

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In re:

Peabody Energy Corporation, et al.,
Debtors.

Case No. 16-42529-399
CHAPTER 11

Jointly Administered

Related to Docket No. 1182

**STIPULATION AND ORDER CONCERNING DEBTORS' RECLAMATION
BONDING OF THEIR COAL MINING OPERATIONS IN ILLINOIS**

Debtors Peabody Energy Corporation ("PEC"); Peabody Investments Corporation ("PIC"); Peabody Midwest Mining, LLC; Peabody Coulterville Mining, LLC; Peabody Gateway North Mining, LLC; Peabody Arclar Mining, LLC; Hillside Recreational Lands, LLC; and Conservancy Resources, LLC (collectively, the "Illinois Mine Debtors", and together with PEC and PIC, the "Debtors") and the Illinois Department of Natural Resources ("IDNR," and together with the Debtors, the "Parties") hereby stipulate and agree as follows:

RECITALS

WHEREAS, the Illinois Mine Debtors operate two active mining operations in Illinois, known as Gateway Mine and the Arclar Complex (which includes Cottage Grove, Wildcat Hills and Willow Creek), and also hold fifteen permits for ten closed mines (collectively, with the active mining operations, the "Illinois Mine Operations");

WHEREAS, prior to commencing mining operation in Illinois, the operator is required to obtain a mining permit from the IDNR;

WHEREAS, applicable statutes in Illinois require mine operators to post performance bonds to provide security for the state in the event the mine operator fails to fulfill its obligation



to restore the property upon which mining operations have been conducted in accordance with specified standards and an approved reclamation plan;

WHEREAS, by applicable statutes, Illinois may allow surface mine operators to "self-bond" their reclamation obligations if they meet specified financial and other criteria;

WHEREAS, Debtors have mining operations in four states – Illinois, Indiana, New Mexico, and Wyoming – where Debtors have self-bonded reclamation liabilities (collectively, the "States");

WHEREAS, over the last permit cycle, the Illinois Mine Debtors' reclamation self-bonding requirements in Illinois, calculated under standards established by IDNR, have been set at approximately \$92.2 million (the "Illinois Reclamation Self-Bond Amount");

WHEREAS, the Illinois Mine Debtors have been "self-bonding" their reclamation obligations as set forth in the following chart:

Mine Location	Permit No.	IDNR Bond No.
Gateway Mine	53, 160, 225, 426, 51, 221	L-13092
Gateway North Mine	416	L-13322
Eagle Valley Mine	127	L-13057
Big Ridge Mine	280	L-13057
Wildcat Hills, Cottage Grove Pit	327, 348, 361, 365, 370, 376, 392, 397, 403, 415, 428	L-13057
Wildcat Hills, Eagle Valley Pit	294, 331	L-13057
Wildcat Hills, Underground Pit	360	L-13057
Willow Lake	347, 369, 374	L-13057
Riola Mine Complex, Riola Portal	338, 350	L-13059
Riola Mine Complex, Vermilion Grove	342	L-13059

(collectively, the "Illinois Mine Debtors' Self-Bonds") and each have executed an Application for Self-Bonding in favor of the IDNR, pursuant to which each Illinois Mine Debtor was authorized to fulfill their reclamation obligations with a self-bond;

WHEREAS, PIC has executed separate General Self-Bond Indemnity and Corporate Guarantees for Self-Bond Capacity (collectively, the "Corporate Guarantees") in favor of IDNR, pursuant to which PIC guaranteed, among other things, the Illinois Mine Debtors' obligations under each of the Illinois Mine Debtors' Self-Bonds;

WHEREAS, the Illinois Mine Debtors, in addition to the Illinois Mine Debtors' Self-Bonds, utilize approximately \$6.4 million in third party commercial bonds in connection with the Illinois Mine Operations reclamation obligations at certain closed mines, as set forth in the following chart:

Mine Location	Permit No.	IDNR Bond No.
Baldwin Mine	62	L-12705
TSM Mine	87	L-13001; L-10800
Randolph Prep Plant	63, 218, 318	L-13143; L-12706; L-13002; L-13003
Universal Mine	115	L-13500

(collectively, the "Illinois Mine Debtors' Performance Bonds");

WHEREAS, on April 13, 2016, the Debtors commenced cases under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Eastern District of Missouri (the "Court");

WHEREAS, the Illinois Mine Debtors believe that they are currently in compliance with, and are continuing to fulfill, their ongoing obligations to perform reclamation, under applicable law and as required by 28 U.S.C. § 959(b), and anticipate remaining in compliance with such obligations for the duration of these chapter 11 cases;

WHEREAS, as a result of the commencement of these chapter 11 cases and financial reporting questions, IDNR stated in a April 27, 2016, letter to the Illinois Mine Debtors and PIC that (i) it was treating commencement of these chapter 11 cases as Debtors' notice that PIC and the Illinois Mine Debtors no longer qualify for self-bonding under applicable IDNR rules and regulations; (ii) that the Illinois Mine Debtors have 90 days from the Petition Date in which to post alternative bonds (the "90-Day Notice"); and (iii) there are obligations due and owing by the Debtors under the terms of the Illinois Mine Debtors' Self-Bonds and Corporate Guarantees;

WHEREAS, IDNR has indicated that, absent approval of this Stipulation and Order, it may immediately issue a substitution demand to the Debtors for the Illinois Mine Operations pursuant to title 62, chapter I(10), Part 1800 of IDNR's regulations (the "IDNR Regulations"), followed, if necessary, by a Notice of Violation and Order at the appropriate time;

WHEREAS, the Debtors contend that they presently are unable to comply with any substitution demand and are prevented from doing so by the terms and conditions of the DIP Credit Agreement (as defined below and in the Motion);

WHEREAS, as a result of the commencement of these chapter 11 cases, the Debtors assert that IDNR is precluded under the Bankruptcy Code from seeking payments for amounts owing under the Illinois Mine Debtors' Self-Bonds and Corporate Guarantees, demanding additional collateral, taking actions that interfere with the Debtors' efforts to reorganize in these proceedings or revoking or refusing to renew the Illinois Mine Debtors' permits to operate coal mines in Illinois due to the Debtors' bankruptcy, financial condition or failing to provide collateral to secure the Illinois Mine Debtors' reclamation obligations;

WHEREAS, IDNR asserts that it is not precluded under the Bankruptcy Code from seeking payments for amounts owing under the Illinois Mine Debtors' Self-Bonds and Corporate

Guarantees, demanding additional collateral, or revoking or refusing to grant, amend or renew the Illinois Mine Debtors' permits to operate their coal mines in Illinois due to the Debtors' bankruptcy case, financial condition, or the Debtors' failure to provide collateral to secure the Illinois Mine Debtors' reclamation obligations;

WHEREAS, the Illinois Mine Debtors contend that they will be able to satisfy their reclamation bonding obligations to IDNR upon confirmation of a plan of reorganization;

WHEREAS the Debtors' debtor in possession postpetition credit agreement dated as of April 13, 2016 (as it may be modified or amended, the "DIP Credit Agreement") approved under the interim order [Docket No. 149] and the final order approving the Debtors' postpetition financing [Docket No. 544] (collectively, and as modified or amended, the "DIP Order"), provides for, among other things, a Bonding Accommodation (as defined in the DIP Order) in the amount of \$200 million, pursuant to which the Debtors are authorized to satisfy a Bonding Request by providing the requesting governmental entity with a Superpriority Claim and/or a Bonding Facility Letter of Credit;¹

WHEREAS, IDNR has the authority to enter a settlement agreement with Debtors pursuant to the Illinois Surface Coal Mining Land Conservation and Reclamation Act, 225 Ill. Comp. Stat. Ann. 720/1.01, *et seq.*; and

WHEREAS, the Debtors and IDNR wish to resolve their disagreements as to the above matters as provided herein without any adjudication of any issue of law or fact;

NOW, THEREFORE, the Parties agree as follows, subject to Court approval:

¹ All capitalized terms not otherwise defined in this paragraph have the meanings given to them in the DIP Credit Agreement.

1. Commencing on the date this Stipulation and Order is approved by the Court, (a) IDNR shall have, pursuant to, as applicable, sections 105, 364 and 503 of the Bankruptcy Code and solely in the manner and to the extent as permitted as a "Bonding Superpriority Claim" under the DIP Order, an allowed superpriority claim having priority over any or all administrative expenses of the kind specified in section 503(b) of the Bankruptcy Code² in the amount of \$12,897,495 (the "Superpriority Claim") against the Debtors to secure the Illinois Mine Debtors' self-bonded reclamation obligations (provided that under no circumstances will Illinois recover more than \$12,897,495 on account of the Superpriority Claim other than if the Court reduces and reallocates another State's Superpriority Claim to Illinois in accordance with that State's court-approved stipulation and order regarding the Debtors' self-bonding obligations); and (b) the Debtors agree that the Superpriority Claim will not be terminated, as permitted under the DIP Order or otherwise, except as set forth in paragraph 15 below. The IDNR Superpriority Claim shall apply to all or any portion of the self-bonded reclamation obligations under all issued and outstanding permits. Immediately upon (1) the revocation of any self-bonded permit and declaration of forfeiture and demand for payment of the associated self-bond in accordance with applicable law and this Stipulation and Order, (2) the abandonment of any Illinois Mine Operations secured by self-bonded permits, or (3) conversion of Debtors' chapter 11 cases to cases under chapter 7 of the Bankruptcy Code, but in all instances after application to the Court after notice and a hearing, the IDNR shall be entitled to payment of its Superpriority Claim, to the extent of the self-bonded obligations owing under the affected permits.

² Except with respect to the claims of the Bonding Facility L/C Issuer to amounts held in the Bonding Facility Letter of Credit Account and with respect to the claims of the L/C Facility L/C Issuer to amounts held in the L/C Facility Letter of Credit Account (as such terms are defined in the DIP Credit Agreement).

2. Within thirty (30) days of approval of this Stipulation and Order, the Debtors shall post as a collateral bond a Bonding Facility Letter of Credit (as defined in the DIP Order), or provide a third party commercial surety bond or deposit cash (a "Collateral Assurance"), that meets the requirements of all applicable Illinois statutes and regulations, in the amount of \$3.2 million to secure the Illinois Mine Debtors' reclamation obligations related to the Illinois Mine Operations. The Bonding Facility Letter of Credit and Collateral Assurance shall not be included in the calculation of the Illinois Mine Debtors' Target Reduction provided in paragraph 5 and shall be irrevocable by the Debtors during its terms. The Collateral Assurance shall be irrevocable during the Compliance Plan Period (as defined below) and at all times thereafter; provided that if, at any time, IDNR reduces the Illinois Reclamation Self-Bond Amount to an amount that is lower than the Bonding Facility Letter of Credit or Collateral Assurance, the Bonding Facility Letter of Credit or Collateral Assurance shall be reduced by such amount. Until Debtors have replaced any Bonding Facility Letter of Credit with an acceptable Collateral Assurance that satisfies applicable Illinois law, the Debtors' obligation to provide a Bonding Facility Letter of Credit or another form of security will remain in place and the Bonding Facility Letter of Credit or other additional security may be drawn down and applied by IDNR in whole or in part upon its revocation of any issued and outstanding self-bonded permit and declaration of forfeiture and demand for payment of the associated self-bond. The Debtors' obligations under this paragraph are severable and independent of any other obligation in this Stipulation and Order.

3. During the Compliance Plan Period, the Debtors shall schedule (at reasonable times) and participate in at least one meeting each quarter with representatives of IDNR to discuss the activities required by this Stipulation and Order, the status of the Debtors'

reorganization and the Debtors' proposed compliance with their reclamation bonding obligations from and after the effective date of a plan of reorganization.

4. Within ninety (90) days of approval of this Stipulation and Order, the Debtors shall provide IDNR a plan outlining a process whereby the Debtors will reevaluate their bonding liability for the Illinois Mine Operations to ensure that the bond reflects the best available reclamation technology and to identify any available reductions in bond liability.

5. Beginning immediately after the Court approves this Stipulation and Order, and within fifteen months thereof, the Illinois Mine Debtors shall use their reasonable best efforts to reduce the total amount of the Illinois Mine Debtors' Self-Bonds, as such existed on the Petition Date, by at least \$20 million (the "Target Reduction"). The Illinois Mine Debtors may reduce the Illinois Mine Debtors' Self-Bonds by any manner permitted under the IDNR Regulations including, without limitation, (a) obtaining bond releases or reductions with respect to any of the Illinois Mine Debtors' Self-Bonds that are eligible therefor; (b) transferring self-bonded permits to another operator; or (c) replacing the Illinois Mine Debtors' Self-Bonds with commercial bonds that satisfy IDNR Regulations. In each case, IDNR shall promptly consider any such request by the Illinois Mine Debtors. Nothing in this paragraph shall require the Illinois Mine Debtors to use cash for reclamation to meet the Target Reduction. For the avoidance of any doubt, the Illinois Mine Debtors may not satisfy their obligations under this paragraph by abandoning mining sites, whether consensually, pursuant to the Bankruptcy Code, or otherwise, or by revocation and/or bond forfeiture, whether consensually or otherwise.

6. Beginning immediately after the Court approves the Stipulation and Order, all reclamation activities conducted by the Illinois Mine Debtors shall be monitored by an Independent Reclamation Consultant (the "Consultant"), who shall be given the same access to

each Illinois Mine Operation as any IDNR authorized representative under the Illinois Surface Coal Mining Land Conservation and Reclamation Act, 225 Ill. Comp. Stat. Ann. 720/1.01, *et seq.*, and corresponding regulations. The Consultant shall be retained at Debtors' cost, with such costs not to exceed \$10,000 per month for the duration of the Compliance Plan Period, no later than September 30, 2016, and shall be subject to the approval of IDNR and its counsel (and such approval shall not be unreasonably withheld). Beginning on October 31, 2016, and on a monthly basis thereafter, the Consultant shall submit a report to the Parties and their counsel for each Illinois Mine Operation that details (1) the current status of reclamation activities, (2) all reclamation activities undertaken since the preceding report, and (3) all reclamation activities projected to occur within the next 60 days. IDNR may rely on the contents and conclusions of the reports in taking any action under all applicable environmental, mining, permitting, and reclamation laws and regulations not otherwise prohibited by this Stipulation and Order.

7. Within 60 days of the date this Stipulation and Order is approved by the Court, the Illinois Mine Debtors will begin reclamation on three inactive mines, permits 51, 63, and 342.

8. As a condition precedent to the reduction or release of any Illinois Mine Debtor's third party commercial surety bond during the Plan Compliance Period, Debtors shall, in an amount not less than the reduction or release sought, replace the Illinois Mine Debtors' Self-Bonds with third party commercial surety bonds that satisfy IDNR Regulations. Any Illinois Mine Debtors' Self-Bond replaced as provided in this paragraph shall be included in the calculations of the Illinois Mine Debtors' Target Reduction contained in paragraph 5 above.

9. Commencing on the date this Stipulation and Order is approved by the Court and continuing through the Compliance Plan Period, (a) IDNR shall not seek additional collateral or revoke, terminate, refuse to grant, renew or amend or take any other adverse action with respect

to the Illinois Mine Debtors' mining permits on account of any failure by the Illinois Mine Debtors to comply with reclamation bonding obligations; (b) except as provided in this Stipulation, IDNR shall not seek to enforce the Illinois Mine Debtors' Self-Bonds and Corporate Guarantees or seek to revoke, terminate, refuse to grant, renew or amend or take any other adverse action with respect to the Illinois Mine Debtors' mining permits on account of their non-payment of obligations under the Illinois Mine Debtors' Self-Bonds and Corporate Guarantees; and (c) any proceedings by IDNR relating to the Debtors' self-bonding status shall be stayed. Nothing in this Stipulation and Order shall require IDNR to issue any new permit to any Debtor or modify or renew any existing permit where such modification or renewal purports to materially expand the mining operations onto additional lands not then currently subject to the permit and bonding requirements, without the submission of an acceptable reclamation bond, collateral, or other financial assurance with respect to any new, changed, or additional reclamation obligations that would result from such issuance.

10. The Debtors acknowledge their obligation to continue to comply with applicable Illinois law as of the effective date of any plan of reorganization in these chapter 11 cases. The Debtors further acknowledge that any plan of reorganization which fails to provide for replacement of the Illinois Mine Debtors' then remaining Self-Bonds is subject to review and potential objection by IDNR.

11. This Stipulation and Order is without prejudice to (a) any claims or causes of action that IDNR may assert over and above the Superpriority Claim against the Debtors on account of any obligation to perform reclamation under the Illinois Mine Debtors' Self-Bonds and Corporate Guarantees, including with respect to the amount of such claims and the priority of such claims or causes of action and (b) any defenses or objections to such claims by the

Debtors or other parties, including with respect to the amount of such claims and the priority of such claims or causes of action, all of which are expressly preserved. Except as specifically set forth in this Stipulation and Order with respect to the Debtors' reclamation bonding obligations, the Debtors agree to comply with their reclamation obligations as required by applicable law, including 28 U.S.C. § 959(b). Without limiting this Stipulation and Order, and excluding the Superpriority Claim, nothing in this Stipulation and Order shall limit, enhance or modify the validity, priority, classification or treatment of any claim that may be asserted by the IDNR in these chapter 11 cases (including in connection with any plan of reorganization) or the Debtors' defenses thereto.

12. During the Compliance Plan Period, with respect to any active permit pursuant to which coal is being mined by an Illinois Mine Debtor subject to the Illinois Debtors' Self-Bond, and where IDNR has a good faith basis to believe that such Illinois Mine Debtor will imminently fall out of compliance with such permit, upon notification from IDNR, such Illinois Mine Debtor must submit an updated mining and reclamation plan that identifies the anticipated activity during the Compliance Plan Period and demonstrates that all necessary actions will be taken to ensure that the Illinois Mine Debtors' activities will remain compliant.

13. Except as specifically set forth herein, nothing in this Stipulation and Order shall in any way limit or impair the rights of IDNR to enforce all applicable environmental, mining, permitting, and reclamation laws and regulations, and none of the Parties waive or release any legal or factual argument, claim, doctrine or defense applicable to any dispute related thereto.

14. Nothing in this Stipulation and Order shall limit any rights of the Debtors to operate, not operate, idle, close, sell or otherwise dispose of their mines in Illinois or any right of IDNR to object to such action; provided, however, that if the Debtors abandon, sell or otherwise

dispose of any such mine, IDNR shall have the right to demand that reclamation bonds or other collateral be posted for all outstanding reclamation obligations with respect to such mine.

Debtors acknowledge that none of the permits issued with respect to the Illinois Mine Operations may be transferred or licensed to another operator without the IDNR's written consent.

15. The Superpriority Claim shall terminate on the earlier of the date that (a) Debtors or the IDNR breaches the Stipulation and Order and fails to remedy such breach within five (5) business days of written notification of such breach by the non-breaching party, and the non-breaching party elects to so terminate; (b) the OSMRE revokes, terminates, refuses to grant or amend or takes any other adverse action with respect to the Debtors' Illinois mining permits and the Debtors or IDNR elect so to terminate; (c) the Superpriority Claim is replaced with collateral, bonding or other assurances acceptable to the IDNR; or (d) a plan of reorganization for the Debtors that provides for bonding of the Debtors' reclamation obligations in Illinois in accordance with applicable law becomes effective by its terms.

16. For purposes of this Stipulation and Order, "Compliance Plan Period" shall mean the earlier of the date that: (a) the Superpriority Claim is terminated pursuant to paragraph 15 hereof; (b) the Debtors' chapter 11 cases are converted to cases under chapter 7 of the Bankruptcy Code; (c) the lenders under the DIP Credit Agreement exercise remedies against the Term Facility Collateral; or (d) a plan of reorganization for the Debtors that provides for bonding of the Debtors' reclamation obligations in Illinois in accordance with applicable law becomes effective by its terms.

17. The termination of the Compliance Plan Period in accordance with paragraph 16 above shall not affect in any way (a) any right to payment that IDNR may have on account of the Debtors' self-bonded or bonded obligations that may arise from the revocation of any self-

bonded or bonded permit at any time, subject to any defenses that the Debtors may have thereto or (b) IDNR's right to payment or recovery on account of the Superpriority Claim to the extent not terminated, subject to any defenses that the Debtors may have thereto.

18. To the extent that the portion of the Illinois Reclamation Self-Bond Amount covered by the Illinois Mine Debtors' Self-Bonds is reduced below the amount of the Illinois Superpriority Claim, the Court may reduce and reallocate such amount of the Illinois Superpriority Claim to the other States' Superpriority Claims in proportion to their respective Reclamation Bond Amounts.

19. This Stipulation and Order is without prejudice to the rights of the Parties under applicable laws and regulations concerning the Debtors' bonding obligations subsequent to the Compliance Plan Period.

20. In the event that the Court does not approve this Stipulation and Order: (a) nothing contained herein shall be deemed to be a waiver of any claims or defenses or an admission of liability by any Party hereto; and (b) this Stipulation and Order shall be null and void, and all rights of the Parties prior to this Stipulation and Order shall be preserved.

21. Nothing in this Stipulation shall modify, alter or otherwise affect the rights or remedies of the agent of the lenders under the DIP Credit Agreement or be deemed to authorize the Debtors to violate the terms of the DIP Credit Agreement or the DIP Order.

22. This Stipulation and Order sets forth the entire agreement and understanding by and among the Parties. No amendment, waiver or modification of any provision of this Stipulation and Order shall be effective unless the same shall be in writing and signed by the Parties and approved by the Court.

23. This Stipulation and Order may be signed in counterparts which, when taken as a whole, shall constitute one and the same document; and facsimile or other electronic copies of signatures shall be deemed originals.


24. Each individual signing this Stipulation and Order on behalf of any Party hereto acknowledges and, with respect to his or her own signature below, warrants and represents that he or she is authorized to execute this Stipulation and Order in his or her representative capacity with binding effect, as reflected below and on behalf of the Party indicated.

25. This Stipulation and Order shall be governed by and shall be interpreted in accordance with the laws of the State of Illinois, except to the extent the Bankruptcy Code applies, without regard to Illinois's rules governing conflicts of laws.

26. No later than two days after the date this Stipulation and Order is entered on the docket, the Claims and Noticing Agent is directed to serve a copy of the Stipulation and Order and is directed to file a certificate of service no later than 24 hours after service.

DATED: September 16, 2016
St. Louis, Missouri

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Barry S. Schermer
United States Bankruptcy Judge

Peabody Energy Corporation, on behalf of
itself and the Illinois Mine Debtors

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