



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OCT 12 2012

ENVIRONMENTAL APPEALS BOARD

Mr. Stephen B. Etsitty  
Executive Director  
Navajo Nation Environmental Protection Agency  
Post Office Box 339  
Window Rock, AZ 86515

Scott C. Fulton, General Counsel  
Office of General Counsel  
U.S. EPA, Headquarters  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
2310A  
Washington, D.C. 20460

Re: Peabody Western Coal Company  
Permit Number: NN-OP 08-010  
Appeal Number: CAA 12-01

Dear Sirs:

This is to advise you that the Environmental Appeals Board received on October 1, 2012, a petition filed by John R. Cline, Attorney, on behalf Peabody Western Coal Company, asking the Board to review a revised permit determination issued by the Navajo Nation Environmental Protection Agency, in this case.

A copy of the petition and exhibits can be found on the Board's website at [www.epa.gov/eab](http://www.epa.gov/eab). Click on "EAB Dockets" in the left-hand menu, and click on the "Active Dockets" link, and then click on the appropriate case name. If you have any difficulty accessing this document, please let me know.

To assist the Environmental Appeals Board in deciding whether the matters raised by petitioner should be reviewed, please have your staff prepare a response that addresses the petitioner's contentions and whether petitioner has satisfied the requirements for obtaining review under 40 C.F.R. § 71.11 and file such response no later than November 27, 2012. Include relevant portions of the administrative record with the response, together with a certified index of the entire administrative record. Filing may be accomplished electronically pursuant to the

Board's Order of January 28, 2010.<sup>1</sup> Alternatively, filing may be accomplished by filing a paper original (signed in blue ink) and two copies of these materials with the Board (at the address shown below) by the date specified above. A copy must be sent to Petitioner, and a certificate of service showing the date and method of service should be included with the filing.

All documents, including the materials due November 27, 2012, must reference the appeal number. **IMPORTANT:** In addition, any envelope or other packaging containing documents sent to the Environmental Appeals Board's mailing address or hand-delivery address, as prescribed below, must bear a complete and accurate return address in the upper left hand corner. The envelope or packaging must also clearly state the case name and appeal number in the lower left hand corner.

**All documents that are sent through the U.S. Postal Service, Express Mail, hand-delivered, via courier must include the name of the organization, address, facsimile number, telephone number, and an email address, if available<sup>2</sup>.**

Documents that are sent through the U.S. Postal Service (except by Express Mail) MUST be addressed to the Environmental Appeals Board's mailing address which is:

U.S. Environmental Protection Agency  
Clerk of the Board  
Environmental Appeals Board 1103B

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<sup>1</sup> The Board has issued an Order authorizing the electronic filing of documents in cases involving permit appeals. See Order Authorizing Electronic Filing in Proceedings Before the Environmental Appeals Board Not Governed by 40 C.F.R. Part 22 (Jan. 28, 2010), available at <http://www.epa.gov/eab> (click "Standing Orders" on sidebar). Instructions on registration and document filing are available by using the "Electronic Filing" link on the Board's website. Documents containing confidential business information should not be filed electronically as the Board considers business confidentiality claims waived when a document is electronically filed. *Id.* at 5-6. Please note that if a party, or its attorney or other representative, electronically files any document, such as a notice of appeal, brief, or motion, that exceeds fifty (50) pages in length, inclusive of the certificate of service, table of contents, and table of authorities, but exclusive of exhibits or attachments, it must also send one paper copy of that document to the Board by U.S. Mail, hand, courier, or commercial delivery service within one business day of the date of the electronic filing. See *id.* at 4-5. Such paper copy must be accompanied by a signed certification stating that it is identical to the electronically filed document. *Id.* at 5. If the combined page length of all of the exhibits or attachments submitted in support of a brief or motion exceeds fifty (50) pages, the requirement to submit a paper copy, and its timing, applies to the entire set of exhibits or attachments. *Id.* Anyone electronically filing exhibits or attachments in support of a brief, motion, or other document should submit them separately from the associated brief or motion. *Id.* at 3.

<sup>2</sup> All mail sent to the Environmental Protection Agency may be delayed by a random sterilization procedure. Parties are encouraged to utilize the Board's e-filing system or hand or courier delivery when filing pleadings with the Board. Additional information regarding mail delivery to the Board is available on the Environmental Appeals Board website ([www.epa.gov/eab](http://www.epa.gov/eab)) at the Clerk of the Board or Frequently Asked Questions links.

Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460-0001

Documents that are sent to the Environmental Appeals Board's hand-delivery address through the U.S. Postal Service (except by Express Mail) will be returned to the sender and shall not be considered as filed.

Documents that are hand-carried in person, delivered via Courier or mailed by Express Mail or delivered by a non-U.S. Postal Service carrier (e.g., Federal Express or UPS) MUST be delivered to:

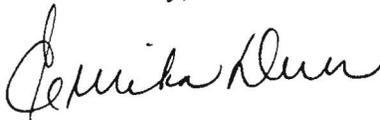
U.S. Environmental Protection Agency  
Clerk of the Board  
Environmental Appeals Board  
Ronald Reagan Building, EPA Mail Room  
1300 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Documents that are hand-carried may be delivered to the Ronald Reagan Building, EPA Mail Room from 8:30 a.m. to 4:00 p.m., Monday through Friday (excluding federal holidays). Documents filed electronically may be filed at any time up to 11:59 p.m. Eastern Time on the day the document is required to be filed with the Board.

A copy of this letter is being sent to the petitioner as notification of these filing requirements.

Thank you for your attention to these matters.

Sincerely,



Eurika Durr  
Clerk of the Board

cc: John R. Cline, PLLC  
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