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March 31, 2015

Ms. Lisa Wade  
Chickaloon Village Traditional Council  
PO Box 1105  
Chickaloon, AK 99674

Subject: Informal Review for Air Quality Minor Permit AQ1227MSS04 for Usibelli Coal Mine, Inc.  
Wishbone Hill Facility, as amended 2/5/15.

Dear Ms. Wade:

I have completed my informal review of the minor permit (Permit No. AQ1227MSS04, Rev. 1) revised on February 5, 2015, which you requested in a letter dated February 19, 2015 on behalf of the Chickaloon Village Traditional Council (CVTC). You contested the ambient air quality boundary upon which the permit is based, alleging that ADEC had not demonstrated that Usibelli has the authority or ability to exclude the public.<sup>1</sup>

For this review I have considered your request and supporting information, your response to Director Edwards' February 27, 2015 request for additional information, Usibelli Coal Mine, Inc. response to Director Edwards' February 27, 2015 request for information, appropriate federal guidance, and the permit record.

**Decision:**

I find that the ambient air quality boundary used in the permit decision was correct, and that Usibelli's authority and ability to preclude public access within the ambient air quality boundary are adequate. The permit, as amended through February 5, 2015 remains effective as written.

**Reasons for the Decision:**

Usibelli's lease includes a provision stating that public access may be restricted for safety reasons. Preventing persons from experiencing unhealthy levels of air pollution can be reasonably described

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<sup>1</sup> You also assert that Usibelli should not exclude the public from the area; however, that question is not a relevant criteria for establishment of an ambient air quality boundary for permitting purposes and was not reviewed.

as a safety reason. Usibelli identified the ambient air quality boundary in their revised lease application.<sup>2</sup> Absent any decision from the Lessor to the contrary, I find that the lease appears to provide sufficient authority to restrict public access within the identified ambient air quality boundary.

To address the actual ability of Usibelli to preclude access by the public, I refer to the expert opinion of the Department staff who visited the site and observed the boundary. They have explained that a fence can clearly establish a boundary. The Department evaluates a proposed ambient boundary that does not have a fence by comparing the effort necessary to approach and cross the boundary to the effort necessary to cross a typical roadside chain-link fence. Staff found for the eastern Wishbone Hill ambient boundary, the location and vegetation was sufficient to establish an ambient boundary, except where trails approach and cross the proposed boundary. The permit addresses these locations for existing and any future trails by requiring fencing where the trails cross the boundary.

CVTC's informal review request also indicates that public access has been effectively precluded in the past, noting on page 3 that barriers erected by Usibelli prevented tribal citizens from accessing State lands within the permit area. Therefore, I find that Usibelli has the actual ability to preclude public access.

**Opportunity to Seek Adjudicatory Hearing:**

This letter comprises the Department's final decision under 18 AAC 15.185. You may seek an adjudicatory hearing regarding this decision under 18 AAC 50.200 by serving a request upon the Commissioner of the Department of Environmental Conservation, 410 Willoughby Avenue, Suite 303, Juneau, Alaska 99811-1800 within 30 days of this decision. If a hearing is not requested in writing within 30 days, the right to appeal is waived.

Sincerely,



Cindy Heil, Acting Director  
Division of Air Quality

cc: Larry Hartig, Commissioner, ADEC  
Alice Edwards, Deputy Commissioner, ADEC  
John Kuterbach, ADEC/APP  
Zeena Siddeek, ADEC/APP  
Rob Brown, UCM, [rob@usibelli.com](mailto:rob@usibelli.com)  
Colin O'Brien, [cobrien@earthjustice.org](mailto:cobrien@earthjustice.org)  
Steve Ross, DOL/Attorney General's Office  
Russell Kirkham, Coal Regulatory Program Manager, DNR

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<sup>2</sup> Available on the Department of Natural Resources website, Wishbone Hill Documents, Part D, page D-129.