



United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
Western Region Office
1999 Broadway, Suite 3320
Denver, CO 80202-3050



FEB 16 2016

Jeremy Nichols
Climate and Energy Program Director
WildEarth Guardians
1536 Wynkoop, Suite 310
Denver, CO 80202

Dear Mr. Nichols,

This is to advise you that the Office of Surface Mining Reclamation and Enforcement (OSMRE) received your written statement on February 8, 2016. In accordance with the Surface Mining Control and Reclamation Act, your statement has been transmitted to the New Mexico Mining and Mineral Division (MMD).

MMD will be given ten days to take appropriate action to cause the alleged violations to be corrected or to show good cause for failure to do so. If MMD fails to notify this Office within ten days, or the action taken by MMD is not considered appropriate action, or MMD fails to show good cause for such failure, a Federal inspection will be conducted. Copies of the ten-day notices are enclosed for your information. Upon final examination of the State's response, you will be promptly informed of the results. If a Federal inspection is necessary, you will be notified as far in advance as practicable and will be given the opportunity to accompany the Federal inspector on the inspection. Meanwhile, if you have any further questions concerning this process, please contact me at (303) 293-5041 or bpostle@osmre.gov.

Sincerely,

Bob Postle, Manager
OSMRE Program Support Division

Enclosures (7)

UNITED STATES DEPARTMENT OF THE INTERIOR
Office of Surface Mining
Reclamation and Enforcement

TEN-DAY NOTICE

Originating Office: Albuquerque Field Office
US DOI, Office of Surface Mining
436 Montano Rd, NE
Albuquerque, NM 87107

Number X16-020-532-001 TV 1

Telephone Number: (505) 761-8986

Ten-Day Notice to the State of New Mexico

You are notified that, as a result of Citizen Information (e.g. a federal inspection, citizen information, etc.) the Secretary has reason to believe that the person described below is in violation of the Act or a permit condition required by the Act. If the State Regulatory Authority fails within ten days after receipt of this notice to take appropriate action to cause the violation(s) described herein to be corrected, or to show cause for such failure and transmit notice of your actino to the Secretary through the originating office designated above, then a Federal inspection of the surface coal mining operation at which the alleged violation(s) is occurring will be conducted and appropriate enforcement action as required by Section 521(a)(1) of the Act will be taken.

Permittee: PEABODY NATURAL RESOURCES CO County: _____
(Or Operator if No Permit)

Mailing Address: 701 MARKET STREET SUITE 718, , ST. LOUIS, MO 63101

Permit Number: 2015-01 Mine Name: EL SEGUNDO MINE

- Surface
 Underground
 Other

01 NATURE OF VIOLATION AND LOCATION:

Self-Bonding

Section of State Law, Regulation or Permit NMAC 19.8.14.1410
Condition believed to have been violated:

NATURE OF VIOLATION AND LOCATION:

Section of State Law, Regulation or Permit
Condition believed to have been violated:

NATURE OF VIOLATION AND LOCATION:

Section of State Law, Regulation or Permit
Condition believed to have been violated:

Remarks or Recommendations:

Date of Notice: 02/11/2016

Signature of Authorized Rep.: 

Print Name and ID: Christy Hulsman ID# 532



U.S. DEPT. OF THE INTERIOR OFFICE OF SURFACE MINING



Citizen Complaint

Citizen Complaint Number

CC16-020-001

Date Complaint Received

02/08/2016

Complainant

WILDEARTH GUARDIANS

Did citizen request confidentiality?

N

Nature of Complaint

COMPLAINANT ALLEGES PEABODY ENERGY NO LONGER MEETS SELF-BONDING CRITERIA AND THEREFORE SELF-BONDS ARE INVALID.

Performance Standard Category (Check all that apply)

- A. Administrative
- B. Hydrologic Balance
- C. Topsoil & Subsoil
- D. Backfilling & Grading
- E. Excess Spoil Disposal
- F. Coal Mine Waste
- G. Use of Explosive
- H. Subsidence Control Plan
- I. Roads
- J. Signs & Markers
- K. Distance Prohibitions
- L. Revegetation
- M. Postmining Land Use

Acknowledgement Letter

FO Decision Letter to Citizen

Citizen Informal Review Request

Informal Review Date

Result of Informal Review

Citizen Notified of Review Results

Comments

UNITED STATES DEPARTMENT OF THE INTERIOR
Office of Surface Mining
Reclamation and Enforcement

TEN-DAY NOTICE

Number X16-020-532-002

TV 1

Originating Office: Albuquerque Field Office

US DOI, Office of Surface Mining

438 Montano Rd, NE

Albuquerque, NM 87107

Telephone Number: (505) 761-8986

Ten-Day Notice to the State of New Mexico

You are notified that, as a result of Citizen Information (e.g. a federal inspection, citizen information, etc.) the Secretary has reason to believe that the person described below is in violation of the Act or a permit condition required by the Act. If the State Regulatory Authority fails within ten days after receipt of this notice to take appropriate action to cause the violation(s) described herein to be corrected, or to show cause for such failure and transmit notice of your actino to the Secretary through the originating office designated above, then a Federal inspection of the surface coal mining operation at which the alleged violation(s) is occurring will be conducted and appropriate enforcement action as required by Section 521(a)(1) of the Act will be taken.

Permittee: PEABODY NATURAL RESOURCES CO

County: MCKINLEY

(Or Operator if No Permit)

Mailing Address: 701 MARKET STREET SUITE 718, , ST. LOUIS, MO 63101

Permit Number: 19-2P

Mine Name: LEE RANCH

Surface

Underground

Other

01 NATURE OF VIOLATION AND LOCATION:

self-bonding

Section of State Law, Regulation or Permit NMAC 19.8.14.1410
Condition believed to have been violated:

NATURE OF VIOLATION AND LOCATION:

Section of State Law, Regulation or Permit
Condition believed to have been violated:

NATURE OF VIOLATION AND LOCATION:

Section of State Law, Regulation or Permit
Condition believed to have been violated:

Remarks or Recommendations:

Date of Notice: 02/11/2016

Signature of Authorized Rep.: 

Print Name and ID: Christy Hulsman ID# 532



U.S. DEPT. OF THE INTERIOR OFFICE OF SURFACE MINING



Citizen Complaint

Citizen Complaint Number

CC16-020-002

Date Complaint Received

02/08/2016

Complainant

WILDEARTH GUARDIANS

Did citizen request confidentiality?

N

Nature of Complaint

COMPLAINANT ALLEGES PEABODY ENERGY NO LONGER MEETS SELF-BONDING CRITERIA AND THEREFORE SELF-BONDS ARE INVALID.

Performance Standard Category (Check all that apply)

- A. Administrative
- B. Hydrologic Balance
- C. Topsoil & Subsoil
- D. Backfilling & Grading
- E. Excess Spoil Disposal
- F. Coal Mine Waste
- G. Use of Explosive
- H. Subsidence Control Plan
- I. Roads
- J. Signs & Markers
- K. Distance Prohibitions
- L. Revegetation
- M. Postmining Land Use

Acknowledgement Letter

FO Decision Letter to Citizen

Citizen Informal Review Request

Informal Review Date

Result of Informal Review

Citizen Notified of Review Results

Comments

As a result of the information below, the Office of Surface Mining Reclamation and Enforcement (OSMRE) has reason to believe that the New Mexico Mining Minerals Division (MMD) may be allowing Peabody Investments Corporation to operate in violation of the approved New Mexico state coal regulatory program under the Surface Mining Control and Reclamation Act. Therefore, pursuant to 30 U.S.C. §1271(a) and 30 CFR §842.11(b)(2), OSMRE is issuing the following Ten Day Notices (TDN's) for the identified surface coal mining operations in New Mexico:

TDN #X16-020-532-001 – Permit #2015-01 (El Segundo Mine)

TDN #X16-020-532-002 – Permit #19-2P (Lee Ranch Mine)

The Federal regulation at 30 CFR §842.11 provides that absent an imminent danger or harm scenario, OSMRE must issue a TDN to a Regulatory Authority (RA) when it has reason to believe a violation exists or when, on the basis of a Federal inspection, it determines that a violation exists (and OSMRE has not issued a previous TDN for the same violation). These TDN's are not based on Federal inspections, and OSMRE has not yet determined that violations exist. However, based on the allegations in the Citizen's Complaint summarized below, OSMRE has reason to believe that MMD may be allowing Peabody Investments Corporation to operate in violation of the New Mexico Surface Coal Mining Reclamation Act (New Mexico SMCRA) and the Regulations of the New Mexico Coal Mine Reclamation Program (CMRP) by allowing Peabody's New Mexico coal mine permits to continue operations while failing to meet regulatory qualification criteria for self-bonding.

On February 8, 2016, OSMRE received a Citizen's Complaint from WildEarth Guardians. The complainant requested an inspection and enforcement action regarding ongoing surface coal mining operations of Peabody Energy and its subsidiaries. The complainant alleges violations of the Surface Mining Control and Reclamation Act (SMCRA) and states that they have reason to believe that Peabody Energy and its subsidiaries are conducting surface coal mining operations in New Mexico without sufficient reclamation bonding as required by SMCRA. Specifically, the complainant alleges that Peabody Energy is violating SMCRA's bonding requirements because the company and its subsidiaries no longer qualify for self-bond status. Additionally, the complainant alleges that Peabody Energy failed to notify MMD that they no longer qualified for self-bonding, and post an alternative bond within 90-days. The complaint included the following New Mexico permits:

Permit #2015-01 (El Segundo Mine)

Permit #19-2P (Lee Ranch Mine)

OSMRE has determined that WildEarth Guardians alleges potential violations of New Mexico Administrative Code §19.8.14.1410(A)(3), §19.8.14.1410(C), and §19.8.14.1410(F).

New Mexico Administrative Code §19.8.14.1410(A)(3) sets forth basic self-bond qualification criteria, stating that:

- (3) The applicant submits financial information in sufficient detail to show that the applicant meets one of the following criteria:
 - (a) the applicant has a current rating for its most recent bond issuance of "A" or higher as issued by either Moody's investor service or Standard and Poor's corporation;
 - (b) the applicant has a tangible net worth of at least \$10 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; or
 - (c) the applicant's fixed assets in the United States total at least \$20 million, and the applicant has 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.

New Mexico Administrative Code §19.8.14.1410(C) sets forth an overarching self-bond qualification requirement, stating that:

C. For the director to accept an applicant's self-bond, the total amount of the outstanding and proposed self-bonds of the applicant for surface coal mining and reclamation operations shall not exceed 25 percent of the applicant's tangible net worth in the United States. For the director to accept a corporate guarantee, the total amount of the corporate guarantor's present and proposed self-bonds and guaranteed self-bonds for surface coal mining and reclamation operations shall not exceed 25 percent of the guarantor's tangible net worth in the United States.

New Mexico Administrative Code §19.8.14.1410(F) sets forth a requirement for self-bonded guarantors to self-report and post a replacement bond when applicable criteria are no longer met, stating that:

F. If at any time during the period when a self-bond is posted, the financial conditions of the applicant or the corporate guarantor change so that the criteria of Paragraph (3) of Subsection A of 19.8.14.1410 NMAC and Subsection C of 19.8.14.1410 NMAC are not satisfied, the permittee shall notify the director immediately and shall within 90 days post an alternate form of bond in the same amount as the self-bond. Should the permittee fail to post an adequate substitute bond, the provisions of Subsection E of 19.8.14.1406 NMAC shall apply.

OSMRE believes it is most appropriate to forward the Citizen's Complaint to MMD via the TDN process in order to provide the opportunity for MMD to respond to the allegations that the self-bonding requirements of the approved State Program are violated because the guarantor's assets are being used by the parent company as collateral for debt, and that Peabody failed to notify

MMD that they no longer qualified for self-bonding and post an alternative bond within 90-days. Therefore, OSMRE is issuing the TDN's noted above.

MMD may respond to these notices as directed in 30 CFR §842.11 within ten calendar days by taking appropriate action to cause the possible violations to be corrected, or to show good cause for such failure. Appropriate action and good cause are defined 30 CFR §842.11(b)(1)(ii)(B)(3) and (4). Good cause includes showing that the possible violations do not exist under the approved State program.