



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 Colorado Division of Reclamation Mining and Safety (DRMS). Upon preliminary review of your statement, OSMRE determined that the alleged violations could not exist at the Hayden Gulch Terminal because a corporate surety bond is posted for that permit. The potential violations you identify pertain to self-bonding qualification criteria which do not apply where a corporate surety bond is employed. For this reason, OSMRE did not issue a ten-day notice regarding the Hayden Gulch Terminal permit.

DRMS 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 DRMS fails to notify this Office within ten days, or the action taken by DRMS is not considered appropriate action, or DRMS 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 (307) 261-6545 or aboehms@osmre.gov.

Sincerely,

Alan Boehms, Manager
OSMRE Denver Field Branch

Enclosures (6)

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

TDN #X16-140-182-001: Permit #C-1982-057 (Seneca II-W Mine)

TDN #X16-140-182-002: Permit #C-1982-056 (Foidel Creek Mine)

TDN #X16-140-182-003: Permit #C-2009-087 (Sage Creek Mine)

TDN #X16-140-182-004: Permit #C-1981-044 (Williams Fork Mine)

TDN #X16-140-182-005: Permit #C-1994-082 (Yoast Mine)

The Federal regulation at 30 C.F.R. § 842.11 provides that absent an imminent danger or harm scenario, OSMRE must issue a TDN to a state 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 DRMS may be allowing Peabody Investments Corporation to operate in violation of the Colorado Surface Coal Mining Reclamation Act and the Regulations of the Colorado Mined Land Reclamation Board for Coal Mining by allowing Peabody's Colorado 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 coal mining operations of Peabody Energy and its subsidiaries in Colorado, New Mexico, and Wyoming. The complainant alleges violations of SMCRA, stating that they have reason to believe that Peabody Energy and its subsidiaries are conducting coal mining operations in these states without sufficient reclamation bonding as required by SMCRA. Specifically, the complainant alleges potential violations of self-bonding requirements due to the subsidiary guarantor's assets being pledged by the parent company as collateral for debt, Peabody's credit rating having been downgraded below regulatory thresholds, Peabody's total liabilities to net worth ratio being greater than 2.5, Peabody's total amount of self-bonds exceeding 25% of its tangible net worth in the United States, and that Peabody failed to notify DRMS it no longer qualified for self-bonding and post an alternative bond within 90 days.

WildEarth Guardians' allegations pertaining to Peabody operations in New Mexico and Wyoming are being addressed through the TDN process separately. For Colorado, WildEarth Guardians' complaint includes the following permits:

Permit #C-1982-056 (Foidel Creek Mine)

Permit #C-1992-081 (Hayden Gulch Terminal)

Permit #C-2009-087 (Sage Creek Mine)

Permit #C-1982-057 (Seneca II-W Mine)

Permit #C-1981-044 (Williams Fork Mine)

Permit #C-1994-082 (Yoast Mine)

Upon preliminary review of this complaint, OSMRE determined that the alleged violations could not possibly exist at the Hayden Gulch Terminal because a corporate surety bond is posted for that permit. All alleged violations pertain to self-bond qualification criteria which do not apply where a corporate surety bond is employed. For this reason, OSMRE did not issue a TDN for the Hayden Gulch Terminal permit. For the remaining permits identified, OSMRE has determined that WildEarth Guardians alleges potential violations of Colorado Rules §3.02.4(2)(e)(i)(C), §3.02.4(2)(e)(iv), and §3.02.4(2)(e)(vii).

Colorado Rule §3.02.4(2)(e)(i)(C) sets forth self-bond qualification criteria, requiring that:

(C) The applicant submits financial information in sufficient detail to show that the applicant meets one of the following criteria:

(I) 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;

(II) 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

(III) 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.

Colorado Rule §3.02.4(2)(e)(iv) sets forth an additional self-bond qualification criteria, requiring that:

(iv) For the Division 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 Division to accept a corporate guarantee, the total amount of the parent corporation 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. For the Division to accept a non-parent corporate guarantee, the total amount of the non-parent corporation 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.

Colorado Rule §3.02.4(2)(e)(vii) 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:

(vii) If at any time during the period when a self-bond is posted, the financial conditions of the applicant, parent or nonparent corporate guarantors change so that the criteria of paragraph (i)(C) and (iv) of this section are not satisfied, the permittee shall notify the Division 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 Section 3.02.4(2)(b)(v) shall apply.

OSMRE believes it is most appropriate to forward the Citizen's Complaint to DRMS via the TDN process in order to provide DRMS the opportunity to respond to the allegations that the self-bonding requirements of its approved State program are being violated. WildEarth Guardians alleges potential violations of self-bonding requirements due to the deterioration of Peabody's financial health, as explained above. Therefore, OSMRE is issuing TDN's for each self-bonded Peabody Investments Corporation coal mining and reclamation permit in Colorado.

DRMS may respond to these notices as directed in 30 C.F.R. § 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 C.F.R. § 842.11(b)(1)(ii)(B)(3) and (4). Appropriate action includes enforcement or other action authorized under the State program to cause the violation to be corrected. Good cause includes showing that the possible violations do not exist under the approved State program, the State regulatory authority requires a reasonable and specified amount of additional time to determine whether a violation exists, the State regulatory authority lacks jurisdiction under its program over the possible violation or subject operation, the State regulatory authority is precluded by an administrative or judicial order from an administrative body or court of competent jurisdiction from acting on the possible violation where that order is based on the violation not existing or where temporary relief standards of section 525(c) or 526(c) of SMCRA have been met, or with regard to abandoned sites the State regulatory authority is diligently pursuing or has exhausted all appropriate enforcement provisions of the State program.

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

TEN-DAY NOTICE

Number X16-140-182-003

TV 3

Originating Office: Denver Regional Office
US DOI, Office of Surface Mining
1999 Broadway, Suite 3320
Denver, CO 80202

Telephone Number: (303) 293-5000

Ten-Day Notice to the State of **Colorado**

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 SAGE CREEK MINING LLC

(Or Operator if No Permit)

County: ROUTT

Mailing Address: 701 MARKET ST SUITE 803, , ST. LOUIS, MO 63101

Permit Number: C2009087

Mine Name: PEABODY SAGE CREEK

Surface

Underground

Other

01 NATURE OF VIOLATION AND LOCATION:

Self-bond applicant must meet appropriate financial criteria (credit rating, tangible net worth of \$10M or fixed assets of \$20M and a ratio of assets to liabilities of 1.2 times or greater).

Section of State Law, Regulation or Permit 3.02.4(2)(e)(i)(C)
Condition believed to have been violated:

02 NATURE OF VIOLATION AND LOCATION:

Total amount of self-bond must not exceed 25 percent of applicant's tangible net worth in the United States.

Section of State Law, Regulation or Permit 3.02.4(2)(e)(iv)
Condition believed to have been violated:

03 NATURE OF VIOLATION AND LOCATION:

Self-bond guarantor failed to notify regulatory authority of ineligibility for self-bond and to post alternative bond within 90 days.

Section of State Law, Regulation or Permit 3.02.4(2)(c)(vii)
Condition believed to have been violated:

Remarks or Recommendations:

WildEarth Guardians alleges potential violations of self-bonding requirements due to the subsidiary guarantor's assets being pledged by the parent as collateral for debt, Peabody's credit rating being downgraded below regulatory thresholds, Peabody's total liabilities to net worth ratio being greater than 2.5, Peabody's total amount of self-bonds exceeding 25 percent of its tangible net worth in the United States, and that Peabody failed to notify DRMS it no longer qualified for self-bonding and post an alternative bond within 90 days.

Date of Notice: 02/16/2016

Signature of Authorized Rep.: 

Print Name and ID: Christine Belka ID# 182

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

TEN-DAY NOTICE

Number X16-140-182-004

TV 3

Originating Office: Denver Regional Office
US DOI, Office of Surface Mining
1999 Broadway, Suite 3320
Denver, CO 80202

Telephone Number: (303) 293-5000

Ten-Day Notice to the State of **Colorado**

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: MOFFAT COUNTY MINING LLC
(Or Operator if No Permit)

County: MOFFAT

Surface

Mailing Address: 29515 ROUTT COUNTY ROAD 27, , OAK CREEK, CO 80467

Underground

Permit Number: C-81-044 Mine Name: WILLIAMS FORK MINES

Other

01 NATURE OF VIOLATION AND LOCATION:

Self-bond applicant must meet appropriate financial criteria (credit rating, tangible net worth of \$10M or fixed assets of \$20M and a ratio of assets to liabilities of 1.2 times or greater).

Section of State Law, Regulation or Permit 3.02.4(2)(e)(i)(C)
Condition believed to have been violated:

02 NATURE OF VIOLATION AND LOCATION:

Total amount of self-bond must not exceed 25 percent of applicant's tangible net worth in the United States.

Section of State Law, Regulation or Permit 3.02.4(2)(e)(iv)
Condition believed to have been violated:

03 NATURE OF VIOLATION AND LOCATION:

Self-bond guarantor failed to notify regulatory authority of ineligibility for self-bond and to post alternative bond within 90 days.

Section of State Law, Regulation or Permit 3.02.4(2)(e)(vii)
Condition believed to have been violated:

Remarks or Recommendations:

WildEarth Guardians alleges potential violations of self-bonding requirements due to the subsidiary guarantor's assets being pledged by the parent as collateral for debt, Peabody's credit rating being downgraded below regulatory thresholds, Peabody's total liabilities to net worth ratio being greater than 2.5, Peabody's total amount of self-bonds exceeding 25 percent of its tangible net worth in the United States, and that Peabody failed to notify DRMS it no longer qualified for self-bonding and post an alternative bond within 90 days.

Date of Notice: 02/16/2016

Signature of Authorized Rep.: 

Print Name and ID: Christine Belka ID# 182

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

TEN-DAY NOTICE

Number X16-140-182-005 TV 3

Originating Office: Denver Regional Office
US DOI, Office of Surface Mining
1999 Broadway, Suite 3320
Denver, CO 80202

Telephone Number: (303) 293-5000

Ten-Day Notice to the State of Colorado

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: SENECA COAL COMPANY, LLC
(Or Operator if No Permit)

County: ROUTT

Surface

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

Underground

Permit Number: C-94-082 Mine Name: YOAST

Other

01 NATURE OF VIOLATION AND LOCATION:

Self-bond applicant must meet appropriate financial criteria (credit rating, tangible net worth of \$10M or fixed assets of \$20M and a ratio of assets to liabilities of 1.2 times or greater).

Section of State Law, Regulation or Permit 3.02.4(2)(e)(i)(C)
Condition believed to have been violated:

02 NATURE OF VIOLATION AND LOCATION:

Total amount of self-bond must not exceed 25 percent of applicant's tangible net worth in the United States.

Section of State Law, Regulation or Permit 3.02.4(2)(e)(iv)
Condition believed to have been violated:

03 NATURE OF VIOLATION AND LOCATION:

Self-bond guarantor failed to notify regulatory authority of ineligibility for self-bond and to post alternative bond within 90 days.

Section of State Law, Regulation or Permit 3.02.4(2)(e)(vii)
Condition believed to have been violated:

Remarks or Recommendations:

WildEarth Guardians alleges potential violations of self-bonding requirements due to the subsidiary guarantor's assets being pledged by the parent as collateral for debt, Peabody's credit rating being downgraded below regulatory thresholds, Peabody's total liabilities to net worth ratio being greater than 2.5, Peabody's total amount of self-bonds exceeding 25 percent of its tangible net worth in the United States, and that Peabody failed to notify DRMS it no longer qualified for self-bonding and post an alternative bond within 90 days.

Date of Notice: 02/16/2016

Signature of Authorized Rep.: 

Print Name and ID: Christine Belka ID# 182

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

TEN-DAY NOTICE

Number X16-140-182-002 TV 3

Originating Office: Denver Regional Office
US DOI, Office of Surface Mining
1999 Broadway, Suite 3320
Denver, CO 80202

Telephone Number: (303) 293-5000

Ten-Day Notice to the State of **Colorado**

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: TWENTYMILE COAL LLC
(Or Operator if No Permit)

County: ROUTT

Surface

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

Underground

Permit Number: C-82-056 Mine Name: FOIDEL CREEK

Other

01 NATURE OF VIOLATION AND LOCATION:

Self-bond applicant must meet appropriate financial criteria (credit rating, tangible net worth of \$10M or fixed assets of \$20M and a ratio of assets to liabilities of 1.2 times or greater).

Section of State Law, Regulation or Permit 3.02.4(2)(e)(i)(C)
Condition believed to have been violated:

02 NATURE OF VIOLATION AND LOCATION:

Total amount of self-bond must not exceed 25 percent of applicant's tangible net worth in the United States.

Section of State Law, Regulation or Permit 3.02.4(2)(e)(iv)
Condition believed to have been violated:

03 NATURE OF VIOLATION AND LOCATION:

Self-bond guarantor failed to notify regulatory authority of ineligibility for self-bond and to post alternative bond within 90 days.

Section of State Law, Regulation or Permit 3.02.4(2)(e)(vii)
Condition believed to have been violated:

Remarks or Recommendations:

WildEarth Guardians alleges potential violations of self-bonding requirements due to the subsidiary guarantor's assets being pledged by the parent as collateral for debt, Peabody's credit rating being downgraded below regulatory thresholds, Peabody's total liabilities to net worth ratio being greater than 2.5, Peabody's total amount of self-bonds exceeding 25 percent of its tangible net worth in the United States, and that Peabody failed to notify DRMS it no longer qualified for self-bonding and post an alternative bond within 90 days.

Date of Notice: 02/16/2016

Signature of Authorized Rep.: 

Print Name and ID: Christine Belka ID# 182

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

TEN-DAY NOTICE

Number X16-140-182-001 TV 3

Originating Office: Denver Regional Office
US DOI, Office of Surface Mining
1999 Broadway, Suite 3320
Denver, CO 80202

Telephone Number: (303) 293-5000

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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 action 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: SENECA COAL COMPANY, LLC
(Or Operator if No Permit)

County: ROUTT

Surface

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

Underground

Permit Number: C-82-057 Mine Name: SENECA II-W

Other

01 NATURE OF VIOLATION AND LOCATION:

Self-bond applicant must meet appropriate financial criteria (credit rating, tangible net worth of \$10M or fixed assets of \$20M and a ratio of assets to liabilities of 1.2 times or greater).

Section of State Law, Regulation or Permit 3.02.4(2)(e)(i)(C)
Condition believed to have been violated:

02 NATURE OF VIOLATION AND LOCATION:

Total amount of self-bond must not exceed 25 percent of applicant's tangible net worth in the United States.

Section of State Law, Regulation or Permit 3.02.4(2)(e)(iv)
Condition believed to have been violated:

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Self-bond guarantor failed to notify regulatory authority of ineligibility for self-bond and to post alternative bond within 90 days.

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Condition believed to have been violated:

Remarks or Recommendations:

WildEarth Guardians alleges potential violations of self-bonding requirements due to the subsidiary guarantor's assets being pledged by the parent as collateral for debt, Peabody's credit rating being downgraded below regulatory thresholds, Peabody's total liabilities to net worth ratio being greater than 2.5, Peabody's total amount of self-bonds exceeding 25 percent of its tangible net worth in the United States, and that Peabody failed to notify DRMS it no longer qualified for self-bonding and post an alternative bond within 90 days.

Date of Notice: 02/16/2016

Signature of Authorized Rep.: 

Print Name and ID: Christine Belka ID# 182