UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUL 19 2012

REPLY TO THE ATTENTION OF:
WW-16J

U.S. Army Corps of Engineers, Louisville District
Colonel Luke T. Leonard, District Commander
600 Dr. Martin Luther King Place
Louisville, Kentucky 40202

Re: Public Notice No. LRL-2011-1117-GJD, Farmersburg Bear Run Amendment #5 (S-256-5) / Peabody Midwest Mining, LLC

Dear Colonel Leonard:

The United States Environmental Protection Agency (EPA) appreciates the opportunity to provide comments on the subject public notice issued on June 19, 2012. EPA's detailed comments on the Section 404 permit application including specific recommendations regarding the alternatives analysis are enclosed (Enclosure 1).

The applicant, Peabody Midwest Mining, LLC (Peabody) proposes to fill over 97 miles (514,498 linear feet) of stream, which include 258,166 linear feet of ephemeral streams, 253,217 linear feet of intermittent streams, and 3,115 linear feet of perennial streams. Peabody also proposes to fill 157.81 acres of wetland, which include 85.18 acres of palustrine forested wetland (PFO), 45.77 acres of palustrine emergent wetland (PEM), 18.60 acres of palustrine unconsolidated bottom (PUBG) wetland and 8.26 acres of palustrine scrub-shrub weltand (PSS). The purpose of the project is to expand surface coal mining activities by 7,252.2 acres at the Bear Run Mine in the Buttermilk Creek (051201111507), Middle Fork Creek (051201111510), Maria Creek (051201111801), Brewer Ditch-Black Creek (051202020603), and White River (051202020801) watersheds, which are tributary to the Middle Wabash-Busseron Creek (05120111) and the Lower White River (05120202). The proposed project is located approximately 6.1 miles southwest of Dugger in Sullivan County, Indiana.

Peabody is proposing to mine all economically recoverable coal from the Amendment 5 areas. According to the permit materials, the area would be returned to approximate original contours, revegetated, and returned to an approved post-mine land use through the SMCRA process. Operation of the Amendment 5 area is proposed from 2015-2032.

The EPA has identified specific concerns with the project as currently proposed. Our concerns focus on practicable opportunities to further avoid and minimize mining-related discharges to waters of the United States, options for improving mitigation of remaining impacts, and evaluation of the project under the National Environmental Policy Act. We believe, however, that coordination with the Corps and Peabody can effectively address these concerns. We look

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forward to timely conversations with you and the company to identify improvements to the project that reduce water quality and environmental impacts.

In the meantime, and consistent with the provisions of the August 1992 Memorandum of Agreement between the EPA and the Department of the Army, Part IV, paragraph 3(a) regarding section 404(q) of the Clean Water Act, we believe that the proposed project may have substantial and unacceptable adverse impacts on the Wabash River and White River, aquatic resources of national importance (ARNIs). Our concerns focus on impacts to 514,498 linear feet (lf) of several headwater tributary systems and 157.81 acres of associated wetlands to the Middle-Wabash Busseron and Lower White River Watersheds.

In order to comply with the 404 (b)(1) Guidelines, the applicant must demonstrate that all practiable steps have been taken to avoid and minimize impacts to the maximum extent possible and finally, to compensate for any unavoidable losses. EPA believes there may be practicable opportunities to avoid and minimize impacts through revisions to the mine construction plan that should be explored during evaluation of the application. These include 1) changing dragline orientation within the proposed mine area to reduce streamflow disruptions and temporal impacts to affected watersheds; and, 2) shortening pit lengths and indentifying specific areas for employing alternative coal extraction methods to avoid resources and to reduce time to reclamation time. In addition, EPA recommends that the applicant detail the timing of impacts to the watersheds and status of reclamation and mitigation throughout the Bear Run Mine complex, from the time of impact to reconnection to downstream waters in order to better analyze the cumulative scope and severity of impacts. More detailed information on these recommendations is included in the attachment.

EPA believes that the mitigation proposed does not adequately compensate for the direct, cumulative and temporal impacts to streams and wetlands. The Corps' public notice does state that Peabody is still exploring additional mitigation options at this time. EPA highlights that after discussions with Peabody regarding the inadequacy of the original mitigation plan proposed for Bear Run Amendment 4 (Amendment 4), Peabody agreed to revise the mitigation plan to include an additional 20,340 linear feet of stream mitigation and 88 acres of wetland mitigation. EPA lifted previous objections to Amendment 4 contingent upon the inclusion of the additional mitigation in the Section 404 permit conditions. The proposed mitigation plan for Bear Run (Amendment 5) includes substantially less stream mitigation for temporal losses than the proposed plan for Amendment 4. The stream impacts proposed for Amendment 5 exceed the impacts authorized for Amendment 4 by 387,812 linear feet.

In addition to our concerns with the permit identified in this letter, based on our review of the public notice EPA reiterates our recommendation that the Corps prepare an EIS for the Bear Run Mine as detailed in a letter to you dated November 22, 2011 (Enclosure 2). Additionally, EPA believes the mitigation proposal, as currently drafted, would not serve as a basis for supporting a Finding of No Significant Impact (FONSI). EPA would also like to further our initial discussions with the applicant and Corps regarding a broader-scale programmatic or area-wide EIS for the Illinois coal mining basin that would evaluate the impacts and reclamation resulting from the historic, current, and reasonably foreseeable coal mines in the area. Minimally, EPA believes a stand-alone project-specific cumulative impacts analysis for the entire Bear Run

operation may provide a better picture of both the adverse impacts and potential beneficial effects of mine reclamation within the watershed.

Thank you for the opportunity to provide our comments on this application. I commit my staff to working with your staff, Indiana Department of Environmental Management, and Indiana Department of Natural Resources and Peabody in the review of this application. Please contact Melissa Gebien at (312) 886-6833 or Andrea Schaller at (312) 886-0746 with any questions you may have.

Sincerely,

Tinka G. Hyde, Director
Water Division

Enclosures

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