



August 16, 2012

FILED

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Via Registered Mail, Return Receipt Requested

Thomas Coverdale, Chairman
Wyoming Environmental Quality Council
122 W. 25th Street
Herschler Building, Room 1714
Cheyenne, WY 82002

John Corra, Director
Wyoming Department of Environmental
Quality
122 W. 25th Street
Herschler Building
Cheyenne, WY 82002

Jim Ruby, Executive Secretary
Environmental Quality Council

AMENDED NOTICE OF APPEAL AND REQUEST FOR HEARING

Re: In re Two Decisions Received by Powder River Coal, LLC Denying Request to Flag Results of Air Quality Monitoring.

Dear Mr. Coverdale and Mr. Corra:

In accordance with Chapter I, Section 16 of the Department's General Rules of Practice and Procedure, Peabody Powder River Mining, LLC, f/k/a Powder River Coal, LLC, (the "Company"), respectfully petitions the Environmental Quality Council ("Council") for a hearing with respect to the Notice of Violation ("NOV") in the above-referenced, docketed matter and to specific decisions by the Department's Air Quality Division ("Division") which gave rise to that NOV.

The Company operates the North Antelope Rochelle Mine ("NARM"), a surface coal mining operation located near Wright, Wyoming. The Company's mailing address is Caller Box 3034, Gillette, WY, 82717.

In a letter dated June 12, 2012, the Division advised the Company of the Division's decision to deny the Company's request to flag results of air monitoring at NARM on August 23, 2011 as likely due to exceptional events, as that term is used at 40 C.F.R. § 50.14. In a letter dated June 14, 2012, the Air Quality Division advised the Company of the Division's decision to deny the Company's request to flag results of air monitoring at NARM on November 12, 2011 as likely due to exceptional events, as that term is used at 40 C.F.R. § 50.14. Based on those two decisions of the Air Quality Division to which the Company objects, the Division issued the referenced NOV with a letter dated June 29, 2012, alleging that the Company had failed to comply with specific regulatory and permit requirements. Inasmuch as the Company disagrees with the two preceding decisions by the Air Quality Division, the Company also challenges the subject NOV.



On July 5, 2012, the Company contacted the agency and requested a meeting to discuss this series of events. A meeting was scheduled for August 9, 2012. At the start of the August 9 meeting, the Company was advised that the opportunity to affect the decisions reflected in the June 12 and June 14 letters had ended on July 1, 2012.

By this letter, the Company requests an appeal and hearing regarding the two decisions denying the Company's request to flag results of air monitoring at NARM as likely due to exceptional events, as that term is used at 40 C.F.R. § 50.14. Holland & Hart LLP will serve as local counsel for this appeal, and John R. Cline, PLLC, P.O. Box 15476, Richmond, VA 23227 is also counsel in this matter, associating with Holland & Hart LLP pursuant to WDEQ Rules of Practice and Procedure, Ch. 2, § 6(a)(vii).

Regulations of the U.S. Environmental Protection Agency ("EPA") allow states to place "flags" on air monitoring data as being due to exceptional events. Such data must be flagged by the state no later than July 1st of the year following the calendar year in which the flagged measurement occurred. See 40 C.F.R. § 50.14. Thereafter, if the state demonstrates to EPA how the data resulted from an exceptional event, that data may be excluded from any analysis which "designates" the air quality in the area where the subject data were measured.

After obtaining the air monitoring results in question, the Company timely provided the Division with demonstrations that the results were due to exceptional events and requested that monitoring data to be flagged. With less than a month before EPA's July 1st deadline for "flagging" data, the Division notified the Company of its decisions to deny the Company's requests. The Division then construed that monitoring data as demonstrating exceedances of the State's 24-hour ambient air standard for PM₁₀ particulate matter, concluded that such exceedances were due to the Company's failure to comply with specific regulatory and permit requirements, and issued the subject NOV.

In sum, the Company objects to the Division's decisions to deny the Company's two requests to flag the subject monitoring data as likely due to exceptional events. The Company also objects to the Division's conclusion that the subject monitoring results demonstrate the Company's failure to comply with specific regulations and permit conditions. Finally, the Company objects to the Division's failure to provide the Company with due process prior to those actions. Therefore, the Company respectfully requests a hearing before the Council to demonstrate that the Division's decisions and subsequent conclusion are erroneous as a matter of fact and as a matter of law.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Maryt L. Fredrickson".

Maryt L. Fredrickson
for Holland & Hart LLP

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