



April 21, 2016

**BY CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Todd Parfitt  
Director  
Wyoming Department of Environmental Quality  
200 West 17<sup>th</sup> St.  
Cheyenne, WY 82002

**Re: Notice of Intent to File Suit Over Violations of Wyoming Environmental Quality Act  
Over Peabody Energy Self-Bonding**

Dear Mr. Parfitt:

Pursuant to Wyoming Environmental Quality Act, Wyo. Stat. § 35-11-904, WildEarth Guardians hereby notifies you that we intend to file suit in state court against the State of Wyoming and the Wyoming Department of Environmental Quality (“DEQ”) over your failure to ensure Peabody Energy Corporation posts adequate reclamation bonds for its coal mining operations in the State of Wyoming. Specifically, DEQ has failed to determine that Peabody Energy no longer qualifies for self-bonding and to take steps to secure adequate replacement bonds pursuant to the Wyoming Environmental Quality Act and Land Quality Division Regulations. *See* Wyo. Stat. § 35-11-417 and Chapter 11 of Land Quality Division Coal Rules.

In Wyoming Peabody Energy currently self-bonds at its North Antelope-Rochelle, Caballo, Rawhide, School Creek, and Shoshone mining operations in the amount of approximately \$728 million. This amount of self-bonding has been guaranteed by Peabody Investments Corporation, a subsidiary of Peabody Energy. On March 28, 2016, DEQ determined that Peabody Energy qualifies for self-bonding by deeming Peabody Investments Corp. financially solvent. However, on April 13, 2016, Peabody, as well as its direct and indirect domestic subsidiaries, including Peabody Investments Corp., filed for reorganization pursuant to chapter 11 of the U.S. bankruptcy code. By virtue of this bankruptcy filing, Peabody Investments Corp. is no longer financially solvent and no longer qualifies to guarantee self-bonds pursuant to the financial criteria set forth under Land Quality Division Coal Rules, Chapter 11, Section 2. DEQ must therefore revoke Peabody Energy Corporation’s self-bonds and require the posting of substitution bonds. *See* Land Quality Division Coal Rules, Chapter 11, Section 5. Unfortunately, no such action has been taken by the State of Wyoming.

The Wyoming Environmental Quality Act provides that, “[A]ny person having an interest which is or may be adversely affected, may commence a civil action [] to compel compliance [] against the state of Wyoming, department of environmental quality, [over] violations of the

[Wyoming Environmental Quality] act or of any rule, regulation, order or permit issued pursuant thereto[.]” Wyo. Stat. § 35-11-904(a)(ii). A civil action may not be commenced prior to “sixty (60) days” after notice of the violations has been provided to the DEQ. *See* Wyo. Stat. § 35-11-904(c)(i). With this letter, WildEarth Guardians is notifying you and other officials that if the violations documented herein are not resolved in 60 days, we intend to file suit in state court to compel compliance. Below, we detail DEQ’s violations.

## **I. BACKGROUND**

Under the Wyoming Environmental Quality Act and Land Quality Division Coal Rules, before a company can mine coal, they are required to post bonds covering the full cost of reclamation in case mining operations are abandoned prior to the completion of reclamation. *See* Wyo Stat. § 35-11-417. Although normally, companies post sureties or offer collateral to ensure the costs of reclamation can be covered, the law allows, but does not require, DEQ to accept self-bonds, or corporate guarantees. *See* Wyo. Stat. § 35-11-417(d) and Land Quality Division Coal Rules, Chapter 11. Self-bonds are essentially agreements between companies and regulatory authorities where the mining companies guarantee to cover the costs of reclamation, but do not actually provide direct funds, collateral, or third-party guarantees to cover such costs. *See* Land Quality Division Coal Rules, Chapter 11, Section 1(a) (defining a self-bond as an “indemnity agreement” offered by the coal mine permittee applicant and any corporate guarantor).

Self-bonding is only allowed where a company has “a history of financial solvency.” Wyo. Stat. § 35-11-417(d). According to Wyoming regulations, a company is only allowed to self-bond where it meets all of the criteria set forth at Land Quality Division Coal Rules, Chapter 11, Section 2. Among other things, certain financial conditions must all be met, including that the company seeking to be self-bonded must:

- Have an “A” rating or higher for its most recent bond issuance, as issued by Moody’s Investor Service, Standard and Poor’s Corporation, or any other “nationally recognized rating organization that is acceptable to the regulatory authority;”
- Have a net worth of at least \$10 million or fixed assets in the U.S. of at least \$20 million, a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater; and
- Ensure that the total amount of self-bonds do not exceed 25% of the company’s, or guarantor’s, net worth in the United States.

Land Quality Division Coal Rules, Chapter 11, Section 2(a)(vii)(A)-(C) and (xii). If the permit applicant or the self-bond guarantor does not meet any one of these criteria, DEQ is not allowed to accept a company’s self-bond.

Upon the inability of the guarantor to meet the criteria for self-bonding, DEQ must require “substitution” with a “corporate surety, cash, governmental securities, or federally insured certificates of deposit, or irrevocable letters of credit[.]” Land Quality Division Coal

Rules, Chapter 11, Section 5(a) and (b). If a substitution bond is not made within 90 days, the DEQ must “suspend or revoke the license of the operator to conduct operations upon the land described in the [mining] permit until such substitution is made.” Land Quality Division Coal Rules, Chapter 11, Section 5(b).

## **II. PEABODY ENERGY AND SELF-BONDING IN WYOMING**

Peabody Energy most recently reports the company self-bonds its Wyoming mining operations in the amount of approximately \$728 million.<sup>1</sup> See Table below.<sup>2</sup> The company’s mining operations include the Caballo (Permit No. 433-T7), North Antelope-Rochelle (Permit No. 2569-T8), Rawhide (Permit No. 240-T7), School Creek (Permit No. 764-T2), and Shoshone mines (Permit No. 477-T7). All of Peabody’s mines actively produce coal, with the exception of the Shoshone mine, which is currently being reclaimed.

**Self-bonds Approved by Wyoming DEQ for Peabody**

Mine	Self-bond No.	Amount
Caballo	SBC142	\$190,136,000
North Antelope-Rochelle	SBC140	\$388,434,000
Rawhide	SBC141	\$76,928,000
School Creek	SBC143	\$71,367,000
Shoshone	SBC129	\$795,400

At the end of March, DEQ determined that Peabody Energy qualified to self-bond its Wyoming operations on the basis that Peabody Investments Corp., the guarantor of Peabody’s self-bonds, met the criteria for self-bonding set forth at Land Quality Division Coal Rules, Chapter 11.<sup>3</sup> Although this determination was conclusory and not supported by information or analysis, since that time both Peabody Energy and its subsidiary Peabody Investments Corp. have filed for bankruptcy, clearly indicating that DEQ’s prior determination is no longer supported.

In fact, based on the April 13, 2016 bankruptcy filing of Peabody Investments Corp., the company no longer has a history of financial solvency, a critical statutory prerequisite for self-bonding approval. See Wyo. Stat. § 35-11-417(d). By virtue of filing for bankruptcy, Peabody Investments Corp. is, by extension, insolvent. Indeed, the company filed its own voluntary chapter 11 petition on April 13, 2016, a petition that would not have been filed but for the company’s insolvency.<sup>4</sup>

Further, based on the company’s chapter 11 filing, as well as that of its parent corporation, Peabody Energy, it very clearly appears the company no longer meets the financial

---

<sup>1</sup> See Exhibit 1, Declaration of Peabody Energy Corporation Executive Vice President and Chief Financial Officer, Amy Schwetz (April 13, 2016) at 23. See also, Exhibit 2, Peabody Energy Corp., Schedule of Surety Bonds as of April 12, 2016 at 7.

<sup>2</sup> In total, Peabody has \$1.148 billion in self-bonds in Illinois, Indiana, New Mexico, and Wyoming. See Exhibit 1 at 22.

<sup>3</sup> See Exhibit 3, Letter from DEQ to U.S. Office of Surface Mining Reclamation and Enforcement (March 29, 2016).

<sup>4</sup> See Exhibit 4, Peabody Investments Corp., Voluntary Petition for Chapter 11 Bankruptcy (April 13, 2016).

criteria for self-bonding set forth under Wyoming rules. In its chapter 11 petition, Peabody Investments Corp. reported its total assets and liabilities were between \$10.01 and \$50 billion.<sup>5</sup> Peabody Energy reported in its chapter 11 petition that its assets totaled \$11.02 billion and liabilities totaled \$10.10 billion.<sup>6</sup> As a practical matter, this has to mean that Peabody Investment Corp.'s assets are somewhere between \$10.01 billion and \$11.02 billion and liabilities are somewhere between \$10.01 and \$10.10 billion. This means Peabody Investment Corp.'s net worth is between \$1.01 billion and -\$90 million. Given that the company guarantees \$1.148 billion in self-bonds, the total amount of self-bonding clearly exceeds 25% of the company's net worth, making the company ineligible to guarantee self-bonds pursuant to Land Quality Division Coal Rules, Chapter 11, Section 2(a)(xii). It also indicates the financial criteria set forth at Land Quality Division Coal Rules, Chapter 11, Section 2(vii)(A)-(C) are not being met by Peabody Investments Corp.<sup>7</sup>

### **III. VIOLATIONS OF ENVIRONMENTAL QUALITY ACT**

While Peabody Investments Corp. clearly no longer qualifies for self-bonding in Wyoming, DEQ has not taken legally required steps to remedy this situation. As of the date of this letter, DEQ continues to accept self-bonds from Peabody Energy for the company's mines, and has not taken legally required steps to secure substitution bonds. These steps include notifying Peabody Investments Corp. that the company no longer qualifies for self-bonding and ensuring the company posts substitution bonds within 90-days. The State of Wyoming, DEQ, is therefore in violation of Wyo. Stat. § 35-11-417 and Land Quality Division Coal Rules, Chapter 11.

The fact that Peabody Energy Corporation, as well as its subsidiaries, including Peabody Investments Corporation, have filed chapter 11 petitions has no effect on DEQ's authority and duty to enforce the law. To the extent that a bankruptcy petition serves as an automatic stay of proceedings against a debtor, this automatic stay does not affect a governmental entity's "police or regulatory power." 11 U.S.C. § 362(b)(4). Although this exception does not apply when a governmental entity seeks to enforce a "money judgment," ordering adequate bonding is not enforcing a money judgment. For one thing, there is no judgment. For another, DEQ would not be seeking money, but rather a financial assurance. To the extent this may require Peabody to spend money does not make the remedy a "money judgment" as the state would receive no money. If, however, the automatic stay is read to prevent Peabody from posting an adequate bond, then DEQ would have no choice but to order cessation of coal mining at the company's mines.<sup>8</sup>

We would prefer to resolve this matter without litigation and to this end, we strongly encourage you to resolve Peabody's self-bonding issues quickly and effectively, and to keep us

---

<sup>5</sup> Exhibit 4 at 3-4.

<sup>6</sup> See Exhibit 5, Peabody Energy Corporation, Voluntary Petition for Chapter 11 Bankruptcy (April 13, 2016) at 5.

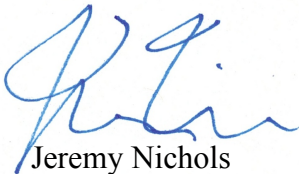
<sup>7</sup> While the numbers indicate Peabody Investments Corp.'s liabilities to net, worth and assets to liabilities ratios exceed the limits set forth at Land Quality Division Coal Rules, Chapter 11, Section 2, the company's credit rating is certainly not an "A" rating or higher, also rendering it ineligible to self-bond.

<sup>8</sup> Wyoming could also file as a party of interest in Peabody's bankruptcy proceedings and request the court provide relief from the stay with regards to securing adequate bonds. See 11 U.S.C. § 362(d)-(f). However, obtaining such relief is subject to the discretion of the bankruptcy court.

informed as you do so. However, if the aforementioned violations are not resolved within sixty days, WildEarth Guardians intends to file suit in state court against the State of Wyoming and DEQ in accordance with the Wyoming Environmental Quality Act. We intend to file suit on behalf of our members who are or may adversely affected by the negative environmental consequences of inadequate bonding and the failure of DEQ to ensure compliance with the Environmental Quality Act.

If there are any questions or concerns, or if you wish to discuss the matters set forth in this notice letter, please contact WildEarth Guardians at the information below.

Sincerely,



Jeremy Nichols  
Climate and Energy Program Director  
WildEarth Guardians  
2590 Walnut St.  
Denver, CO 80205  
(303) 437-7663  
[jnichols@wildearthguardians.org](mailto:jnichols@wildearthguardians.org)

cc via certified mail, return receipt requested:

Peter Michael  
Attorney General  
State of Wyoming  
Kendrick Bldg.  
2320 Capitol Ave.  
Cheyenne, WY 82002

Wyoming Environmental Quality Council  
122 W. 25<sup>th</sup>  
Herschler Bldg. 1W, Rm. 1714  
Cheyenne, WY 82002

Sally Jewell  
Secretary  
U.S. Department of the Interior  
1849 C St. NW  
Washington, D.C. 20240

Joe Pizarchik  
Director  
U.S. Office of Surface Mining Reclamation and  
Enforcement  
1951 Constitution Ave.  
Washington, D.C. 20240

(w/o exhibits)  
Glenn Kellow  
President and Chief Executive  
Officer  
Peabody Energy  
Peabody Plaza  
701 Market St.  
St. Louis, MO 63101

