 in Kayenta, Second Mesa, and Leupp, Arizona. Additionally, EPA was present at the following meetings held during the first week of January, 2007 in Moenkopi, Kayenta, and Kykotsmovi, Arizona. The only comment received at these meetings related to water was from several downstream landowners who objected to the presence of the stormwater holding ponds at the mine site because they felt the ponds were withholding valuable water from downstream users. As noted in the fact sheet, EPA is implementing the new Subpart H requirements which will allow PWCC to remove many ponds from the site. EPA received no comments nor was any interest expressed related to water quality issues from the mine site.

COMMENT: Remedying Violations of WQS Standards

Much of the limited background information contained in EPA's Administrative Record indicates a significant water quality problem at the Black Mesa Complex. Commenters respectfully assert that EPA's renewal permit (as currently proposed) would exacerbate the problem by authorizing Peabody to continue its unabated discharge of, in some instances, highly contaminated wastewater from over 110 outfalls—while directing Peabody to seek a "variance" to deal with ongoing exceedances of applicable WQS.

Commenters believe that EPA's approach to dealing with Peabody's ongoing violations of the Clean Water Act ("CWA") is flawed and that a fundamentally different approach needs to be immediately employed by the agency to deal with this very serious situation.

RESPONSE: The Administrative Record does not demonstrate significant water quality problems at the Black Mesa Complex. As indicated in the Fact Sheet, the permit authorizes the discharge of mine drainage stormwater at over 100 Outfall locations which drain areas of the mine site defined as "Alkaline Mine Drainage", "Western Alkaline Reclamation Areas" and "Coal Preparation and Associated Areas". No water quality problems have been identified from the discharge of mine drainage from authorized Outfalls. The commenter may be conflating perceived issues at the seeps with the 100 stormwater outfalls authorized by the permit.

All stormwater generated at the mine site is subject to NPDES permitting requirements and is treated in pond impoundments prior to discharge. At the impoundments, collected and stored stormwater may infiltrate into the soil. At several impoundments, depending on the location of the impoundment and the geologic formations beneath them, water that has seeped into the soils may re-emerge below the impoundment structure. EPA observed these seeps on a compliance inspection, and required Peabody Western Coal Company (PWCC) to monitor and characterize these seeps in the previous permit (issued December 2000). In response, PWCC submitted an "Interim Final Report" ("Report") on April 1, 2008 which summarized the data collected at each of the seeps, including a description of the following information:

- Number of seep inspections;
- Number of flows observed;
- Range of flows observed;
- Number of samples taken;
- Exceedances of Livestock standards;
- Exceedances of acute standards, exceedances of chronic standards;
- Current use of pond (e.g., outfall location, internal pond, treatment for reclaimed water, active, shop areas, etc.);
- Final use of pond, including an estimation if pond can be removed;
- Best Management Practices ("BMPs") utilized (e.g., vegetation, fencing, dewatering);
- Potential BMPs to be evaluated (e.g., pond removal, vegetation, passive pH treatment, clay lining, dewatering, other);

PWCC has characterized both the water quality of the impoundments and the water quality of the seeps as part of the report. Based on a comparison of the analysis, it was concluded that many pollutant levels found at the seep locations were caused by the seepage activity itself (during which stormwater infiltrates certain soil layers below the impoundment ponds and leaches pollutants found in the soil layers) and not from mining activities.

Therefore, the characterization of the seeps must be considered separate from the characterization of both the authorized Outfalls and the characterization of the stormwater contained in the ponds. Seep identification and characterization has demonstrated that several seeps have shown concentrations of pollutants above water quality standards. However, these issues are strictly related to the seeps, which are small in number, low in flows, and may not result in a discharge to a Water of the U.S. A complete analysis of these seeps was provided in the fact sheet.

As stated in the Fact Sheet, EPA has required PWCC to monitor all 230 impoundments on the Black Mesa Complex, many of which are internal impoundments for treatment and storage and which do not discharge to a water of the U.S. There are currently 111 ponds that discharge to Waters of the U.S. and which are therefore listed as NPDES outfalls in this permit. EPA has instructed PWCC to monitor all seeps located within 100 feet of an impoundment. Many of the seeps are simply moist areas which do not generate actual flow volumes. Additionally, many other seeps are located on the toes of the impoundments and do not discharge to a Water of the U.S., or may be located at internal impoundments which do not discharge to a Water of the U.S.

Regardless of the cause of the pollutant concentrations documented in Section VI of the Fact Sheet, and regardless of whether the seep is or is not considered a discharge to a Water of U.S., EPA has required PWCC to implement the Seep Management Plan at all impoundments at the mine site in order to characterize and implement corrective actions to control all seeps. Therefore, EPA believes that this is the most comprehensive and effective approach to monitor seeps to prevent even the potential for water quality problems, and to provide for corrective actions and the installation of Best Management

Practices at those seeps which have been identified with the potential to cause water quality problems. This approach is being pursued regardless of whether the seeps have the potential to discharge to a Water of the U.S. EPA believes the conditions in the permit are effective for the monitoring and control of seeps.

See next response for response to this comment as it pertains to variances.

COMMENT: Variances Inappropriate

EPA provides no discussion or legitimate basis for the proposed use of "variances." See, EPA's "Fact Sheet." See e.g., 40 C.F.R. §124.8(5) (requiring EPA to "justify" use of variances). In particular, EPA provides no discussion or analysis of "the economic and social costs and the benefits to be obtained" from allowing Peabody to evade compliance with (even temporarily) applicable WQS. 33 U.S.C. §1312(b)(2).

While nowhere defined in EPA's permit materials or Administrative Record, Commenters understand EPA's proposed "variance" to mean a period of time where water quality effluent limits would not apply to Peabody.

According to Peabody's website, "Peabody Energy (NYSE: BTU) is the world's largest private sector coal company, with 2008 sales of 256 million tons and $6.6 billion in revenues." Peabody recently reported record revenues.

Commenters expect EPA, consistent with the requirements of the CWA, to hold Peabody to the highest of standards and order to exercise the "maximum degree of control" of its discharge of pollutants. 33 U.S.C. §1312(b)(2). Achievement of WQS is achievable both from a technological and financial perspective as Peabody is clearly in a financial position to implement technological-based pollution controls that eliminate discharges (e.g. temporary/permanent wastewater treatment facilities, liners, etc.).

That said and instead of recommending that Peabody seek "variances" from WQS to deal with its ongoing Clean Water Act violations (presumably from the Navajo Nation), EPA should immediately issue a "compliance order" within the next 30 days. 33 U.S.C. §1319 (dealing with "compliance orders"); see also, 40 C.F.R. §131.12 (outlining EPA's antidegradation policy).

RESPONSE: The reissued permit does not allow for, nor does it authorize, any variances at the Black Mesa Mine Site. No variances were proposed nor considered in the draft permit. Therefore, EPA has not provided a discussion of the basis for a water quality variance.

As indicated in the fact sheet (Part VI Special Conditions- Seep Monitoring and Management Plan), EPA and PWCC established a prioritization to address seeps, including 1) reclaim as many ponds as possible 2) eliminate monitoring requirements for seeps not causing problems 3) continue monitoring where data is inconclusive 4) establish a permanent fix for problem areas and 5) explore if regulatory variances may be applicable for certain non-bioaccumulative parameters.

EPA notes that a regulatory variance may be allowed as specified under 40 CFR 131.10(g) if certain conditions are met, including the presence of naturally occurring pollutant concentrations. EPA has made no determination at this time if a variance may

be appropriate for the circumstances at the mine site, and PWCC has not indicated an intention to apply for a regulatory variance at this time. EPA has merely stated in the fact sheet as part of its recommend seep management approach, that a variance may be considered as a last priority in certain circumstances. Hence, EPA stated that it may be appropriate to "...explore if a regulatory variance may be applicable..."

Moreover, before EPA could consider making a permit less stringent on the basis of a variance from a water quality standard, the variance would need to be adopted by the Navajo Nation and/or Hopi Tribe and approved by EPA in accordance with Section 303 (c) of the CWA. Any variance would need to be adopted following the procedures for changing water quality standards, including public participation. Likewise, any permit modification incorporating a variance would be subject to a public comment period.

COMMENT: Compliance Order Requested

In particular, a compliance order should be issued for ponds BM-A1, J3-D, J-7A, J7-CD, J7- Dam, J7-JR, J16-A, J16-E, J19-D, J21-C, J27-A, J27-RC, N6-C, N6-F, N14-B, N14-H, N14-P, WW-9. According to EPA's "fact sheet," discharges from all of these ponds are currently noncompliant with one or more WQS. EPA's compliance order should establish a wastewater treatment process for each discharge point as well as a timeframe for compliance with WQS. Commenters believe 60-days is a sufficient time for Peabody to take any necessary corrective action to halt violations of the CWA.

RESPONSE: The commenters' request to issue a compliance order to PWCC is a separate matter from the effluent limitations, monitoring requirements, and special conditions contained in the reissued NPDES permit. EPA believes the continued implementation of the Seep Management Plan is the most comprehensive approach to address seeps. No changes to the permit appear necessary to address comment.

COMMENT: Enforcement Action Requested

Additionally, and according to the Final Environmental Impact Statement ("FEIS") for the Black Mesa Complex and prepared by the URS Corporation, at least two ponds, J-21A1 and N14-P-S1 which are violating WQS do not appear to be covered by Peabody's current NPDES permit. FEIS at 3-27. That said EPA needs to take immediate (and similar) enforcement actions to halt these unpermitted discharges.

RESPONSE: These ponds and the seeps from these ponds do not discharge to a Water of the U.S. and are therefore not regulated as an NPDES Outfall. (*see discussion above regarding seeps*). As stated in the fact sheet (Section VI), there are over 230 impoundments on the Black Mesa Complex, many are internal impoundments for treatment and storage and which do not discharge to a water of the U.S. The ponds referenced by the commenter are internal impoundments used to treat stormwater runoff at locations within the mine site, which may be located miles away from a discharge location. Although these impoundments do not discharge to a Water of the U.S. and are not subject to NPDES permitting requirements, EPA is requiring PWCC to sample,

characterize, and install corrective actions for all seeps identified at the mine site, which includes seeps that may not be subject to NPDES permitting regulations.

COMMENT: Monitoring and Sampling Requested

EPA itself should monitor and sample discharges from the outfalls listed above to ensure compliance with WQS and ground-truth any argument (expected from Peabody) that certain exceedances of WQS somehow constitute "background levels" or are attributable to "natural processes"-- a claim that is not substantiated by any independent agency review or analysis in the Administrative Record.

REPSONSE: EPA has not made any determinations for the permit renewal that the characterization data of the seeps represents natural background levels, or that a variance would be appropriate. As noted above, the renewed permit does not contain any variances nor effluent limitations based on variances. Additional studies and sampling may be necessary to justify any variance request, if such a request is made. The commenters' request for EPA to conduct its own monitoring is a separate matter from the effluent limitations, monitoring requirements, and special conditions contained in the reissued NPDES permit.

COMMENT: Construction of Wastewater Treatment Facility Requested

Commenters recognize that in at least two situations (Ponds J-7 and BMA-1), and while temporary and immediate cleanup measures are necessary, a permanent wastewater treatment facility will need to be constructed by Peabody. This should be expressly accounted for in any compliance order. Establishment of a permanent wastewater treatment facility is certainly within the "economic capability" of Peabody. 33 U.S.C. §1312(b)(2).

RESPONSE: As EPA stated in the Fact Sheet, EPA believes that the first priority to address seeps is to reclaim the impoundments, which would eliminate associated seeps entirely. In certain cases, the impoundment ponds are necessary either on a temporary basis (for treatment of active mining areas) or on a permanent basis (for livestock watering as determined by the property owner). In the table in Section VI of the Fact Sheet, EPA has noted the pond condition as temporary or permanent and the rationale for this categorization. If the pond cannot be reclaimed, the treatment options for the seeps depend up the characterization of the pond (temporary or permanent treatment) and the pollutants that are present in the seep. EPA believes the continued implementation of the Seep Management Plan is the most comprehensive approach to address seeps.

Moreover, issuance of a compliance order is not a mandatory act, but within the enforcement discretion of the EPA. Issues related to EPA's enforcement of the effluent limitations, monitoring requirements, and special conditions contained in the NPDES permit are subject to EPA enforcement policy and are not a consideration for EPA's establishment of the NPDES permit conditions. The comments pertaining to enforcement have been forwarded to the appropriate compliance and enforcement staff for their consideration.

COMMENT: Rejection of Potential Remediation Proposals

Additionally, Commenters affirmatively state their opposition to any Peabody proposal to dewater contaminated ponds and use the water for "dust control." This is not a viable solution and poses significant environmental health and safety issues. Any such remediation proposals by Peabody should be rejected by EPA.

RESPONSE: The permit does not authorize nor prevent the use of pond water for dust control, because dust control does not result in a discharge to a Water of the U.S. in this case. As noted above, the commenter confuses the water quality characterization of the seeps with the water quality characterization of the impoundment ponds. There is no evidence that the water collected in the impoundments would pose any environmental health or safety issues, as the water only fails to meet water quality standards after it has flowed through the ground and resurfaced at the seeps. Dust control is a necessary activity for mining to limit unwanted air quality effects, and EPA generally encourages the re-use of stormwater on-site for this purpose rather than the use of fresh sources of water. The utilization of stormwater collected from the mine site and placed back into the mine area to control dust is not prohibited by the NPDES permit. No changes have been made to the reissued permit in response to this comment.

Comment: Independent Review of Outfalls

Because of the significant number of violations of WQS already occurring at Peabody's Black Mesa Complex and because of the large number of discharges being covered by EPA's NPDES permit (over 100 outfalls), EPA needs to conduct its own independent review of all outfalls in the Black Mesa Complex to ensure compliance with WQS and existing permit conditions.

The administrative record suggests that EPA has conducted one (1) site visit over the last ten years and that the agency's visit may have been limited to two ponds. One site visit does not constitute meaningful regulatory oversight of this operation. This is especially true where, as here, there are over 230 impoundments on the Black Mesa Complex and where Peabody intends to make at least 51 impoundments permanent.

RESPONSE: While inspection frequency bears no relation to the effluent limits and performance standards found in the permit, EPA notes that several inspections and site visits have been conducted by U.S EPA during the life of the mine site, and numerous inspections have been conducted by both the Navajo Nation EPA and the Office of Surface Mining Reclamation and Enforcement. EPA routinely coordinates with these agencies to ensure the mine site is meeting environmental regulations.

Comment: Deletion of Outfalls

Further, Peabody is requesting "deletion" of outfalls covered under its current NPDES permit for ponds J16-I, J16-J, J16-K, J21-J, N2-G, N7-A1, N8-A, N8-B and N14-M and WW-9D. However, there is no indication from the Administrative Record that EPA or any other regulatory agency (e.g. Navajo Nation Environmental Protection Agency) has verified and confirmed the permanent elimination of discharge from these ponds. Deletion should not occur unless and until EPA has physically verified elimination of discharges from these outfalls.

REPONSE: Due to the nature of coal mining, the pit where coal extraction is taking place is constantly moving. Therefore, PWCC is continuously updating its treatment plan, sediment control plan, opening new areas to mining, and reclaiming areas already mined. New ponds must be built to accommodate the new mined areas, and non-utilized ponds must be removed after mining and reclamation has been completed to minimize the risk of seeps and other effects. A pond may be deleted as an NPDES Outfall location when it is physically removed, or when a new pond is constructed downstream of the existing pond, and the Outfall location therefore moves to the pond located downstream. The locations of Outfalls and impoundment ponds were submitted as part of the NPDES permit re-application Form 2C. EPA has verified the deletion of the Outfall locations on topographical maps and through review of the Sediment Control Plan. Based on the detailed information submitted and the significant drain on limited agency resources that would come with inspecting the mine site after every pond change, EPA has concluded it is not appropriate to physically verify each change or deletion of ponds.

COMMENT: Design Parameters for 404 permit

Additionally, Peabody has now requested the addition of 16 ponds to be covered under the NPDES permit. Given the problems (and violations of WQS) at existing Peabody impoundments, EPA (in conjunction with the U.S. Army Corps of Engineers) should be establishing design parameters and any necessary wastewater treatment processes up front. Design parameters should be established during the 404 permitting process.

REPONSE: As described immediately above, new ponds and Outfall locations must be constructed to accommodate new mining areas. As part of the continued implementation of the Seep Management Plan, all impoundments must be inspected regularly for seeps. If any seeps are identified, they must be characterized and managed to prevent exceedances of water quality standards. EPA believes the continued implementation of the Seep Management Plan is the most comprehensive approach to address any seeps that may result from sedimentation ponds. As indicated above, this permit is being issued under the authority of Section 402 of the CWA which requires that the discharge of any pollutant to a Water of the U.S. must be in compliance with a NPDES permit. The facility may also require authorization under a separate permit under the authority of Section 404 of the CWA for the discharge of fill material to a water of the U.S. While the requirements and design parameters that may be necessary to implement Section 404 of the CWA will be considered upon the issuance of a 404 permit, they are not a consideration for the issuance of the NPDES permit.

COMMENT: Peabody's Significant Permit Revision and EIS

EPA's proposed permit draft (1/20/08)" states that EPA is a cooperating agency in review of Peabody's Significant Permit Revision, Permit No. AZ-0001D, OSM Project No. AZ-0001-E-P-01 (SMCRA Permit Revision) and the production of the Environmental Impact Statement ("EIS") evaluating the establishment of the Black Mesa Complex.

That said EPA was under a duty to notify the Federal Office of Surface Mining, Control and Enforcement ("OSM") of Peabody's ongoing violation of the CWA and WQS. Additionally,

and because of these ongoing violations, EPA should have instructed OSM to deny Peabody's Significant Permit Revision, Permit No. AZ-0001D, OSM Project No. AZ-0001-E-P-01. It was unlawful for OSM (and EPA) to authorize a SMCRA Permit Revision where, as here, Peabody is not meeting water quality standards.

Additionally, and equally troubling, is the fact that the EIS prepared for Peabody's SMCRA Permit Revision (in both draft and final form) did not analyze or even mention Peabody's pending NPDES application with EPA. See e.g., 40 C.F.R. §124.61 According to EPA's "fact sheet", Peabody's NPDES renewal application was submitted to EPA in August of 2005 and was pending before the agency by February of 2006. The Draft EIS for Peabody's Black Mesa Complex was issued in November 2006. The Final EIS and Record of Decision ("ROD") was issued in November 2008. Thus, it appears that EPA and OSM unlawfully segmented the NPDES permit decision in violation of the National Environmental Policy Act ("NEPA"). See e.g., 40 C.F.R. §1508.25(a)(1).

Further, the EIS for the Black Mesa Complex omitted analysis of highly relevant information including, but not limited to, Final Reports on the Seepage Management Plan for NPDES Permit No. NN0022179 and submitted to EPA in April and May of 2008 and a Sediment Control Plan which was submitted to EPA in September 24, 2008.4 These records constitute significant new information none of which was analyzed in the EIS for the Black Mesa Complex. See e.g., 40 C.F.R. §1502.9(c).

At a minimum, OSM, EPA and U.S. Army Corp of Engineers need to prepare a new or supplemental EIS to analyze this information.

RESPONSE: EPA notes that all materials related to the NPDES permit, including the previous permit which included requirements for the Seep Management Plan, and the date of which PWCC submitted its NPDES permit re-application, are a matter of public record and have been available through EPA Region 9's website and the Permit Compliance System (PCS).

As described above, EPA was a cooperating Agency in the review of the SMCRA permit revision and EPA participated in the public review and comment process. No further analysis nor notification by EPA was required as part of the EIS process.

As indicated above, this permit is being issued under the authority of Section 402 of the CWA which requires that the discharge of any pollutant to a Water of the U.S. must obtain a NPDES permit. The facility has also obtained a SMCRA permit revision and prepared an EIS due to the Surface Mining Control and Reclamation Act which is a separate permit issued under separate regulatory authority then the NPDES permit. The SMCRA permit is not a consideration for the effluent limitations, monitoring conditions, and regulatory requirements contained in the NPDES permit. No changes to the permit appear necessary to address comment.

COMMENT: Other Issues

First, and as rightfully noted by EPA, there is no discussion in the EIS for the Black Mesa Complex or the Administrative Record for the NPDES permit of 404 permitting for the ponds and impoundments at Peabody's Black Mesa Complex. Because Peabody has now created over 230 impoundments on the Black Mesa Complex, this situation warrants intensive on-site investigation

by EPA. The Army Corp of Engineers, unlike EPA, was not made a cooperating agency in production of the EIS. 404 permitting should also be addressed in a new or supplemental EIS.

RESPONSE: This permit is being issued under the authority of Section 402 of the CWA which requires that the discharge of any pollutant to a Water of the U.S. must be in compliance with a NPDES permit. This permit does not authorize any activity regulated under Section 404 of the CWA which requires a separate permit.

COMMENT: Safe Drinking Water Act Applicability

Second, some of the data in the Administrative Record suggests that some of the "seeps" and discharges may be leeching into groundwater. EPA needs to analyze whether the Safe Drinking Water Act is implicated. This should be addressed in a new or supplemental EIS.

RESPONSE: This permit is being issued under the authority of Section 402 of the CWA which requires that the discharge of any pollutant to a Water of the U.S. must be in compliance with a NPDES permit. The CWA requires that effluent limitations must be placed in the permit to control all pollutants which have the reasonable potential to cause or contribute to an exceedance of water quality standards. The beneficial uses of the water quality standards, which may include drinking water beneficial use where applicable, have been evaluated in the fact sheet. The NPDES permit only authorizes discharges to surface waters of the U.S. and neither authorizes nor prevents discharges to groundwater, which may be regulated at the discretion of the Navajo Nation and the Hopi Tribe. The Safe Drinking Water Act is not related to the effluent limitations and performance standards contained in the permit. No changes to the permit appear necessary to address comment.

COMMENT: Navajo Nation Law Applicability

Third, and because of the Navajo Nation's treatment as a state status, EPA needs to discuss the application of much more stringent Navajo Nation laws to Peabody's operation. See, 4 N.N.C. §1301 et seq. (Navajo Nation Clean Water Act); 4 N.N.C. §§ 901, et seq. (Navajo Nation Environmental Protection Act) and Diné Bi Beenahaz'áanii (Diné Fundamental Law), 2 N.N.C. §§ 201-206. Navajo law would apply to all Navajo lands.

RESPONSE: EPA has coordinated extensively with the Navajo Nation EPA on the permit reissuance. The Navajo Nation has its own approved Water Quality Standards, and EPA is required to ensure that the permit reissuance is in compliance with Navajo Nation Standards. The Navajo Nation submitted a 401 Water Quality Standards Certification to USEPA on 2/25/09 stating the permit will comply with all appropriate requirements of Navajo Nation law.

COMMENT: Federal law on Hopi Land

As Hopi does not have treatment as state status, it is assumed that Federal law and EPA's effluent limitations would apply by default.

RESPONSE: The Fact Sheet contained erroneous information regarding the status of the Hopi Tribe Water Quality Standards. The Hopi tribe recently received Treatment as a State Status and EPA has approved their 1999 Water Quality Standards. Therefore, the

State Status and EPA has approved their 1999 Water Quality Standards. Therefore, the Hopi Tribe submitted a 401 Water Quality Standards Certification to USEPA stating that the permit will comply with all appropriate requirements of the Hopi Tribe's Water Quality Standards. The language in the Fact Sheet has been corrected.

COMMENT: Sediment Control Plan Availability

The Sediment Control Plan (September 24, 2008) was not released as part of EPA's Administrative Record. Commenters reserve the right to supplement their comments once the plan has been made public.

RESPONSE: EPA provided the Sediment Control Plan to the commenter both via electronic format (on 3/10/09 via email) and also as hard copy (sent on 2/10/09 via regular mail), per the commenter's request to receive a copy of the Administrative Record. As noted in the Administrative Record documents, the Sediment Control Plan was sent directly to the commenter but did not include 4 large-format maps that could not be scanned/copied. All materials were publicly available as documented in the Public Notice.

COMMENT: Designation of Outfalls on Hopi vs. Navajo Land

Approximately 25,000 acres of land are held exclusively by the Navajo Nation. However, approximately 40,000 acres of land are located in the former Hopi and Navajo Joint Minerals Ownership Lease Area and the surface has been partitioned with 6,000 acres partitioned to Navajo and 34,000 partitioned to Hopi. That said Navajo law does not govern on Hopi lands. EPA needs to identify which outfalls may be subject to more stringent Navajo Nation laws and which are on Hopi lands and would be subject to EPA standards. This should be addressed in a new or supplemental EIS.

RESPONSE: As described above, a new or supplemental EIS is not needed. In addition, both Navajo and Hopi have EPA approved water quality standards and have provided EPA with a 401 certification that the reissued permit is in compliance with their respective Water Quality Standards.

COMMENTS: Sampling Point Objection

Fourth, Commenters object to EPA's allowance to Peabody in the proposed permit to collect discharges resulting from precipitation events "from a sampling point representative of the type of discharge, rather than from each point of discharge." At a minimum, Peabody should be required to "show cause" for each instance where a use of a "representative sampling point" was necessary.

RESPONSE The reissued permit contains effluent limitations and monitoring requirements for over 100 Outfalls located on a lease area that is over 60,000 acres. The permit establishes effluent limitations and monitoring requirements for stormwater runoff associated with three different subcategories (alkaline mine drainage, western alkaline mine drainage, and coal preparation areas). EPA has concluded that the drainage area for each of the subcategories has similar characteristics and that the treatment in surface impoundment ponds achieves similar results for the associated Outfalls. Therefore, EPA

has concluded it is reasonable to establish monitoring for representative sampling points where the outfalls are substantially similar, especially considering the impracticability of conducting monitoring at all Outfall locations within the timespan of a given precipitation event. EPA has established a restriction that at least 20% of the discharges must be sampled. Monitoring of representative outfalls is provided for in the Clean Water Act: "When an applicant has two or more outfalls with substantially similar effluents, the Director may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially similar outfalls." [40 CFR 122.21(g)(7)].

COMMENT: Missing Stormwater Discharge Plan

Fifth, Peabody's application does not contain a stormwater discharge plan. It is not clear whether such a plan is needed or whether stormwater issues are addressed in the Sediment Control Plan.

RESPONSE: There is no requirement for a "stormwater discharge plan" in the Permit. The permit contains numeric effluent limitations for the control of stormwater generated at the mine site in accordance with the effluent limitations, guidelines and standards for the Coal Mining Point Source Category (40 CFR Part 434) for discharges of drainage from areas of Alkaline Mine Drainage, Coal Preparation Areas, and Western Alkaline Reclamation. The Permit also contains a requirement for a "Sediment Control Plan", a "Seep Management and Monitoring Plan", as well as a "Quality Assurance/Quality Compliance Plan". EPA does not believe any additional stormwater plans are necessary to further control discharges of stormwater.

COMMENT: Failure to Consult under the Endangered Species Act

Last, EPA has failed to consult with U.S. Fish and Wildlife Service. Section 7(a)(2) of the Endangered Species Act ("ESA") states that each Federal agency shall, in consultation with the Secretary, insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. 16 U.S.C. §1536(a)(2). In fulfilling these requirements, each agency is to use the best scientific and commercial data available. Id. This section of the ESA sets out the consultation process, which is further implemented by regulation, 50 C.F.R. §402. The Administrative Record indicates that this process has not been followed.

RESPONSE As stated in the Fact Sheet, EPA has determined that discharges in compliance with this permit will have no effect on threatened or endangered species. When a "no effect" determination is made, no consultation is required. EPA's conclusion of no effect is consistent with the determinations made in previous permit reissuances for the PWCC, and no significant changes in facility operations or endangered and threatened species inhabiting the area have occurred. However, a copy of the permit and fact sheet was sent to the U.S. Fish and Wildlife Service for review and comment during the public comment period. No comments were received from U.S. Fish and Wildlife Service. The commenter has not raised an issue with the facts of this conclusion, and has not provided comment that any endangered or threaten species may be affected by this action. EPA has added to the Administrative Record a copy of the documentation on the list of potentially affected Endangered and Threatened Species that was not previously included in the record for this reissuance.

COMMENT: Conclusion

The proposed NPDES permit for Peabody is wholly deficient and requires significant investment of agency resources to become workable. Peabody has been given a free-pass to pollute with impunity. This situation is untenable and needs to be immediately corrected.

RESPONSE EPA does not agree the permit is deficient. The permit establishes effluent limitations, monitoring conditions, and special conditions consistent with the effluent limitation guidelines for the Coal Mining Point Source Category (40 CFR Part 434) and consistent with the water quality standards established by the Navajo Nation and the Hopi Tribe for the protection of water quality. The permit establishes a special condition to monitor, characterize, and report conditions to address seeps located at the toe of pond impoundments.