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May 23, 2012

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By Messenger

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RE: Request for Information Pursuant to Section 308 of the Clean Water Act, 33 U.S.C. § 1318, regarding Peabody Midwest Mining, LLC - Bear Run Mine, Indiana (the "Information Request")
Docket No. V-W-12-308-09

Dear Ms. Barton:

Pursuant to our ongoing discussions, with this letter, Peabody Midwest Mining, LLC ("Peabody") is submitting to the United States Environmental Protection Agency ("EPA"), consistent with the Agency's request, a proposed Effluent Sampling and Biomonitoring Assessment Plan (the "Plan") for Peabody's Bear Run Mine located in Sullivan County, Indiana. Specifically, the Plan (see Appendix A hereto) responds to EPA's March 22, 2012 Clean Water Act Section 308 request for information and subsequent technical discussions among Peabody and EPA personnel to develop an approach to proposed sampling that is mutually acceptable to the parties.

As you know from our discussions and as presented at our meeting on April 16, 2012, Peabody has significant legal and technical objections to EPA's request for sampling and assessment as set forth in the Agency's March 22nd 308 request. It is uncontroverted that Peabody is in full compliance with its Clean Water Act permitting obligations at Bear Run. This fact was confirmed for EPA through the reams of data provided to the Agency in response to the first Section 308 request for information issued to Peabody for Bear Run back in October of 2011. Discussions with representatives of the Indiana Department of Environmental Management ("IDEM") have likewise confirmed the Department's position that Peabody is currently complying with its Clean Water Act permitting obligations at Bear Run.

Notwithstanding the results of the submitted data and IDEM's repeated statements on Bear Run compliance, EPA's second request for information of March 22nd nonetheless requests Peabody to undertake exceedingly expansive water quality monitoring, biological, stream and habitat assessments, and effluent sampling in numerous watersheds at Bear Run. Peabody estimates that the cost to implement the work requested in the latest Section 308 request will exceed $700,000.

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Peabody is troubled by the Agency's apparent motives in issuing not one, but two, 308 requests – the second of which being of unprecedented scope and extent – for an operation that has and continues to satisfy its Clean Water Act regulatory obligations. Peabody should not be placed in the middle of any EPA/IDEM dispute over the State's implementation of its Clean Water Act program, nor should this or any Section 308 request be used to advance philosophical debate over the nature of operations at Bear Run.[1] As such, Peabody respectfully disputes EPA's legal authority to enforce its March 22nd 308 request.

At our April 16th meeting, the Agency suggested that EPA has the authority under Section 308 of the Clean Water Act to require Peabody to characterize its wastewater discharges from Bear Run. While Peabody views this obligation as fully satisfied consistent with IDEM's EPA approved National Pollutant Discharge Elimination System ("NPDES") permitting program, in an effort to provide a productive response to EPA's second request for information, and without conceding any legal arguments or objections regarding the Agency's actions here, Peabody is providing EPA with the proposed Effluent Sampling and Biomonitoring Assessment Plan for Bear Run. As explained more fully below, this Plan is appropriately tailored to respond to EPA's request for data regarding the nature and character of Peabody's permitted discharges at Bear Run.

While Peabody hopes to continue to explore options for productive engagement with EPA with respect to the pending 308 request and will reserve the full force of any legal arguments and defenses for future proceedings should they become necessary, some additional commentary is necessary, in part, as a basis for explaining the scope of Peabody's proposed Effluent Sampling and Biomonitoring Assessment Plan. In sum, Peabody finds the Agency's March 22nd 308 request to be unjustified and contrary to law as (i) EPA cannot use its 308 authority to compel monitoring, testing and assessment of the scope and magnitude proposed in the 308 request, (ii) the Agency already has sufficient information to understand both the character of Peabody's wastewater discharges and the nature of impairments in the watersheds, and (iii) the requested work is, in many respects, technically infeasible and otherwise not designed and tailored to assess and measure potential impacts from Peabody's mining operations.

I. The scope and substance of EPA's March 22nd Request for Information

In January of 2012, Peabody provided extensive documentation to EPA in response to the Agency's original 308 request directed at Bear Run. This documentation included copies of all applicable SMCRA and NPDES permits for the Bear Run operations and voluminous effluent sampling, water quality, and biological monitoring and habitat and stream

[1] Peabody finds the timing of EPA's 308 requests curious, coming as they have after The Environmental Law and Policy Center initiated litigation challenging the issuance of the IDEM NPDES permit for Bear Run.

assessment data generated by or at the direction of Peabody at Bear Run for the past five years, including the following:

- All analytical results, including sampling results generated by any laboratory, for any monitoring of process water and storm water discharges at Bear Run during the past five-years, including ambient and groundwater monitoring for all NPDES and/or SMCRA permits;
- Copies of all Discharge Monitoring Reports (DMRs) submitted to any regulatory agency during the past five-years; and
- Copies of all biological and water chemistry monitoring and/or sampling results during the past five-years.

Notwithstanding Peabody's prior exhaustive response and document submittal, EPA's March 22nd 308 request seeks additional information in the Company's possession regarding historical sampling, monitoring and assessment work conducted by Peabody at Bear Run. More problematic, though, the 308 request (specifically, Requests 1 through 6) also asks that Peabody affirmatively conduct wide ranging monitoring, assessments and other studies in waters in and around the Bear Run mine, including portions of the Busseron Creek, Black Creek, Indian Creek, and Maria Creek watersheds. The work requested in the March 22nd 308 request includes water quality testing (ambient water quality, whole effluent toxicity ("WET"), and effluent), biological community assessments (fish and macroinvertebrates), and stream physical habitat evaluations of the type and nature documented in the initial 308 submittal. As it has in the past, Peabody is prepared to provide EPA with access to water quality, biological and habitat assessment and effluent discharge data and other relevant information generated at Bear Run and currently in the possession of Peabody. In fact, Peabody is quite confident that EPA currently possesses, or has access to, all such information and data. Nonetheless, Peabody is currently reviewing its files and will provide any additional responsive documents to the Agency consistent with the deadlines set forth in the 308 request. Peabody, however, objects to the request for monitoring, assessment and sampling as contrary to the Agency's authority under Section 308 of the Clean Water Act.

II. EPA lacks the legal authority to enforce its March 22nd 308 request

EPA's demand to Peabody to proceed with the proposed studies and assessment and monitoring work at Bear Run, as embodied in the 308 request, is without legal justification. Section 308(a) of the Clean Water Act gives EPA the authority to request information of an owner or operator of a point source in order to carry out the objectives of the Act. 33 U.S.C. § 1318(a). EPA's authority under Section 308 is not unlimited, however, and the Agency is required to exercise such authority in a reasonable manner. *U.S. v. Hartz Constr. Co.*, 2000 U.S. Dist. LEXIS 12405, at *9 (N.D. Ill. Aug. 17, 2000). Historically, and as contemplated by the Act, EPA has used Section 308 to request from regulated entities specific information that is already available or easily compiled. Even when EPA has requested sampling, such

requests typically involve only influent or effluent sampling that is already available or can be readily conducted within the context of a company's regular operations.

No such reasonable scope or appropriately limited compliance efforts can be found in EPA's March 22nd 308 request. Instead, the request seeks expansive sampling, evaluation and study across multiple watersheds using protocols that are technically infeasible in many requests and not in any way designed to assess impacts from coal mining operations. Ultimately, Peabody's cost to provide "information" to EPA under this request will run in excess of $700,000.

Clearly, the scope and cost of what EPA has proposed here is not what Congress intended when it granted EPA this authority to request information from the regulated community under Section 308 of the Clean Water Act and is unprecedented in Agency practice. Even more egregious, though, is the fact that EPA is pursuing this broad request from a company that is in full compliance with its Clean Water Act regulatory requirements, with such compliance being continuously and thoroughly assessed, vetted and addressed by multiple agencies – the Army Corps of Engineers, EPA, the Indiana Department of Natural Resources and IDEM – through numerous regulatory approval processes – SMCRA permit applications, Clean Water Act Section 404 permits, state Clean Water Act 401 certifications, and state NPDES permits. Importantly, extensive sampling and habitat assessments were performed during regulatory proceedings associated with these permits. EPA actively participated in these proceedings and approved the scope of these assessments. Nonetheless, the Agency appears to be suggesting now, through its 308 request, that this prior work is somehow insufficient today. Further, the vast majority of the work requested by EPA at Bear Run is studies, assessments and evaluations that both have already been performed and, in any event, are the responsibility of IDEM to complete as the Indiana Clean Water Act permitting authority.

Wastewater discharges at Bear Run are authorized under the Clean Water Act pursuant to NPDES permit ING040239 issued by IDEM on May 15, 2009, as modified, including most recently on July 15, 2011 (the "Permit"). Peabody is in full compliance with the Permit and has had no violations at Bear Run in the last five years. In its January response to EPA's first 308 request, Peabody provided EPA with data which conclusively demonstrates the impeccable Clean Water Act compliance status of its operations at Bear Run. IDEM has further confirmed Peabody's compliance with its Clean Water Act requirements at Bear Run.

In addition to documented NPDES permit compliance, IDEM has also determined through comprehensive technical review and analysis that mining operations, including Peabody's Bear Run facility, are not contributing to water quality impairments in watersheds in the vicinity of Bear Run. IDEM's 303(d) listing documentation confirms that the constituents of concern identified by EPA at our April 16th meeting – total dissolved solids and sulfates – are not identified as impairments in any of the Bear Run watersheds. Instead, a review of IDEM's 303(d) documentation identifies the most prevalent impairment in the four

watersheds around Bear Run as "impaired biotic communities." Specifically with respect to IDEM's development of the Total Maximum Daily Loads ("TMDL") for the Busseron Creek watershed, the TMDL report notes the following: "The current mines in the Busseron Creek watershed are not considered significant sources of the impairments noted in this TMDL, as they are in compliance with the limits of their permits." See Busseron Creek TMDL report January 13, 2012, at 33. The conclusion that the Bear Run mine is not a source of relevant impairments is consistent with the fact that impaired biotic communities are designated 303(d) impairments in over 3,000 stream segments across the State of Indiana, with only a very small percentage of such streams being located in areas with any coal reserves.

The overwhelming prevalence of the identified impairments in Bear Run streams across Indiana suggests that any water quality concerns at Bear Run are associated with other prevailing regional sources and issues of concern and not Peabody's mining operations. IDEM has likewise concluded in its 303(d) and TMDL documentation that such impairments are the result of loading from unregulated, i.e., nonpoint, sources (such as agriculture, septic). Given the nature of the identified impairments, the implementation steps developed by IDEM to address these impairments do not include any recommendations to make changes in permitted sources (including Bear Run) in order to meet the TMDLs. Instead, implementation focuses on other sources; recommended controls include lime application and other projects to address impacts from abandoned mine lands, agriculture best management practices ("BMPs") (vegetated filter strips, nutrient management plans), outreach to septic owners and septic repair and maintenance, ongoing monitoring, and consideration of other BMPs as part of Sullivan County's watershed management plan.

Based on the compliance record of Bear Run under its NPDES Permit and on IDEM's evaluation of the causes of impairments in the relevant watersheds, as well as the long history of comprehensive water quality and stream and habitat assessments completed over the last number of years in connection with Bear Run permitting, it is clear that Bear Run is in full compliance with its Clean Water Act obligations and is not contributing to identified water quality impairments. Accordingly, EPA has not provided any legitimate basis for additional assessment and monitoring, let alone the excessive work proposed in its 308 request. As such, EPA's demand for extensive studies here is patently unreasonable and contrary to law.

III. EPA's March 22nd request is duplicative and unnecessary in light of the availability of existing information sufficient for EPA to fulfill its objectives under the Clean Water Act

The studies requested by EPA in the March 22nd 308 request are unnecessary and, therefore, unreasonable, given the extensive data that is already available regarding compliant discharges from, and water quality associated with, Peabody's Bear Run operations. As previously stated, Peabody has already provided EPA with all relevant data in its possession

regarding wastewater discharges and the multitude of stream, habitat and water quality assessments that have been completed at Bear Run. Additionally, in connection with ongoing technical discussions with EPA regarding this request, Peabody has also provided the Agency with additional data regarding the analysis of pollutant discharges and other Clean Water Act assessments conducted at other Peabody mines in the region. Moreover, to the extent that the studies are focused on areas within the purview of IDEM, the type of data that EPA is seeking is already routinely generated by IDEM and readily available to EPA through the State of Indiana.

Taken together, the data, reports, study results and other documentation referenced below provide ample support for EPA to conclude both that Bear Run operations are in compliance with Clean Water Act requirements and otherwise not contributing to water quality concerns, and that the sampling, analysis and assessment work requested by EPA in the 308 request is unnecessary, overbroad and not likely to yield any useful information on potential Clean Water Act concerns associated with mining operations at Bear Run. In fact, as noted below, EPA's 308 request is yet another attempt by the Agency to compel Peabody to repeat the broad study of potential impacts from coal mining operations that was conducted at Vermillion Grove. Given the plethora of data available, it is arbitrary and capricious for EPA to demand that Peabody conduct the requested studies.

In addition to ongoing NPDES discharge effluent monitoring and reporting, Peabody conducts ambient water quality sampling as part of the SMCRA permitting process and continues to monitor SMCRA related water quality at Bear Run on a quarterly basis. Peabody also regularly monitors receiving waters as required pursuant to Bear Run Section 404 permits. Data from each of these sampling programs was submitted to EPA as part of the original 308 response documentation.

Further, Peabody also took samples voluntarily at Bear Run specifically in response to EPA comments during the proceedings associated with Peabody's Bear Run Amendment #4 Section 404 permit application to analyze for additional pollutants, including trace elements and inorganics. This data has already been provided to EPA and found that water quality standards are being met at the mine. Peabody also conducted 14 fish and 53 macroinvertebrate surveys and 2,344 stream habitat assessments as part of its Section 404 work at Bear Run. Likewise, all of this data was provided to EPA in response to the first 308 request.

In the last several weeks during additional technical discussions with EPA over the scope of the latest 308 request, Peabody also provided EPA with the results of a study conducted at Peabody's former Vermillion Grove mine to assess the presence of toxic constituents in Illinois Basin mine wastewater discharges. The express purpose of this study, conducted over an extended period of time and at great expense with the active participation of both EPA and Illinois EPA, was to determine what chemical constituents of concern are associated with mining operations and effluent discharges from such operations. The

Vermillion Grove site was determined to be an ideal location for such a study given the presence of a large above ground refuse disposal area and underground pumpage, both of which contributed to higher dissolved solids loadings to sediment basins, thus reflecting a "worst case" scenario for Illinois Basin coal mining. Multiple year results from the Vermillion Grove study indicated no violations of water quality standards (as was predicted by EPA's initial study and analysis of the indicator NPDES effluent parameters still used pursuant to EPA's federal effluent guidelines for coal mining (40 CFR Part 434)) with constituents beyond those now being monitored under Peabody's NPDES permit at Bear Run. EPA's Region 5 office participated in this exhaustive sampling effort, including sending staff to the mine. Illinois EPA uses the results from the Vermillion Grove testing today to set NPDES permit analyses at mining sites. It should also be noted that WET testing was initially considered for inclusion in the Vermillion Grove sampling plan; however, the regulatory agencies ultimately agreed it was inappropriate and not required. This data overwhelmingly establishes that the scope of pollutant sampling and assessment proposed in the March 22nd 308 request is without technical justification and inappropriately broad.

Further, the appropriateness of current data and testing requirements at Bear Run is affirmed by recent EPA sampling and results of assessments conducted at other Peabody mines. Specifically, last September, EPA conducted an unannounced inspection at Peabody's Somerville mine for the purpose of collecting additional water quality data associated with Peabody's regional mining operations. During that inspection, EPA collected numerous samples at all sediment basins following an approximate 4 inch rainfall event. These samples were tested for trace elements and inorganics. While Peabody has not as yet been provided with copies of the Agency's data as promised, Peabody's split samples indicated no concerns with the data. EPA inspectors have also verbally reported that the Agency's results were satisfactory and confirmed the absence of permitted discharge or water quality issues associated with the mine.

Further documentation to support EPA's conclusions at Peabody's Somerville mine can be found in studies conducted at Peabody's Farmersburg mine located south of Terre Haute, Indiana. The Farmersburg mine was the largest surface mine in Indiana for most of the 15 years it was in operation. This mine was closed at the end of 2010 and operated in the same Busseron Creek watershed as Bear Run. In fact, the Farmersburg mine disturbed more surface acres per year than Bear Run is expected to disturb at current production rates. During our April 16th meeting with EPA, Agency personnel argued that large mining operations conducted over an extended period of time must be contributing higher concentrations of contaminants to receiving waters. However, studies conducted at the Farmersburg mine have demonstrated that waters associated with reclaimed surface coal mines support aquatic ecosystems comparable to, or better than, those representative of the pre-mined area. EPA has reviewed this data from Farmersburg and previously concluded that no Clean Water Act problems or concerns exist with respect to the Farmersburg operations. Peabody is unaware of any data supporting increased contaminant loading or

impacts due to mine size or length of operating life and has not seen any such trend at the Company's own mines.

Another study prepared by Environ International Corporation at the request of Peabody (January 2011) documents the successful reconstruction of stream ecosystems at a large surface mine in southern Illinois where mining and reclamation had been completed during the 1980s and early 1990s. Mining and reclamation processes in the Illinois Basin have improved since this successful restoration was completed. Peabody has commissioned similar studies at the former Farmersburg mine as well. EPA was previously provided with copies of these studies as well.

Additional studies and reports were recently provided to EPA personnel during ongoing technical discussions in furtherance of resolution of issues associated with this 308 request. These documents respond to and refute the Agency's contentions regarding the apparent assumed impacts associated with significant mining operations. These reports are referenced below and provided again at Appendix B hereto.

- Impacts of Coalmine Discharges on Illinois Unionid Mussels, by David J. Soucek, Center for Ecological Entomology, Illinois Natural History Survey (2004)

- Black Beauty Coal Vermillion Grove Mine Surface Water Quality Analysis, Prepared by Peabody Energy (November 2010)

- Report for Fish and Macroinvertebrate Sampling for Bioassessment Monitoring of West Busseron Creek, Prepared by Environ International Corporation (September 2010)

- The Biological Status in Bonnie Creek, Galum Creek, and White Walnut Creek Following Stream Diviersion and Reconstruction, Prepared by Environ International Corporation (January 2011)

- Freshwater Mussel Survey Results, West Fork Busseron Creek Mitigation Area (Farmersburg), prepared by Environ International Corporation (August 2011)

In sum, exhaustive sampling at Bear Run, studies at other mines, and IDEM's sampling in the watersheds relevant to Bear Run all provide more than sufficient data for EPA's consideration in fulfilling it objectives under the Clean Water Act. Despite repeated requests from Peabody to EPA to provide relevant information on water quality concerns at Bear Run and despite Agency statements to the press regarding the apparent presence of water quality impacts associated with Peabody operations at Bear Run (i.e., Indianapolis Star article), EPA has yet to provide any documents, studies, reports or other information to support its allegations. As documented in this letter, Peabody has provided the Agency with a long list of comprehensive studies and reports establishing the absence of impacts and concerns and

the corresponding baseless nature of the pending 308 request. As stated, Peabody is also reviewing its files again and, to the extent not already provided, will produce additional documentation responsive to the March 22nd request consistent with the direction and timing requested by the Agency.

IV. EPA's Information Request is inappropriate

The breadth and technical substance of EPA's March 22nd request also finds no support in law. Most of the requested assessment and monitoring falls squarely within the purview of IDEM as the permitting authority for implementation of the Clean Water Act in the State of Indiana, including conducting Section 305(b) water quality assessments and listing impaired waters and developing total maximum daily loads under Section 303(d), and are not the responsibility of Peabody to perform as a regulated entity. The requested sampling also seeks to compel Peabody to analyze for wide ranging chemical constituents that have been determined by decades of sampling and regulatory proceedings, as well as Peabody's own data, to be wholly inapplicable to coal mining operations in the Illinois Basin. EPA has also requested assessment and testing that is technically infeasible to perform given the hydrology of the Bear Run environment.

At its core, the breadth of EPA's 308 request appears motivated by the Agency's desire to generate data to any kind and nature to support its arguments with IDEM over the technical sufficiency of the State's general permit program for mining operations and the application of that permit program to Bear Run. Obviously, EPA's use of its 308 authority in this manner and for these reasons is entirely inappropriate. Moreover, the actual substance of the requests for sampling and analysis – requesting as they do unlimited chemical constituent screening and unnecessary and duplicative assessment work - offends any sense of regulatory logic as IDEM's general permit program is based on EPA's long established and recently reaffirmed federal effluent guidelines for coal mining, was approved by the Agency, and has been determined to be protective of human health and the environmental through decades of sampling and analysis at coal mines operating throughout the State.

Ambient Water Quality Sampling: EPA has requested extensive ambient water quality sampling at Bear Run in the 308 request. Such sampling is within the exclusive purview of IDEM, which assesses water bodies to evaluate attainment of state water quality standards for the biennial 303(d) listing and to determine TMDLs for impaired water bodies. IDEM has evaluated impairments and potential sources for many of the segments in the relevant watersheds and continues that effort as part of its 305(b) assessment and 303(d) listing processes. It is inappropriate for EPA to request evaluations of water quality and impairments outside the context of the long established statutory process for doing so.

EPA's request also seeks to compel Peabody to analyze water quality for a very broad list of parameters – 20 constituents, including cations, anions, and metals. For the Busseron Creek watershed, IDEM has already determined the parameters that need to be managed through

TMDLs in order to address the impairment for impaired biotic communities that is present in these regional waters – TSS, iron, phosphorus, dissolved oxygen, pH, copper, and zinc. More narrowly, pH, TSS and iron are the only parameters relevant to the portions of the watersheds where Bear Run is located. Rather than focus on the impairments that have been identified in the relevant watersheds, EPA has proposed a study of ambient water quality that disregards the work already done by IDEM and includes a host of parameters that have no relevance at all to coal mining operations.

Further, Peabody has serious technical objections to the locations proposed for ambient water quality sampling as provided in the 308 request. The suggested locations for such sampling are not properly placed to elicit true measurements of watershed water quality.

WET Testing: WET testing is used to determine compliance with WET limits in an NPDES permit. WET limits are only included in an NPDES permit if the permit writer determines that the discharge causes or has the reasonable potential ("RP") to cause or contribute to non-attainment of a WET water quality standard. WET limits are not necessary in an NPDES permit if the permit writer determines that the chemical-specific limits in the permit are sufficient to attain applicable WET water quality standards. Thus, the function of WET testing is to determine compliance with an NPDES permit that includes a WET limit as a permit term. Absent an RP determination, there is no justification to suggest that the Bear Run NPDES permit should include WET limits or that any WET testing is justified. Further, it is inappropriate as a regulatory matter to simply require WET testing outside the context of an NPDES permit term requiring WET testing.

Moreover, EPA and state agencies have determined as a general matter that WET limits and testing are not appropriate for discharges from typical Midwest mining operations, such as Bear Run, given the flow limitations and characteristics of the relevant streams, and other technical factors. For example, EPA initially proposed WET testing for Peabody's former Vermillion Grove mine, but later withdrew the request after further consideration and dialogue by and among Illinois EPA and EPA. This determination regarding the inappropriateness of WET testing to Midwest mine sites was based on the recognition that WET testing is not accurate in the context of mining operations and the streams that are typically present at these operations. Consistent with conditions at mine sites within the Illinois Basin, applicable stream segments at Bear Run are primarily ephemeral or intermittent, thus making WET testing infeasible. Enclosed at Appendix C is a technical memorandum comprehensively discussing the scientific and technical bases for the conclusion that WET testing is inappropriate at Bear Run.

Effluent Sampling: As with the ambient water quality sampling, EPA is seeking to analyze effluent for a very broad list of parameters – 20 constituents, including cations, anions, and metals. If EPA's focus is on impairments in the relevant watersheds, then any sampling should be focused on specific parameters relevant to such identified impairments. For the relevant watersheds associated with Bear Run, IDEM has already determined the parameters

that need to be managed through TMDLs in order to address the impairment for impaired biotic communities – TSS, iron, phosphorus, dissolved oxygen, pH, copper, and zinc. More narrowly, TSS and iron are the only parameters relevant to the portion of watersheds where Bear Run is located. Accordingly, EPA's insistence that Peabody conduct sampling that goes well beyond an analysis of applicable parameters is entirely inappropriate.

The broad nature of the requested effluent sampling is also underscored by comparing EPA's proposed sampling protocol against federal and state NPDES permit limits and regulations for mining operations. The IDEM General NPDES Permit regulations for coal mining provide limits for TSS, pH, iron, as well as manganese for acid mine drainage, and also requires reporting of (but no limits for) aluminum, copper, zinc, and nickel for acid mine drainage. According to the Busseron Creek TMDL report, the limits are based on federal effluent guidelines for coal mining (40 CFR Part 434), which only include limits for iron, manganese, total suspended solids, and pH. A more appropriate effluent sampling plan would focus on the parameters that are typical relevant to mining operations as opposed to the limitless parameters proposed in the 308 request.

Biological and Habitat Assessment: As stated previously, extensive biological assessments of fish and macroinvertebrates and stream physical habitat evaluations have already been completed at Bear Run. Specifically, 14 fish, 53 macroinvertebrate, and 2,344 stream physical habitat evaluations were conducted for the Amendment #4 and #5 permit areas at Bear Run. Stream sampling locations were selected to reflect the expected biological attributes of the surrounding streams in the geographic region and to be representative of each land use type and watershed in the proposed permit area. Land use consists predominately of row crop agriculture with mosaic forested areas along stream corridors and wetlands and reclaimed mine surfaces. Perennial, intermittent, and ephemeral flow regimes were also sampled to further elucidate the representative biological communities and level of biological integrity in the area. Results of the macroinvertebrate index of biotic integrity (mIBI) and fish index of biotic integrity (fIBI) indicated the streams were impaired. Physical habitat evaluations, following the EPA RBP II physical habitat assessment for low gradient streams, also found the streams to be marginal to sub-optimal. Stressors observed across the county were nitrogen, phosphorous, increased streambed sediments, and riparian disturbance (EPA's Wadeable Stream Assessment Survey, 2006) and identified impairments were attributable to the common industrialized row crop agriculture in the area.

These comprehensive biological and habitat assessments and evaluations have yielded detailed information on appropriate conditions within Bear Run watersheds and are sufficient to allow EPA to complete any relevant assessments regarding compliance with Clean Water Act requirements. These assessments were completed primarily in the Amendment #4 and #5 areas at Bear Run due to changing regulatory requirements, but are applicable across the watersheds. To compel Peabody to proceed with additional biological assessment work here – a task, incidentally, never required of an NPDES permitee - would necessarily mandate the retention of third party environmental consultants with the required

expertise to complete these highly technical reviews. The time and expense of such an undertaking to confirm the consistency of current conditions with prior technical conclusions is unwarranted and inappropriate. Nevertheless, Peabody is proposing in the Effluent Sampling and Biomonitoring Assessment Plan to complete two additional biomonitoring assessments downstream of sediment basins 03R and 062, since previous assessments did not include these areas.

V. Peabody's proposed Effluent Sampling and Biomonitoring Assessment Plan

Notwithstanding Peabody's stated objections to the March 22nd 308 request, Peabody is proposing an alternative Effluent Sampling and Biomonitoring Assessment Plan (Appendix A) in an effort to respond in a productive way to EPA's desire for additional assessment work at Bear Run. The proposed Plan has been developed consistent with the ongoing technical discussions between EPA and Peabody with respect to this matter and specifically to respond to EPA's stated objectives here – to provide EPA with information on the character of Peabody's wastewater discharges at Bear Run. The proposed Plan was also developed with specific reference to EPA's apparent position that no additional work will be requested under Section 308 if IDEM mandates Peabody to obtain an Individual NPDES permit for Bear Run.

In light of this understanding, the proposed assessment work is intended to address those discharges and those chemical constituents demonstrated to be relevant and appropriate for assessment and evaluation based on the nature of Peabody's operations and the conditions encountered at Bear Run The proposed list of parameters in the Plan goes beyond what is required to be assessed under Indiana's General Permit program and includes relevant constituents typically analyzed under Illinois EPA's Individual Permit program, which has been approved and affirmed by EPA. Peabody is confident that implementation of this Effluent Sampling and Biomonitoring Assessment Plan will yield results consistent with the decades of data generated by EPA, IDEM and Peabody on Bear Run water quality and Peabody mining operations in the Illinois Basin.[2]

Peabody is prepared to engage with EPA on the substance of the proposed Effluent Sampling and Biomonitoring Assessment Plan and any outstanding questions the Agency may have regarding the scope and extent of the assessment work proposed in the Plan. Peabody is also committed to pursue implementation of the proposed Plan consistent with a mutually agreeable timetable to ensure fulfillment of EPA's objectives here. Of course, as

[2] Information specific to sediment basins and impoundments that are associated with process water management was provided in Peabody's response to the original 308 request letter. Note that a revised Coal Processing Plant Circuit Map 4I is provided in this submittal showing: 1) outfall 041N will be dropped and all drainage from SB041 will discharge through NPDES outfall 061 and 2) the corrected location of outfall 061. As requested, additional design information relevant to the sediment basins/outfalls included in the proposed Effluent Sampling and Biomonitoring Assessment Plan is included in Appendix D of this submittal.

stated herein, this Plan is being proposed without prejudice to any legal rights and defenses Peabody may wish to assert in subsequent legal proceedings in connection with this matter and nothing herein shall be construed as an admission or waiver of any facts, legal arguments or defenses Peabody may have here.

We look forward to your response to the proposed Effluent Sampling and Biomonitoring Assessment Plan.

Very truly yours,

John W. Watson

Enclosures