NAVAJO NATION ENVIRONMENTAL PROTECTION AGENCY
Navajo Nation Operating Permit Program
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Detailed Information

Permitting Authority: NNEPA

County: San Juan **State:** New Mexico **AFS Plant ID:** 35-045-NAV02

Facility: Four Corners Steam Electric Station
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RESPONSES TO COMMENTS

on the Part 71 Permit Renewal to Operate Four Corners Steam Electric Station Permit No. NN-ROP-05-07

On December 31, 2007, the Navajo Nation Environmental Protection Agency (NNEPA) had notices published in the Daily Times of Farmington, New Mexico, the Gallup Independent of Gallup, New Mexico, and the Navajo Times of Window Rock, Arizona stating that Four Corners Steam Electric Station, located at the end of San Juan County Road 6675, Fruitland, New Mexico, had applied for a Part 71 Operating Permit renewal to operate a coal-fired power plant. The notice also stated that NNEPA proposed to issue a permit for this operation and provided information on how the public could review the proposed permit and other documentation. Finally, the notice informed interested parties that they would have thirty (30) days to provide comments on whether or not the permit should be issued as proposed.

On January 31, 2008, Mr. Robert Ukeiley, on behalf of WildEarth Guardians, submitted comments on the proposed Part 71 Operating Permit. These comments are listed in Comments 1 through 20. On February 13, 2008, U.S. EPA, Region 9 submitted comments on the proposed Part 71 Operating Permit. These comments are listed in Comments 21 through 27. On February 11, 2008, Four Corners Steam Electric Station (referred to as "the permittee") submitted comments on the proposed Part 71 Operating Permit. These comments are listed in Comments 28 through 51. This Response to Comment document provides responses to all of these comments. When permit language is included in the response, bolded language indicates additions to the permit and language with a line through it has been deleted from the permit.

Comments from WildEarth Guardians (Comments 1 through 20)

Comment 1:

We recommend that you do not say that the permit is enforceable by “citizens” on 1st

page. While we understand what you mean, others less familiar with the Clean Air Act may assume that one has to be a citizen of the United States in order to enforce a permit. Thus, one could mistakenly believe that the permit discriminates against people who are not U.S. citizens as well as entities such as Tribes, States and corporations. Therefore, we suggest you replace "citizens" with the phrase "persons, as defined in the Clean Air Act."

Response to Comment 1:

The proposed change has been made to the cover page of the permit.

Comment 2:

Condition II.A.1.g should be clarified to explicitly state that the affirmative defense does not apply to actions seeking injunctive relief.

Comment 3:

In Condition II.A.1.m, it would be useful to explain when startup starts. A common definition is when there is first a flame in the boiler.

Furthermore, the definition of when startup ends needs to be changed. The permit's definition is the most expansive definition we have ever seen. More importantly, it seems arbitrary. Usually startup is described as ending when the flue gas temperature at a certain location has reached a certain temperature. This is based on the belief that certain equipment may not be able to operate below that temperature. For example, some people believe that an Electro-Static Precipitator (ESP) may have difficulty operating under a certain temperature because of sulfuric acid condensation. However, for this permit, there does not appear to be any rational relationship between a certain mega-wattage that has been chosen as the end of startup and any reason why there should be excess emissions before the unit achieves that mega-wattage. The plant operator's or owners' desire to make more money by quickly ramping up the unit between 0 and 400 megawatts is not a rational basis upon which to make air pollution permitting decisions. Because none of the units at Four Corners have ESPs, we recommend that you simply delete the startup excuse provision and the definition of startup.

Comment 4:

II.A.2.a.i contains a sentence that is problematic in terms of not being understandable and thus not being enforceable as a practical matter. The sentence is: "This percent emitted is determined by a daily calculation of the plantwide heatinput [sic] weighted annual average.?

We suggest that you reference the later provisions for calculating compliance or non-compliance with the 12% requirement. Furthermore, as explained in more detail below, there needs to be monitoring and reporting of mass sulfur dioxide (SO_2) emissions plant wide on a rolling three hour basis.

Comment 5:

II.A.2.b needs to clearly explain that the particulate matter (PM) emission limit is for total PM, that is condensable and filterable PM. If the FIP is to ensure compliance with PM National Ambient Air Quality Standards (NAAQS) and NAAQS are limits on total PM, then this limit needs be for total PM. Furthermore, Condition II.A.3 needs to be changed to a test method to test total PM such as Method 202b.
In the alternative, if you incorrectly maintain that this is a limit for just filterable PM, you still need to make sure that the test method tests is for PM and not just PM10 as the permit limit is written in terms of PM and not just PM10.

Comment 6:

The statement: "If the baghouse is operating within its normal operating parameters, the baghouse is not fully closed, and a high opacity reading occurs, it will be presumed that the occurrence was caused by saturated stack conditions and shall not be considered a violation[]" in Condition II.A.3 must be removed. No factual or legal basis is provided for this condition in the Statement of Basis (SoB). Furthermore, no rational basis exists. There are a variety of reasons that could cause excess opacity readings when the baghouse is operating within its normal operating parameters and the baghouse is not fully closed. These range for an under-designed baghouse to a batch of coal with high ash content. Furthermore, this assumption assumes that the Continuous Opacity Monitoring System (COMS) reads water vapor as opacity. Many, if not most, COMS are designed not to read water vapor as opacity. In addition, even if the COMS was reading water vapor as a certain percentage of opacity, there is no basis to assume that the percentage is greater than the compliance margin. For example, is water vapor is adding 15% to the COMS opacity readings which are 60%, this would still be a violation as opacity would be actually 45% which is still above the permit limit.

In the alternative, if you maintain this condition, which would be incorrect, then you would need to define what are "normal operating parameters" as used in this condition.

Comment 7:

Condition II.A.3.a must require a CEMs that monitors NOx, not just NO, because the permit limit is for NOx.

Responses to Comments 2 through 7:

Condition II.A directly incorporates provisions of the Federal Implementation Plan (FIP) for the Four Corners Plant, as finalized on May 7, 2007, 72 Fed. Reg. 25698, and codified at 40 C.F.R. § 49.23 Since the FIP provisions are underlying applicable requirements which cannot be changed through Title V permitting process, NNEPA is without authority to make any of the suggested changes. Changes to these conditions can only be

made by U.S. EPA. Therefore, NNEPA has not made any changes as a result of Comments 2 through 7.

Comment 8:

In order to assure compliance with Condition II.A.2.e.ii, the permit must require the permittee to perform the calculation in Condition II.A.3.d and report the results in the semi-annual reports to U.S. EPA and the Navajo Nation EPA.

Response to Comment 8:

The provisions of the FIP (40 CFR 49.23) do not include recordkeeping and monitoring requirements for the 24-hour plant-wide NOx emission limit in Condition II.A.2.e(ii). In order to demonstrate compliance with the NOx emission limit in Condition II.A.2.e(ii) and as required by the Title V operating provisions of 40 CFR 71.6(a)(3)(iii), a recordkeeping requirement for daily emission calculations has been added to Condition III.B as follows:

III.B. Recordkeeping Requirements [40 CFR § 71.6 (a)(3)(ii)]

. . .

3. In order to demonstrate compliance with Condition II.A.2.e(ii), the permittee shall keep records of the 24-hour period of total NOx emissions from the entire plant. The NOx emissions shall be calculated based on the equation specified in Condition II.A.3.d. [40 CFR § 71.6(a)(3)(ii)]

A corresponding reporting requirement has been added to Condition III.C:

III.C. Reporting Requirements [40 CFR § 71.6 (a)(3)(iii)]

. . .

5. In order to demonstrate compliance with Condition II.A.2.e(ii), the permittee shall submit the 24-hour period NOx emissions data to U.S. EPA and NNEPA in the semi-annual monitoring reports required by Condition III. C.1. [40 C.F.R. § 71.6 (a)(3)(iii)]

Comment 9:

Condition II.A.3.b.ii must have a minimum data requirement for the number of days per year that must have input and stack SO_2 amounts. Otherwise, the facility could simply choose to exclude unfavorable data.

Comment 10:

In order for condition II.A.3.c to be rational and enforceable as a practical matter, the Permit needs to define "maximum operation" in lb/MMBtu heat input. Similarly, the "device design capacity" used in III.A.2 needs to be defined.

Also, condition II.A.3.c should be clarified that "annual" applies to each stack. Also, the condition should be clarified that to explain that runs must be at least 60 minutes so that runs that are longer than exactly 60 minutes are not rejected. Finally, the condition should explain that invalid runs can be disregarded and the results can be determined based on two runs or if not, the condition must require that stack test without three valid runs must be redone within a certain time such as thirty days.

Comment 11:

II.A.3.e should be changed to delete the year and a half period before determining compliance with the FIP provisions. There is no basis for this delay and none was offered in the SoB.

Comment 12:

II.A.4.b must require reporting of three hour average plant wide SO_2 emissions in lb/hr to all for a determination of compliance with II.A.2.a.ii. This is an easy requirement as the source is going to be reporting daily SO_2 emissions anyway. In addition, this condition should be clarified to explain that these reports have to be submitted semi-annually.

Responses to Comments 9 through 12:

Condition II.A directly incorporates provisions of the FIP. Since the FIP provisions are underlying applicable requirements which cannot be changed through Title V permitting process, NNEPA is without authority to make any of the suggested changes. Changes to these conditions can only be made by U.S. EPA. Therefore, NNEPA has not made any changes as a result of Comments 9 through 12.

Comment 13:

The CAM provisions in Condition II.C. must be augmented to include requirements to record and report the results of the parameter monitoring to the U.S. EPA and the Navajo Nation EPA.

Response to Comment 13:

Although the recordkeeping and reporting requirements of the permit do not specifically call out CAM monitoring records and reports, the generalized provisions of Conditions III.B. and III.C, which require recordkeeping and reporting of all monitoring results, apply to the CAM monitoring. Therefore, NNEPA believes that the permit already

requires the recordkeeping and reporting sought by the commenter, and thus the proposed permit conditions adequately addresses the commenter's concerns. Therefore, no change has been made as a result of this comment.

Comment 14:

The SoB should be corrected to explain that CAM does apply to the NOx and SOx emission limits except for the Acid Rain requirements. EPA explained this in its draft SoB for the original Part 71 Permit. See Ex. 1 at 4. The permit would then need a provision applying CAM to NOx and SOx limits that derive from the FIP. However, CAM can and should be the NOx and SOx CEMS.

Response to Comment 14:

The FIP provisions of 40 C.F.R. § 49.23(e)(1) require the permittee to continuously monitor the SO_2 and NOx emissions from all the existing boilers at this source. This continuous compliance determination method has been incorporated into this Part 71 permit as Condition II.A.3.a. Because the Part 71 permit requires CEMS for NOx and SO_2 emissions for the boilers at this source, they are exempt from CAM for those pollutants, pursuant to 40 C.F.R. § 64.2(d)(1)(vi). The discussion in Section 4(l) in the SoB has been revised to state that the CAM exemption for the SO_2 and NOx emissions is based on the provision of 40 C.F.R. § 64.2(d)(1)(vi) instead of 40 C.F.R. § 64.2(d)(1)(iii).

Comment 15:

The SoB does not explain when U.S. EPA approved the revised Acid Rain Program NOx emissions averaging plan for boilers B1 through B5. It appears that there was no NOx emission averaging plan for 2005. The SoB should explain this.

Also, there are figures that are crossed out. Therefore, it is not clear what is applicable and what is not. The SoB should clarify this.

Response to Comment 15:

The Acid Rain Permit renewal for this source will be issued by U.S. EPA. Comments related to Acid Rain permit have been directed to U.S. EPA, which will respond in a separate "Response to Comments" for the Acid Rain Permit Renewal.

Section 4(b)(3) of the SoB for this Part 71 permit has been revised to state that the numbers in bold mean the current limits and the numbers stricken out represent the limits in the Acid Rain Permit issued on January 1, 1998.

Comment 16:

U.S. EPA should make sure it completes the mercury trading rule for Indian Country promptly.

Response to Comment 16:

On February 8, 2008, the U.S. Court of Appeals for the District of Columbia Circuit vacated the Clean Air Mercury Rule (CAMR). The discussion for CAMR in Section 4(c) of the SoB has been revised to state that CAMR is vacated. As CAMR is no longer an effective regulation, NNEPA has no basis to believe that U.S. EPA will complete its mercury trading rule for Indian Country.

Comment 17:

The SoB claims that New Source Performance Standard Subpart Y, 40 CFR 60.250 - 60.254, is not an applicable requirement. This is incorrect. U.S. EPA and almost all the states have long interpreted the coal conveying and processing equipment at a coal fired electric steam generating unit as sources subject to Subpart Y. See e.g. Ex. 2 at 11 (draft permit for Desert Rock) Therefore, the requirements of Subpart Y should be added to this permit.

Response to Comment 17:

As explained in Section 4(e) of the SoB, this source does not perform breaking, crushing, screening, wet or dry cleaning, or thermal drying for the coal received. As such, the coal handling operation at this source is not considered a coal preparation plant, according to the definition in 40 C.F.R. § 60.251. Therefore, the requirements of NSPS, Subpart Y are not applicable to the coal handling operation at this source. NNEPA made no changes as the result of this comment.

Comment 18:

The draft permit claims there is no startup boiler. This seems unusual that a coal fired power plant of this size would not have a startup boiler. We recommend that you take a site visit to determine if there is a startup boiler and if so, include the applicable requirements.

Response to Comment 18:

NNEPA has confirmed that no startup boiler exists at this plant. NNEPA made no changes as a result of this comment.

Comment 19:

The Phase II NOx Averaging Plan attached to the Draft Acid Rain permit is marked as new. However, it should be marked as revised.

Response to Comment 19:

As stated in our response to Comment 15 above, U.S. EPA, which will respond in a separate "Response to Comments" for the Acid Rain Permit Renewal.

Comment 20:

The Navajo Nation EPA submitted comments on the original Part 71 permit requesting that U.S. EPA include monitoring for mercury emissions. U.S. EPA rejected the Navajo Nation EPA's comments. Navajo Nation EPA should now require a mercury CEMS.

Response to Comment 20:

There are no applicable regulations that regulate mercury for this source. See Section 4 of the SoB. Therefore, NNEPA has no authority to require a mercury CEMS at this source. In addition, as noted in the response to Comment 16, the U.S. Court of Appeals for the District of Columbia Circuit recently vacated the CAMR rule, the only potential regulation that could have required such monitoring.

Comments from U.S. EPA (Comments 21 through 27)

Comment 21:

Condition II.C.l, which incorporates §64.6 through §64.8 of the Compliance Assurance Monitoring (CAM) rule, is vague, and flawed because it incorporates requirements that do not apply to the facility. U.S. EPA recommends that NNEPA delete this condition, and replace it with more specific, enforceable conditions.

§64.6 contains requirements for permitting authorities to review and approve CAM plans submitted by facilities subject to CAM, and permit content requirements. These requirements apply to permitting authorities, not facilities. We note that one of the permit content requirements is a definition of an excursion or exceedance. NNEPA should add such conditions to the final permit as appropriate for each control device.

§64.7, operation of approved monitoring, contains requirements that are currently applicable to the facility. NNEPA should include one or more conditions in the final permit to implement these requirements. For example, the permit should specify what the facility must do when it detects an excursion or exceedance (§64.7(d)).

§64.8 contains requirements for quality improvement plans (QIP). A local permitting authority or EPA may require a QIP if it believes that the source's response to a pattern of exceedances or excursions is inadequate. However, the Four Corners plant is about to start implementing CAM monitoring, and at this stage there is no need for a QIP.

Response to Comment 21:

Condition II.C.1 has been revised as follows as a result of this comment. In addition, due to the source's comments provided in Comment 36, the timeframe for implementing the CAM requirements has been changed to be within ninety (90) days after the issuance of this Part 71 permit (see the response to Comment 36).

II.C. CAM Requirements [40 CFR 64]

. . .

1. ~~The CAM program for boilers B1 through B5 shall follow the Approval of Monitoring, Operation of Approved monitoring, and Quality Improvement Plan (QIP) requirements specified in 40 CFR §§ 64.6, 64.7, and 64.8, respectively.~~ **The permittee shall comply with the following requirements in 40 CFR 64.7:**

   a. The permittee shall conduct the CAM requirements within ninety (90) days after the issuance of this Part 71 permit.

   b. At all times, the permittee shall maintain the monitoring, including but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

   c. Except for, as applicable, monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), the permittee shall conduct all monitoring in continuous operation (or shall collect data at all required intervals) at all times that the pollutant-specific emissions unit is in operating. Data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities shall not be used for purposes of 40 CFR Part 64, including data averages and calculations, or fulfilling a minimum data availability requirement, if applicable. The permittee shall use all the data collected during all other periods in assessing the operation of the control device and associated control system. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

   d. Upon detecting an excursion or exceedance, the permittee shall restore operation of the pollutant-specific emissions unit (including the control device and associated capture system) to their normal or usual manner of operation as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions. The response shall include minimizing the period of any

startup, shutdown or malfunction and taking any necessary corrective actions to restore normal operation and prevent the likely recurrence of the cause of an excursion or exceedance (other than those caused by excused startup or shutdown conditions). Such actions may include initial inspection and evaluation, recording that operations returned to normal without operator action (such as through response by a computerized distribution control system), or any necessary follow-up actions to return operation to within the indicator range, designated condition, or below the applicable emission limitation or standard, as applicable.

Determination of whether the permittee has used acceptable procedures in response to an excursion or exceedance will be based on information available, which may include, but is not limited to, monitoring results, review of operation and maintenance procedures and records, and inspection of the control device, associated capture system, and the process.

e. After approval of monitoring under Part 64, if the permittee identifies a failure to achieve compliance with an emission limitation or standard for which the approved monitoring did not provide an indication of an excursion or exceedance while providing valid data, or the results of compliance or performance testing document a need to modify the existing indicator ranges or designated conditions, the permittee shall promptly notify the permitting authority and, if necessary, submit a proposed modification to the Part 71 permit to address the necessary monitoring changes. Such a modification may include, but is not limited to, reestablishing indicator ranges or designated conditions, modifying the frequency of conducting monitoring and collecting data, or the monitoring of additional parameters.

. . .

Comment 22:

Part 71 includes "excursions," as that term is defined in Part 64, in the definition of "deviation" (71.6(a)(3)(iii)(C)(4)), and requires that they be promptly reported as well as disclosed in the semi-annual monitoring reports. The draft permit does not include "excursion" in its definition of "deviation" and does not require excursions to be included in the monitoring reports. NNEPA should add "excursion" to the definition of "deviation" in condition III.C.1(c)(iv), and to the list of required monitoring report data elements in condition III.C.1(a)(v).

Response to Comment 22:

As the results of this comment, Condition III.C.1.(a)(v) has been revised to require the reports of excursions. Condition III.C.1.(c)(iv) has been revised to include excursion in the definition of deviation. The definitions of "exceedance" and "excursion" have been added to this condition. Therefore, Condition III.C.1. has been revised as follows:

III.C. Reporting Requirements [40 CFR § 71.6 (a)(3)(iii)]

1. . . .

a. A monitoring report under this section must include the following:

. . .

(v) All instances of deviations from permit requirements, including those attributable to upset conditions as defined in the permit and including exceedances **and excursions** as defined under 40 CFR 64, and the date on which each deviation occurred.

. . .

c. "Deviation," means any situation in which an emissions unit fails to meet a permit term or condition. A deviation is not always a violation. A deviation can be determined by observation or through review of data obtained from any testing, monitoring, or record keeping established in accordance with 40 CFR §§ 71.6(a)(3)(i) and (a)(3)(ii). For a situation lasting more than 24 hours, each 24-hour period is considered a separate deviation. Included in the meaning of deviation are any of the following:

. . .

(iv) A situation in which an exceedance **or an excursion**, as defined in ~~the compliance assurance plan (~~40 CFR 64~~),~~ occurs.

(v) Pursuant to 40 CFR § 64.1, exceedance means a condition that is detected by monitoring that provides data in terms of an emission limitation or standard and that indicates that emissions (or opacity) are greater than the applicable emission limitation or standard (or less than the applicable standard in the case of a percent reduction requirement) consistent with any averaging period specified for averaging the results of the monitoring.

(vi) Pursuant to 40 C.F.R. § 64.1, excursion means values outside the CAM indicator ranges established for total recycle flow rate, differential pressure, or opacity in Condition II.C of this permit.

. . .

Comment 23:

Since the acid rain permit renewal that EPA will issue will contain the facility's acid rain renewal application, Attachment B is not necessary and U.S. EPA recommend that NNEPA delete it. For the same reason, Condition II.B. should be revised to remove this language: "...and the acid rain permit application (see Attachment B)."

Response to Comment 23:

Attachment B has been removed from the permit and Condition II.B has been revised as requested.

Comment 24:

Since the facility is not voluntarily accepting any limits on its potential to emit (PTE) in this permit, its PTE will be the same before and after permit issuance. For greater clarity, we recommend that NNEPA delete the phrase "after issuance" in the heading "Potential to Emit after Issuance" in Section 1.1 of the SoB.

Response to Comment 24:

Section 1.1 of the SoB has been revised as requested.

Comment 25:

Section 1.1(c) of the SoB states that "fugitive emissions from this source are counted toward determination of PSD review." Since the facility is currently a major source under the Prevention of Significant Deterioration program due to its PTE of criteria pollutants, and the facility is not making a physical change or a change in its method of operation, there is no need to address how fugitive emissions are evaluated for PSD applicability purposes. For greater clarity, U.S. EPA recommend deleting section (c).

Response to Comment 25:

Section 1.1(c) has been removed from the SoB as a result of this comment.

Comment 26:

The last two sentences of section 3 of the SoB are misleading because they give the impression that NNEPA is currently making a PSD applicability determination for modifications the facility made in the past. In addition, PSD is triggered at an existing major source by a "significant" emission increase, as that term is defined in 40 C.F.R 52.21, not by having a "potential to emit greater than the significant modification thresholds." For these reasons, and since the facility is not currently making a physical change or a change in its method of operation, the SoB language should be revised. U.S.

EPA suggests the following changes:

> The projects that occurred after 1970 ~~do~~ did not result in an emission increase above ~~have potential to emit greater than~~ the significant modification thresholds in 40 C.F.R. § 52.21. Therefore, these projects ~~are not subject to the requirements of~~ did not trigger PSD

Response to Comment 26:

NNEPA has discussed this comment with U.S. EPA, which after further consideration, indicated that they recommended simply deleting the two sentences from the statement of basis. NNEPA agrees and has made this change.

Comment 27:

The description of CAM applicability for NO, and SO_2 for Boilers B1-B5 in section (1) on page 14 of the SoB is not accurate because it states that the requirement to operate continuous emissions monitors (CEMS) under the acid rain program exempts the boilers from CAM for those pollutants. In fact, the applicable CAM exemption is for emission limitations for which the Title V permit specifies a continuous compliance determination method (§64.2(b)(1)(vi)). Since the permit requires the use of CEMS for NO_X and SO_2, the boilers qualify for this exemption for those pollutants.

Response to Comment 27:

The SoB has been revised to clarify the applicability of the CAM exemption, as requested.

Comments from the Permittee (Comments 28 through 51)

Comment 28:

The permittee has significant concerns about the jurisdictional language on the cover page, because it is contrary to the Voluntary Compliance Agreement (VCA) between APS and the Navajo Nation. Maintaining the viability of the VCA is very important to APS, as we know it is to the Navajo Nation. The jurisdictional assertions on the cover page contradict the VCA and thereby jeopardize the integrity of the VCA. They proposed the following changes:

- Contrary to the language in the first paragraph of page 1, this permit is not issued pursuant to the Navajo Nation Operating Permit Rules. The VCA is very clear that "the permit is issued pursuant to the VCA between the permittee and the Navajo Nation" (see Article 6 of the VCA). Indeed, Section IV.S of this very permit specifically states, "This permit is issued pursuant to the VCA" between the parties. We respectfully request that this same language be used in the first

paragraph of the cover page, and the references to the "Navajo Nation Operating Permit Rules" be deleted. We have previously requested deletion of the references to the Navajo Nation Operating Permit Rules, and the Navajo Nation, through its attorney (Jill Grant), has agreed that this paragraph should not reference the Navajo Nation Operating Permit Rules generally. It is critical to the continuing viability of the VCA that this change be made. Any language indicating that the Navajo Nation Operating Permit Regulations apply generally could result in termination of the VCA between APS and the Navajo Nation.

- The VCA also clearly specifies that "The Navajo Nation will not seek to enforce any permit issued under Part 71 in tribal court, but will refer all such enforcement to USEPA" (see § 5.4.5). For this reason, the language in the second paragraph stating that the permit is "enforceable by NNEPA" must be deleted.

- For the reasons expressed above, the reference in the second paragraph to enforcement under the Navajo Nation Clean Air Act must be deleted. Enforcement of this permit is by USEPA alone, pursuant to the federal Clean Air Act, as provided in the VCA.

  The permittee stated that they will be forced to consider challenging the permit and, potentially, terminating the VCA, if the proposed changes are not made in the final permit.

Response to Comment 28:

The language of the first paragraph on the cover page has been revised to clarify that this permit is being issued pursuant to the Title V Operating Permit rules, the delegation agreements with U.S. EPA, and certain portions of the Navajo Nation operating permit regulations. The VCA provides a framework for the NNEPA to operate under these authorities as they apply to APS and NGS, but does not provide any authority to the NNEPA to issue permits. NNEPA is not, therefore, referencing the VCA in this general statement of authority. However, NNEPA agrees that more specificity is desirable regarding the rules and agreements that establish NNEPA's authority to issue the permit. The following changes have been made to the language of the first paragraph of the permit cover page:

. . .

~~This permit is being issued and administered by the Navajo Nation EPA ("NNEPA") pursuant to the Delegation Agreement between EPA Region IX and NNEPA, dated October 15, 2004.~~ In accordance with the provisions of Title V of the Clean Air Act~~,~~**;** 40 CFR Part 71~~,~~**;** Navajo Nation Operating Permit Regulations **§§ 404, 405(c)-(e), and subpart VI; 2004 Delegation Agreement § VI(1) and (7); 2006 Supplemental Delegation Agreement**~~,~~**;** and all other applicable rules and regulations, the Permittee, Four Corners Steam Electric Station, is

authorized to operate air emission units and to conduct other air pollutant-emitting activities in accordance with the permit conditions listed in this permit.

Terms and conditions not otherwise defined in this permit have the same meaning as assigned to them in the referenced regulations. All terms and conditions of the permit are enforceable **under the Clean Air Act** by ~~NNEPA and by~~ **U.S.** EPA, as well as by persons~~,~~ as defined in the Clean Air Act, **and by NNEPA only as provided in the VCA**~~, under either or both the Navajo Nation Clean Air Act and the Clean Air Act, as applicable~~. If all proposed control measures and/or equipment are not installed and/or properly operated and maintained, this will be considered a violation of the permit.

. . .

In addition, a change has been made to the heading of Condition IV.S. for a similar reason, as follows:

IV.S. ~~**Part 71 Permit Issuance**~~ **Additional Permit Conditions** [Voluntary Compliance Agreement, Article 6]

Comment 29:

Paragraph two of the cover page states, "If all proposed control measures and/or equipment are not installed and/or properly operated and maintained, this will be considered a violation of the permit."

This language constitutes a new permit requirement (to "install" and "properly operate and maintain" equipment), and specifies that a failure to do so constitutes a permit violation. The permittee requested to delete this language since there is no independent basis in 40 CFR Part 71 for this requirement. In addition, the VCA provides that this permit cannot add new terms and conditions.

Response to Comment 29:

The requirement to "install" and "properly operate and maintain" equipment is implied and often specifically stated in underlying regulations. Moreover, NNEPA disagrees that this language constitutes a new permit requirement. In fact, this exact language appeared on the signature page of the initial Part 71 permit issued by U.S. EPA on June 12, 2001. Because regulations do not always specifically state that proper operation and maintenance of monitoring equipment is necessary, the Title V operating permit provisions at 40 C.F.R. § 71.6(a)(3)(i)(C) require that the operating permits contain such requirements. NNEPA contends that it has the authority and responsibility to implement these provisions. It would be inappropriate under the VCA to apply a new tribal requirement but it is completely appropriate to apply the Federal provisions whether they be new or a long standing requirements.

Despite this, NNEPA has decided to remove the last sentence of the second paragraph on the cover of the permit because it does not add anything to the clarity or enforceability of the permit. The provisions requiring the installation, operation and maintenance of control and monitoring equipment are all contained elsewhere in the permit with more details.

Comment 30:

The permittee has the following comments regarding the FIP requirements in Condition II.A:

(a) The direct incorporation of FIP language into this permit causes confusion and could be interpreted to allow additional time to implement certain requirements, as follows:

The second and third sentences in Section II.A.3.a. are directly from the FIP. The permittee stated that they have already met this six month requirement and did not have a need to petition the Regional Administrator for an extension. APS requests that this language be deleted; this section would then read as follows:

> "The owner or operator shall maintain and operate CEMS for SO_2, NO or NOx, a diluent and, for boiler B4 and B5 only, COMS, in accordance with 40 CFR §§ 60.8 and 60.13, and Appendix B of 40 CFR Part 60. Completion of 40 CFR § 75 monitor certification requirements shall be deemed to satisfy the requirements under 40 CFR §§ 60.8 and 60.13 and Appendix B of Part 60. The owner or operator shall comply with the quality assurance procedures for CEMS found in 40 CFR § 75, and all reports required there under shall be submitted to the Regional Administrator. The owner or operator shall provide the Regional Administrator notice in accordance with 40 CFR § 75.61."

The third sentence in Section II.A.3.c. contains FIP language that Four Corners has already met. The permittee requested that this section be revised to read as follows:

> "*Particulate Matter*. Particulate matter emissions shall be determined by averaging the results of three test runs. Each test run shall be sixty (60) minutes in duration and shall collect a minimum volume of thirty (30) dry standard cubic feet. ***Particulate matter testing shall be conducted annually and at least six (6) months apart, with the equipment within 90 percent of maximum operation in accordance with 40 CFR 60.8 and Appendix A to 40 CFR Part 60.*** The owner or operator shall submit written notice of the date of testing no later than 21 days prior to testing. Testing may be performed on a date other than that already provided in a notice as long as notice of the new date is provided either in writing or by telephone or other means acceptable to the Region 9 Enforcement Office,

and the notice is provided as soon as practicable after the new testing date is known, but no later than 7 days (or a shorter period as approved by the Region 9 Enforcement Office) in advance of the new date of testing."

(b) Section II.A.2.e states, "No owner or operator shall discharge or cause the discharge of NOx into the atmosphere." There is a period at the end of this sentence. This language prohibits Four Corners from discharging *any* NOx. The intent of this language is not to prohibit all NOx emissions from the plant but, rather, to limit NOx emissions as set forth in e.(i) and e.(ii). The permittee requests that this provision be revised to parallel the language in the SO_2 emission limitation: "The permittee shall not discharge or cause the discharge of NOx in the atmosphere *in excess of*."

Response to Comment 30:

Language in Condition II.A is verbatim language from 40 C.F.R. § 49.23. NNEPA does not have authority to change a federal regulation through a title V permitting process. Changes can only be made by U.S. EPA as appropriate. Specific issues raised in Comment 30 are discussed below.

Commenter requests that certain conditions regarding the CEMS be removed because they have already been met. As NNEPA has not independently verified whether the permittee has indeed complied with these requirements, NNEPA is not prepared remove the provisions from the permit. If the permittee has indeed already complied with them, their inclusion in the permit will not create any additional obligations for the permittee. To help clarify the permit, however, NNEPA has made one minor change to the language of these provisions. While the FIP requires particulate matter testing within "six (6) months of the promulgation of this section," where the word 'section' refers to the specific FIP provision contained at 40 C.F.R. § 49.23(e)(3), the use of the word 'section' in the permit without further clarification could be confusing as it could be referring either to the FIP or the permit. Therefore, NNEPA has inserted a bracketed clarification in the provision as follows: ". . . promulgation of this section [40 C.F.R. § 49.23]. . . " By making this change, NNEPA is not making any changes to the requirements of the FIP, only adding additional language that clarifies the application of the provision.

Finally, commenter suggested a change to the language in Condition II.A.2.c, which sets forth the FIP NOx limitations. As with the rest of the requested changes in this comment, NNEPA can not make this particular change because it would be changing FIP language. However, to clarify NNEPA's understanding of the provision and to help address the commenter's concerns, NNEPA interprets this provision not to be an absolute prohibition on the discharge of NOx, bur rather to allow NOx discharges so long as the permittee meets the requirements set forth in 40 C.F.R. §§ 49.23(d)(5)(i) and (ii).

Comment 31:

Section II.A.2.c sets forth requirements related to dust control. In APS's judicial

challenge to certain provisions of the FIP, U.S. EPA voluntarily asked the court to remand and vacate these dust requirements. If and when the court remands and vacates these requirements, the permit will need to be revised to remove these provisions.

Response to Comment 31:

APS and others have challenged U.S. EPA's promulgation of the FIP in the Tenth Circuit Court of Appeals. NNEPA understands that in that proceeding, APS and U.S. EPA have agreed to seek a vacatur and voluntary remand by the Court of the cited provision. However, as of the date of issuance of this permit, that provision, 40 C.F.R. § 49.23(d)(3), has still not been vacated by the Court. Until such time that it is vacated, the provision remains an applicable requirements that must be included in the Part 71 permit. The permittee can apply for a permit modification if and when 40 C.F.R. § 49.23(d)(3) is vacated. NNEPA has not changed the permit as a result of this comment.

Comment 32:

Section II.A.1.h sets forth a definition of "owner or operator." This language is directly out of the FIP. The permittee recommends that this definition be deleted from the draft permit, and that all references in the permit to "owner or operator" be changed to the permittee." This is important, because Units 4 and 5 are co-owned by a number of different participant owners. Notwithstanding this joint ownership, APS alone is responsible for obtaining this permit and for complying with the permit. To impose requirements in this permit on the "owner or operator" could be construed to impose obligations on the participant owners of Units 4 and 5, a result that is inappropriate.

Response to Comment 32:

Pursuant to 40 CFR 71.5(a) - Duty for Apply, for each part 71 source, the owner or operator shall submit a timely and complete permit application in accordance with this section. Therefore, the owner or operator is responsible to obtain the permit. Violations are enforceable against either owner or operator, per CAA 113. Since the CAA and U.S. EPA regulations clarify that permittee includes owner and operator, NNEPA made no changes to the permit as a result of this comment.

Comment 33:

The permittee requests that the following language changes be made to the data representativeness sections for *total recycle slurry flow* and *differential pressure*, respectively:

> The recycle flow transmitters shall be located between the recycle pump outlet and the top of the venturi scrubber vessel.
>
> The differential pressure transmitters shall be located at the same level as the venturi and are positioned as close to the vessel as practical.

The proposed language will allow for the flexibility to accommodate for any problems that may occur with the current transmitter installations during the permit term, allow for the installation of redundant monitors and/or provide for the installation of newer and more efficient monitoring technology if necessary.

Response to Comment 33:

Condition II.C.2.a.(iii) has been revised as follows:

> The recycle flow transmitters shall be located ~~at approximately the half way point~~ between the recycle pump outlet and the top of the venturi scrubber vessel.

Condition II.C.2.b.(iii) has been revised as follows:

> The differential pressure transmitters shall be located at the same level as the venturi and are positioned as close to the vessel as ~~possible~~ **practical**.

The same changes have been made to Section 4.(l)(i) of SoB as well.

Comment 34:

The permittee stated that it cannot accept the 5% opacity indicator value proposed by NNEPA and U.S. EPA. The permittee stated that this value is entirely arbitrary and does not comport with the clear and specific requirements of the CAM rule. The permittee stated that it strongly objects to a 5% opacity indicator value for the Units 4 and 5 baghouses, for the following reasons (the details are listed in the letter to NNEPA on February 11, 2008):

(a) U.S. EPA has expressly recognized that 20% opacity is a reasonable indicator of proper baghouse performace.

EPA itself confirmed in the Four Corners FIP that the 20% opacity level constitutes an indicator of proper baghouse operation: "The opacity limit for this facility (20%) is set to assure proper operation of the baghouse." See 72 Fed. Reg. 25698, 25701 (May 7, 2007). EPA also stated that the 20% opacity limit was "added in order to confirm Units 4 and 5 are in continuous compliance and are properly operated and maintained." See 64 Fed. Reg. 48731, 48733 (Sept. 8, 1999). EPA clearly believes that the 20% opacity limit provides "reasonable assurance" of proper baghouse operation; had EPA concluded otherwise, the opacity limit for these units should have reflected that. It is inappropriate for EPA to attempt to establish a second threshold intended to serve precisely the same purpose as the 20% opacity limit in the FIP.

(b) The purpose of CAM is to provide "reasonable assurance" of compliance with emission limits, not to force implementation of "good air pollution control practices."

(c) Units 4 and 5 can easily comply with the 0.050 lbs/MMBtu particulate matter limit at an excess of 5% opacity. The permittee provided test results from 2003 to 2007 for Unit 4 and Unit 5 to support this claim.

(d) EPA itself has acknowledged the uncertainty of opacity measurements. EPA has identified uncertainty issues with regard to COMS data that is measured at the lower end of the opacity scale. These uncertainties are found at 40 CFR Part 60, Appendix B, Performance Specification 1 - Specifications and Test Procedures for Continuous Opacity Monitoring Systems in Stationary Sources.

(e) Limitations of ASTM Standard D6216-98.

Performance Specification 1 directly references ASTM Standard D6216-98 *Standard Practice for Opacity Monitor Manufacturers to Certify Conformance with Design and Performance Specifications*. This standard covers the procedure for certifying continuous opacity monitors. "[I]t includes design and performance specifications, test procedures, and quality assurance requirements to ensure that continuous opacity monitors meet minimum design and calibration requirements, necessary in part, for accurate opacity monitoring requirements in regulatory environmental opacity monitoring applications subject to ***10% or higher opacity standards***."

It is important to note that the COMS that are installed on Units 4 and 5 were manufactured in conformance to this ASTM standard prior to the most recently adopted Annex A (November 2007), which provides for an "additional or alternative specifications applications where the opacity standard is less than 10%" opacity.

(f) CAM limits *must* be based on performance testing or engineering analyses; they cannot be arbitrary values that EPA believes represent good air pollution control practices.

The permittee has performed data analysis for the test results in 2003 through 2007 for Units 4 and 5. This 16% opacity value, in conjunction with the 4% calibration tolerance, would suggest that a 20% opacity value is an appropriate maximum indicator range for CAM on Units 4 and 5.

(g) 5% opacity indicator for CAM may be appropriate for other monitoring conditions.

A 5% opacity indicator value for CAM may be appropriate for an opacity meter that is located between a baghouse and a wet scrubber. However, it is not

appropriate to set a 5% opacity indicator value for CAM for a unit that measures opacity after a wet scrubber. Measuring opacity after the scrubbers is likely to yield higher opacity than before the scrubbers. This can be caused by a small amount of particulate (calcium sulfite) that may pass through the mist eliminators, water vapor that may pass through the mist eliminators, and water vapor and other aerosols that may condense in the stack. This is especially true since Four Corners has maximized SO_2 removal by minimizing the bypass reheat, thereby increasing velocity through the scrubbers and decreasing stack temperatures. Therefore, opacity values above 5% are not a reliable indication of baghouse performance problems.

(h) Units 4 and 5 would regularly exceed the 5% opacity indicator value for CAM.

The permittee combined the 2007 fourth quarter hourly opacity data for Units 4 and 5 and found that these boilers would not meet the 5% opacity indicator value being proposed for CAM the majority of the time.

The permittee proposed a 16% opacity indicator value that is based on a one-hour average. A statistical evaluation of historic performance testing on Units 4 and 5 that has been presented in the letter dated February 11, 2008 clearly justifies this indicator range.

Response to Comment 34:

Commenter generally challenges NNEPA's establishment of a 5% CAM indicator range for opacity as being arbitrary, excessively stringent, and inconsistent with the 20% FIP opacity requirement. Despite commenter's arguments, NNEPA believes that a CAM indicator range less than 20%, however, is warranted. First, the FIP opacity limit is based on a 6-minute average, whereas the CAM indicator is based upon a 3-hour average. Given the longer averaging period of the CAM indicator, it is not possible to directly compare that range with the FIP opacity limit. In addition, despite commenter's assertions, the 20% value in the FIP is an opacity limit, not an indicator for CAM. Under CAM, the parameter values are used as an indication that a control device may not be working optimally. Going over the indicator value is not a violation of the FIP opacity limit. Rather, such "excursions" as defined in Part 64 trigger the need for the permittee to take steps to return the control device to normal operation. If a permitting authority detects a pattern of excursions, it may require a Quality Improvement Plan, pursuant to 40 C.F.R. § 64.8. The purpose of CAM is to detect a control device problem before it deteriorates to the point of a violation. Therefore, an indicator range lower than an actual emission limit is justified to meet the purposes of CAM. Finally, contrary to the commenter's assertion, NNEPA is not aware of U.S. EPA ever stating that 20% opacity on a 3-hour average is a reasonable indicator for CAM purposes of baghouse performance. The examples identified by commenter do not demonstrate such statements.

The NNEPA also disagrees with the commenter's assertion that CAM does not have the purpose of implementing "good air pollution control practices". In 40 C.F.R. § 64.7(d),

the provisions of CAM state that a control device with an exceedance or excursion must be restored to normal operations "in accordance with good air pollution control practices. . . ." NNEPA has discussed this issue with U.S. EPA, which has indicated that it does not believe 20% opacity on a 3-hour average is good air pollution control practice, as required by 40 C.F.R. § 64.7(d), for emission units B4 and B5.

Based on the stack testing results reported by the source in its February 11, 2008 comment letter, NNEPA agrees that APS may not be able to consistently stay under an opacity indicator of 5%. However, according to Graph 1 in the letter, opacity is less than 10% when the PM emissions are less than the emission limit of 0.05 lbs/MMBtu in all but one of the test runs1. According to FCPP's own data, an opacity indicator range of 10% or higher would be a reasonable range to identify potential problems with baghouse operation. Therefore, as a response to this comment, NNEPA has revised the opacity indicator range for Boilers 4 and 5 (Condition II.C.3.a (ii)) from 5% to 10%.

Ten percent as an opacity indicator range is similar to other CAM monitoring for baghouses associated with coal-fired boilers established in other recently issued Title V permits. For example, a 12% opacity indicator range is used for Units 1 and 2 at Tuscon Electric Power Company - Springerville Generating Station, located in Springerville, Arizona (Title V permit # 32008, issued by Arizona Department of Environmental Quality on July 21, 2006); and a 10% opacity indicator range is used for Unit I4 at Tuscon Electric Power - Irvington Generating Station, located at Tuscon, Arizona (Title V permit # 1052, issued by PIMA County Department of Environmental Quality on August 17, 2007). The application of a similar CAM indicator range for other large coal-fired boilers supports the revised indicator range.

NNEPA also notes that the opacity readings in Graph 1 are based on 6-minute averages. while the opacity indicator range specified in Condition C.3.a(ii) is based on a rolling 3-hour average. NNEPA believes that the much longer averaging time in the CAM indicator range will greatly reduce the odds of an excursion from the range. Thus it is not appropriate to compare the FIP 20% opacity limit, which is with limited exception based on a 6-minute average with a 10% CAM opacity indicator range averaged over three hours.

Therefore, based on the comments, NNEPA believes that a 10% CAM opacity indicator range is appropriate and nothing higher than that range would meet the goals and requirements of CAM.

Comment 35:

The permittee proposed exemptions for CAM during unit start up and shutdown, monitor malfunction and saturated stack conditions in the initial CAM plan submittal. Because there were no specific comments made by NNEPA on this matter, Four Corners has interpreted this to mean that EPA has accepted this proposal. This exemption should be included in the Part 71 permit renewal.

Response to Comment 35:

NNEPA has reviewed these comments, as well as supplementary comments on this topic submitted by APS following the end of the comment period. The provisions of CAM do not exempt any specific periods such as start up and shutdown, monitor malfunction, or saturated stack conditions. However, CAM only applies when there's an emission limit. The FIP has an exemption for startups, shutdowns, and saturated stack conditions, provided that certain criteria are satisfied. During these times, if the criteria are met, the FIP emission limits do not apply and therefore CAM is not applicable. However, the required criteria can only be evaluated after the qualifying event has occurred. Therefore NNEPA cannot grant such a blanket exemption in the permit, and has not modified the permit in response to this comment. Moreover, the 3-hour averaging period for the indicator range should address the commenter's concerns about potential temporary opacity spikes during periods of start up, shutdown, or malfunction.

NNEPA also notes that U.S. EPA did not formally approve APS' CAM plan in writing. APS cannot assume that U.S. EPA's silence on the exemption request in the plan means that U.S. EPA approved it.

Comment 36:

A CAM implementation period of 180 days after the effective date of the Four Corners Title V renewal permit was proposed by Four Corners in the initial CAM plan submittal. Because there were no specific comments made by NNEPA on this matter, Four Corners has interpreted this to mean that EPA has accepted this proposal. This implementation period should be included in the Part 71 permit for Four Corners. An implementation period is necessary after a final CAM in order to install software for the calculation of indicator values and to develop the reporting mechanisms for these same indicators.

Response to Comment 36:

NNEPA has considered this comment, and supplementary comments on this issue submitted by APS following the end of the comment period. APS does not have to install and test new monitoring devices for CAM purposes, and has not explained with any specificity why it needs the maximum of 180 days allowed by 40 C.F.R. § 64.4(e) to begin implementing CAM. APS has been on notice of the need to conduct parametric monitoring of the venturi scrubbers used for particulate matter control on Units 1, 2, and 3, and use of its existing continuous opacity monitors for the baghouses used for Units 4 and 5, since U.S. EPA promulgated the FIP on May 7, 2007. The issues raised by APS are related to software installation and configuration, which should not be time-consuming tasks. Nevertheless, to ensure that APS has time to perform these tasks prior to implementing its CAM plan, NNEPA has revised the permit to allow for a period of 90 days before APS must begin implementing the CAM monitoring. NNEPA believes that 90 days is sufficient to allow APS to install and configure the necessary software to comply with the CAM regulations. The 90 days time frame for implementing the CAM

requirements has been included in the final permit as Condition II.C.1.a.(see the changes made in the Response to Comment 21).

Comment 37:

Condition II.D (Operational Flexibility) in the draft permit has the following language:

> Such notice shall state when the change will occur and shall describe the change, any resulting emissions change, and *the inapplicability of any permit term or condition*.

The permittee stated that the above italicized language is unclear. In the source's first operating permit, issued on June 12, 2001, it states:

> The notice must describe the change, when it will occur and any change in emissions, and identify *any permit terms or conditions made inapplicable as a result of the change.*

The permittee stated that the italicized language in the first operating permit is clear and unambiguous. The permittee requested that the original language be restored.

Response to Comment 37:

Condition II.D.1.b has been revised as follows as a result of this comment:

II.D. Operational Flexibility

1. Clean Air Act Section 502(b)(10) Changes [40 CFR § 71.6(a)(13)(i)] [NNOPR § 404(A)]

. . .

b. For each proposed § 502(b)(10) change, the permittee shall provide written notification to the Director and the Administrator at least 7 days in advance of the proposed change. Such notice shall state when the change will occur and shall describe the change, any resulting emissions change, and ~~the inapplicability of any permit term or condition~~ **any permit terms or conditions made inapplicable as a result of the change**. The permittee shall attach each notice to its copy of this permit.

. . .

Comment 38:

The permittee stated that Section II.D.1.c is an entirely new condition and cannot be included in this permit. The VCA between the parties expressly prohibits the addition of new terms and conditions to the permit, unless the new term or condition stems from a

new federal requirement. Even if the condition is based on a new federal requirement - which it is not - it is far too vague: it establishes a requirement that the § 502(b)(10) submittal be "sufficient," and if the submittal is "determined not to qualify and/or" not be "sufficient," then the "original terms of the permit remain fully enforceable." There is no discussion of what constitutes a "qualifying" or a "sufficient" submittal. In any event, the permittee stated that this provision should be deleted in its entirety, because it is a new condition and accordingly cannot be included in this renewal Part 71 permit.

Response to Comment 38:

NNEPA agrees that the provisions of II.D.1.c. are not contained in any applicable federal requirements and so it has deleted this paragraph. The other requirements in Condition II.D.1 have been renumbered.

Comment 39:

The permittee stated that Condition III.A (Testing Requirements) is an entirely new section and cannot be included in the Part 71 permit renewal. The VCA between the parties expressly prohibits the addition of new terms and conditions to the permit, unless the new term or condition stems from a new federal requirement. The permittee stated that Condition III.A does not appear to be based on any new federal requirement and should be removed from the permit.

The permittee stated that 40 CFR § 71.6(a)(3) does not contain the language set forth in III.A. Rather, it merely states that permits should contain "all monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including [CAM requirements] and any other procedures and methods that may be promulgated pursuant to sections 114(a)(3) or 504(b) of [the Clean Air Act]." The provisions in III.A are not "required" under any testing requirement, nor have they been promulgated under the Act. In short, there is no regulatory basis for these requirements.

The permittee stated that the fact that this language may be "typical" language in recently issued permits is simply not adequate to trump the clear provisions in the VCA that prohibit the addition of new requirements unless they are based on new federal requirements. The assertion (even if true) that "EPA has been doing this recently" is insufficient to overcome the Nation's contractual commitment only to add new requirements if new federal regulations are enacted.

If it is NNEPA's and EPA's position that new Section III.A is appropriate due to the new requirement in the FIP to test for particulate matter, then inclusion of this section is inappropriate. FIP itself contains specific requirements for particulate matter testing. The requirements in Section III.A are not necessary and, in fact, expressly conflict with some of the FIP testing requirements for particulate. (For example, Section III.A requires submission of a source test plan to Navajo EPA 30 days prior to the testing, whereas the FIP requires submission 21 days prior to testing.) Because the FIP expressly provides particulate matter testing requirements, the addition of Section III.A is not warranted.

If the justification for adding Section III.A is the FIP's requirement to test for particulate, then this section must be specifically limited to particulate matter testing. As currently drafted, it applies to any testing, including relative accuracy test audits (RATA testing) under 40 CFR Part 75. At a minimum, Section III.A should be revised to clearly limit its applicability to particulate matter testing, as follows:

> In addition to the unit specific testing requirements derived from the applicable requirements for each individual unit contained in Section II of this permit, the permittee shall comply with the following generally applicable testing requirements *for particulate matter*, as necessary, to ensure that the required tests are sufficient for compliance purposes:

Moreover, the requirements of Section III.A are inconsistent with the Part 75 testing requirements with which Four Corners is required to comply. In other words, Four Corners cannot comply with both Section III.A and certain Part 75 RATA testing requirements. Four Corners conducts annual/semiannual RATAs for SO_2, NOx, CO_2, H_2O and stack flow. By way of example, Section III.A requires all source tests to be performed at "maximum operating rates," meaning between 90% to 110% of device design capacity. Under Part 75, however, Four Corners is required to periodically test at low-. mid-, and high-load ranges - ranges outside the Section III.A parameters. The permittee stated that they cannot comply with both Section III.A and this Part 75 requirement.

There are several indicators that Section III.A is intended to apply only to particulate matter testing. For example:

- The lower end of the maximum operating rates (90%) of device capacity design capacity requirement can be achieved for every particulate matter test.

- The requirement that no adjustments be made during a source test is a reasonable requirement for a particulate matter test, because adjustments to process or emission control devices are directly related to a passing particulate matter test. However, this requirement does not make sense for a RATA test, because a RATA test is a comparison between two systems (the reference method and the CEM system) that are independent of process changes.

- Recording visible emissions during a particulate test arguably could be indicative of problems that may have occurred during a particulate matter test. However, visible emissions generally do not indicate a problem with a RATA test.

- The subject of parametric data requirements is directly related to particulate matter emissions. Because the CAM indicators for Units 1, 2, and 3 (and 4 and 5) will be approved before the final issuance of this Title V permit, the parametric

data requirement is not appropriate. Even then, if this requirement is expanded to include CAM indicators, these indicators have been established for the sole purpose of providing a reasonable assurance for continuously meeting the particulate matter limit established in the Four Corners FIP.

- The three (3) valid test runs requirement clearly supports the requirement for a valid particulate matter test.

In sum, the permittee stated that Section III.A should be deleted in its entirety, because it contravenes the plain terms of the VCA and it is not based on any new federal requirements. To the extent that it is based on the new FIP particulate testing requirements, it must be expressly limited to particulate matter testing.

If NNEPA and EPA determine that Section III.A should remain in the draft permit but be limited only to particulate matter testing, there still are several requirements in this section that require revision or deletion, including:

- Section III.A.3 would inappropriately restrict normal operational adjustments that have nothing to do with the source test. For example, in a typical day, a unit operator might make changes in lime flow and/or scrubber plumb bob position to maintain a set SO_2 removal rate. These changes are strictly driven by unit operational issues and are wholly unrelated to source testing. We understand the desire to prohibit changes *related to* the source testing (ie, changes to "tweak" a unit to assure compliance, etc.), but this language goes too far and would unnecessarily hamper normal unit operation. We recommend the following changes to this provision:

  > Only regular operating staff may adjust the processes or emission control device parameters within two (2) hours before or during a compliance source test. No adjustments are to be made within two (2) hours before the start of the tests or during a source test, if those adjustments are a result of consultation before or during the tests with source testing personnel, equipment vendors, or consultants. Such adjustments may render the source test invalid

- Section III.A.4.a should be deleted. The permittee stated that they cannot comply with the requirement in Section III.A.4.a to record fuel characteristics and/or amount of product processed, because the coal analysis data is not available at the time of testing and because Four Corners does not track the amount of coal being burned on a specific unit on a real-time basis. Four Corners translates "amount of product processed" to mean the amount of coal burned. Four Corners obtains coal characteristics data days *after* source testing is completed.

- Section III.A.4.d should be deleted. This recording of information is already required in Section II.A.3.c. (by reference to Appendix A of 40 CFR Part 60). Furthermore, the permittee stated that they are unsure as to what "minimum test length, minimum sample volume, other operating conditions to be monitored, correction of O_2, etc." would be recorded during the two hours prior and two hours after the completion of the test (these four hours would be a period of time when there is no testing being performed).

Response to Comment 39:

The renewal permit contains a new federal requirement that was not in existence when the initial Title V permit was issued. The new federal requirement is the FIP which has a requirement for testing PM. The FIP does not contain all the details necessary to demonstrate compliance and demonstrate that the testing is conducted correctly. Pursuant to 40 C.F.R. § 71.6(a)(3), the permit must contain these provisions. It is NNEPA's interpretation of the applicable federal requirements (the FIP and 40 C.F.R. § 71.6(a)(3)) that the details contained in Section III.A are required permit contents. Therefore, the inclusion of these provisions is not a violation of the VCA.

The commenter claims that some of the provisions of Condition III.A.1 conflict with certain of the FIP provisions. For example, the commenter claims that Condition III.A.1's requirement that the source submit a "test plan" 30 days prior to testing conflicts with Condition II.A.3.c.'s (40 C.F.R. § 49.23(e)) requirement that the source submit a "notice" 21 days prior to PM testing. As one condition applies to a "test plan" and the other simply a "notice," commenter is not correct that these two conditions conflict with each other.

However, the permittee is correct that this condition is meant to provide details for PM testing. Therefore, the language in Condition III.A has been revised to clarify this. Also the requirement to record the fuel characteristics has been deleted and a requirement to obtain a coal analysis on the coal used during stack testing and on the coal used two days prior to stack testing has been added. NNEPA agrees to make the requested changes to Condition III.A.3. However, parameter adjustments should also be recorded and reported.

Condition III.A has been revised as follows to reflect the above changes:

III.A. Testing Requirements [40 CFR § 71.6(a)(3)]

In addition to the unit specific testing requirements derived from the applicable requirements for each individual unit contained in Section II of this permit, the permittee shall comply with the following generally applicable testing requirements **for particulate matter,** as necessary to ensure that the required tests are sufficient for compliance purposes:

. . .

3. Only regular operating staff may adjust the processes or emission control device parameters **within two (2) hours before or** during a compliance source test. **All adjustments must be logged and a copy of the log submitted with the test report.** No adjustments are to be made within two (2) hours **before** ~~of~~ the start of the tests **or**~~. Any operating adjustments made~~ during a ~~source~~ test, **if those adjustments** ~~that~~ are a result of consultation **before or** during the tests with source testing personnel, equipment vendors, or consultants~~,~~**. Such adjustments** may render the source test invalid.

4. During each test run and for two (2) hours prior to the test and two (2) hours after the completion of the test, the permittee shall record the following information:

   a. ~~Fuel characteristics and/or amount of product processed (if applicable).~~

   ~~b~~**a**. Visible emissions.

   ~~c~~**b**. All parametric data which is required to be monitored in Section II for the emission unit being tested.

   d. ~~Other source specific data identified in Section II such as minimum test length (e.g., one hour, 8 hours, 24 hours, etc.), minimum sample volume, other operating conditions to be monitored, correction of O_2, etc.~~

5. The permittee shall perform coal analysis tests on the coal used two (2) days prior to the stack testing and for the coal used on the day of stack testing, and report the results with the performance test results in accordance with Condition II.A.4.c.

~~5~~**6**. Each source test shall consist of at least three (3) valid test runs and the emission results shall be reported as the arithmetic average of all valid test runs and in the terms of the emission limit. There must be at least 3 valid test runs, unless otherwise specified.

~~6~~7. Source test reports shall be submitted to NNEPA and U.S. EPA within 60 days of completing any required source test.

Comment 40:

The permittee stated that Section III.B.3 (Recordkeeping Requirements) is an entirely new condition and should be removed from the Part 71 permit. The VCA between the parties expressly prohibits the addition of new terms and conditions to the permit, unless the new term or condition stems from a new federal requirement. Section III.B.3 is not based on any new federal requirement.

Maintaining the integrity of the VCA is very important to us, as we know it is to the Navajo Nation. Contravening the VCA requirements by including new permit terms and

conditions that are not based on any new federal requirement jeopardizes the integrity of the VCA.

Response to Comment 40:

Condition III.B.3 is based on the requirements of 40 CFR Part 60, Subpart A. This source is not subject to any New Source Performance Standards, therefore, Condition III.B.3 has been removed from the permit. The other requirements in Condition III.B have been renumbered accordingly.

Comment 41:

Section III.D is entitled "Stratospheric Ozone and Climate Protection." Section III.D is strictly limited to the requirements of 40 CFR Part 82, entitled "Protection of Stratospheric Ozone." The permittee requested that the reference to Climate Protection be removed, as there is no basis for it.

Response to Comment 41:

NNEPA revised the title of Condition III.D to "Protection of Stratospheric Ozone," as requested.

Comment 42:

The permittee requested additional time to submit the Title V monitoring and annual certification reports. Other quarterly reports, such as the electronic data reports (EDRs) for the Part 75 CEMS program and the newly applicable FIP reports, are due 30 days after each calendar quarter. This 30-day period is a relatively short period of time to complete the monitoring and annual certification reports, especially with the due diligence Four Corners requires to assure the completeness and accuracy of the reports. Because these quarterly reports support the reporting for both the Title V monitoring and annual certification reports, it is important that the appropriate time for due diligence is granted to APS.

The permittee requested that the 30-day period be changed to 45 days in Section III.C.1 to read as follows:

> All reports shall be submitted to NNEPA and U.S. EPA and shall be postmarked by the **45th** day following the end of the reporting period.

Furthermore, the first sentence in Section IV.C.1. should be changed to read as follows:

> The permittee shall submit to NNEPA and U.S. EPA Region 9 a certification of compliance with permit terms and conditions, including emission limitations, standards, or work practices, postmarked by **February 14** of each year and covering the previous calendar year.

In addition, there is a new sentence in the first paragraph of Section III.C.1, stating, "All instances of deviations from permit requirements must be clearly identified in such reports." This should be deleted, because it is a new requirement (to "clearly identify" deviations) and thus violative of the VCA, and because deviation reporting is already required in III.C.I.a.v.

Response to Comment 42:

NNEPA has considered these comments, as well as supplementary comments on the due dates for annual compliance certifications and semi-annual monitoring reports submitted by APS following the end of the comment period. NNEPA has revised the permit to require that these submittals be due 45 days after the end of the reporting period, instead of 30 days.

Regarding the requirement to "clearly identify" deviations. This requirement is specified in 40 CFR § 71.6(a)(3)(iii)(A). NNEPA has not deleted this provision.

Conditions III.C.1 and IV.C have been revised as follows as a result of this comment:

III.C. Reporting Requirements [40 CFR § 71.6 (a)(3)(iii)]

1. The permittee shall submit to NNEPA and EPA Region 9 reports of any monitoring required under 40 CFR § 71.6(a)(3)(i)(A), (B), or (C) each six month reporting period from January 1 to June 30 and from July 1 to December 31. All reports shall be submitted to NNEPA and U.S. EPA and shall be postmarked by the ~~30~~**45**th day following the end of the reporting period. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with Condition IV.E of this permit.

. . .

IV.C. Compliance Certifications [40 CFR § 71.6(c)(5)]

1. The permittee shall submit to NNEPA and U.S. EPA Region 9 a certification of compliance with permit terms and conditions, including emission limitations, standards, or work practices, postmarked by ~~January 30~~ **February 14** of each year and covering the previous calendar year. The compliance certification shall be certified as to truth, accuracy, and completeness by the permit-designated responsible official consistent with Section III.C.4. of this permit [40 CFR § 71.6(c)(5)].

. . .

Comment 43:

Numerous provisions of the permit require Four Corners to submit various reports and certifications to both NNEPA and to EPA Region 9. Because NNEPA will issue and administer this permit, the permittee stated that all required reports and certifications should be submitted only to NNEPA, and not to EPA Region 9. The permittee noted that NNEPA can forward any reports it wishes to EPA Region 9. The permittee proposed that the requirements to submit reports to EPA Region 9 should be deleted throughout the permit.

Response to Comment 43:

Reports and certifications must be submitted to U.S. EPA as well as to NNEPA. Although NNEPA is the agency issuing and administering the permit pursuant to the Part 71 delegation from Region 9, this Part 71 permit is still a U.S. EPA permit permit and U.S. EPA is responsible for enforcing it. Therefore, U.S. EPA needs to have copies of these documents. NNEPA made no changes to the permit as the result of this comment.

Comment 44:

Section IV.T.1. is language verbatim from the VCA and is thus appropriate. Section IV.T.2., however, is not in the VCA and may conflict with the VCA. The VCA says this, in relation to NNEPA's and U.S. EPA's enforcement authority: "The Navajo Nation will not seek to enforce any permit issued under Part 71 in tribal court, but will refer all such enforcement to USEPA." The permittee stated that this language should replace the language currently in IV.T.2.

Response to Comment 44:

The language in Condition IV.T.2 does not violate the VCA, as it simply states that U.S. EPA retains its enforcement authority under the Clean Air Act, which is true for every federal environmental statute However, to avoid any conflict, NNEPA agrees to revise the language in Condition IV.T.2 as follows to reflect the precise provisions of 40 C.F.R. § 71.12:

IV.T. Part 71 Permit Enforcement [Voluntary Compliance Agreement, Section 5.4.5**; 40 CFR § 71.12**]

. . .

2. ~~U.S. EPA retains authority under Clean Air Act 113 for all enforcement-related activities, without limitation~~ **Violations of any applicable requirement; any permit term or condition; any fee or filing requirement; any duty to allow or carry out inspection, entry, or monitoring activities; or any regulation or order issued by the permitting authority pursuant to this part are violations of the Act and are subject to full Federal enforcement authorities available under the Act.**

Comment 45:

The permittee requested to make the following typographical and other miscellaneous corrections:

(a) The permittee recommend changing certain regulatory citations to include the word "Part" where appropriate (for example, the reference to 40 CFR 64 in Section II.C. should be changed to "40 CFR Part 64"; and the reference to 40 CFR § 82 in Section III. D. should be changed to "40 CFR Part 82").

(b) The year for issue date should be changed to 2008. The expiration date should be changed to 2012.

(c) An "a" should be placed between "is" and "2,060"in the "Description of Process:" to read as follows: "The facility is **a** 2,060 Megawatts coal fired power plant."

(d) The second sentence in the Unit Description column for B1, B2, B3, B4, and B5 should be changed to read as follows: "[Bl, B2, B3, B4, B5] also burns **a small amount of** used oil, for enemy during the combustion of coal. "

(e) The last sentence in Section II.A.1.f. should be changed to read as follows: "Heat input shall be **determined** in accordance with 40 CFR Part 75."

(f) The third sentence in Section II.A.1.g (the definition of "malfunction") states that "This *rule* provides an affirmative defense ..." This language is verbatim from the FIP but, given that the language is incorporated into this permit, we recommend revising the language to state, "This *permit* provides an affirmative defense ..." As is, the reference to this rule" is vague; it is unclear what "rule" is referenced.

(g) Section II.A. I .n. should be changed to read as follows: "24-hour period means the period of time between **12:00 a.m and 11:59 p.m.**" This is how our current data acquisition system (DAS) accounts for a day (a 24 hour period).

(h) Heat input are separate words. Section II.A.2.a.(i) should read as follows: "12.0 percent of the potential combustion concentration assuming all of the sulfur in the coal is converted to SO_2. This percent emitted is determined by a daily calculation of the plantwide *heat input* weighted annual average."

(i) This first sentence in Section IV.A.2. should be revised to read as follows: "The permittee shall submit a fee calculation worksheet form with the annual permit fee by ***April 1*** of each year."

(j) The last sentence in Section IV.A.4.a.(1) abruptly ends. It appears that the additional words "materials processed, stored, or combusted during the preceding calendar year" were inadvertently omitted.

(o) Section IV.I.3.(v) - This provision does not make sense. Subsection 3 states that a minor permit application "shall include the following:" ... (v) If the requested permit revision would affect existing compliance plans or schedules, related progress reports, or certification of compliance requirements, and an outline of such effects." It appears that the "and" in the last clause should be deleted.

(q) The first word in Section IV.K.3. should start with a capital letter. This Section should read as follows: "***P****ermittee* must meet all requirements of Part 71 for applications for significant permit modifications."

(r) Section IV.L.1 refers to "a major Part 71 source." We believe this should be changed to the permittee," because this provision clearly isn't intended to apply to any major Part 71 source.

(s) The letter " t" is missing from the word "treatment". Therefore, Section IV.R. l .c. should read as follows: the source is issued a Part 70 permit by NNEPA, provided that EPA has granted the Navajo Nation ***t****reatment* as a state and primacy for a Part 70 program and that NNEPA issues the permit consistent with the VCA.

(t) I'he word "that" should be place between the words "renewal" and "is". Section IV.R.3. should read as follows: "If the permittee submits a timely and complete permit application for renewal ***that*** is consistent with 40 CFR § 71.5(a)(2), but the permitting authority has failed to issue or deny the renewal permit, then the permit shall not expire until the renewal permit has been issued or denied and any permit shield granted pursuant to 40 CFR § 71.6(f) may extend beyond the original permit term until renewal.

(u) Section IV.R.I - the word "elapses" should be changed to "elapse" where it appears in this section.

(v) Pages 41 through 52 appear to have been erroneously included in the initial draft sent to Four Corners. The second copy of draft permit sent to Four Corners includes the correct version of this entire part of the permit.

Response to Comment 45:

All of the requested changes have been made in the permit, except for the following:

Item (g) in Comment 45: The 24-hour period definition in Condition II.A.1.n is from 40 CFR § 49.23(c). NNEPA has no authority to modify this definition from a federal rule. Therefore, NNEPA made no changes to Condition II.A.1.n as a result of this comment.

Comment 46:

Section IV.A.4.b(3) is worded erroneously and should be revised to comport with the regulations. The language currently reads as follows:

> The insignificant quantities of actual emissions not required to be listed or calculated in a permit application pursuant to 40 CFR § 71.5(c)(11).

This regulation, however, applies to "insignificant activities" as well as insignificant emissions. The language, as currently drafted, does not cover insignificant activities, and it should. The permittee requested that this language be revised to be consistent with the language that is in the plant's current operating permit, as follows:

> The quantity of actual emissions (for fee calculation) of insignificant activities [defined in 40 CFR § 71.5(c)(11)(i)] or of insignificant emissions levels from emissions units identified in the permittee's applications [pursuant to 40 CFR § 71.5(c)(11)(ii)].

Sections IV.A.2 and IV.A.5 both refer to fee-related worksheets and forms. Section IV.A.2 refers to forms "provided by EPA." Section IV.A.5 refers to forms "provided by NNEPA." These provisions appear to conflict, and it is unclear whose forms (NNEPA or EPA) the plant should use for fee purposes.

Response to Comment 46:

NNEPA does not provide a specific form for emission calculations. Conditions IV.A.2 and IV.A.5 have been revised to state that the permittee shall use the emissions-related forms provided by U.S. EPA.

Comment 47:

Section IV.C.1 (Compliance Certifications) states that compliance certifications should be submitted "consistent with Section IV.E of this permit." The permittee stated that Section IV.E. merely provides contact information for submittals. The corresponding provision in Four Corners' current Title V permit refers back to the underlying requirement itself to certify submittals to the agency. The permittee recommend revising this to refer to the underlying requirement to certify agency submittals (Section III.C.4).

Response to Comment 47:

Condition IV.C.1 has been revised as requested.

Comment 48:

Section IV.H.4 specifies that an administrative permit amendment may be used to indicate a change in ownership or operational control, provided that paragraphs (a) through (d) are met. The permittee stated that Conditions IV.H.4(a) through (d) are new requirements and cannot be included in this renewal permit per the VCA. In addition, the reference to NNOPR § 301(D)(2) is not authorized to be included in the VCA: only

certain specified provisions in the NNOPR may be included in this permit, and § 301(D)(2) is not one of those.

Comment 49:

The permittee states that NNOPR § 406, is not authorized to be included in the permit by the VCA and should be removed from Condition IV.H.4.c.

Response to Comments 48 and 49:

Condition IV.H.4 has been revised as follows to match the language in 40 CFR 71.7(d)(1)(iv):

IV.H Administrative Permit Amendments [40 CFR § 71.7(d)] [NNOPR § 405(C)]

. . .

4. Allows for a change in ownership or operational control of a source where the NNEPA determines that no other change in the permit is necessary, provided that~~:~~

   ~~a.~~ ~~A~~ **a** written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the NNEPA~~;~~**.**

   ~~b. The new owners have submitted the application information required in NNOPR § 301(D)(2);~~

   ~~c. No grounds exist for permit reopening, revocation and reissuance, or termination pursuant to NNOPR § 406; and~~

   ~~d. The permittee has published a public notice of the change in ownership of the source in a newspaper of general circulation in the area where the source is located.~~

. . .

Comment 50:

Section IV.J (Group Processing of Minor Permit Modifications) refers repeatedly to EPA acting on applications requesting the use of group processing procedures. The permittee stated that they are unclear why these provisions reference EPA, and not NNEPA, and requested for a clarification.

Response to Comment 50:

The permitting authority referred to in Condition IV.J has been revised to NNEPA as a result of this comment.

Comment 51:

The permittee stated that they make the same comments on the Statement of Basis that we made on the draft permit.

Response to Comment 51:

The changes made to the unit description in the response to Comment 45 have been made to the SoB as well.

Upon further review, NNEPA has decided to make the following additional changes to the permit:

1. Based on the additional comments received from Navajo Generating Station (Permit #NN-ROP-05-06), Condition IV.A - Fee Payment has been revised as follows:

IV.A. Fee Payment [NNOPR Subpart VI] [40 CFR § 71.6(a)(7) **and § 71.9**]

1. . . .

c. The permittee shall send **the** fee payment to:

. . .

4. Basis for calculating annual fee:

~~a.~~ The annual emissions fee shall be calculated by multiplying the total tons of actual emissions of all ~~regulated~~ **fee** pollutants ~~(for fee calculation)~~ emitted from the source by the ~~presumptive~~ **applicable** emissions fee (in dollars/ton) in effect at the time of calculation. Emissions of any regulated air pollutant that already are included in the fee calculation under a category of regulated pollutant, such as a federally listed hazardous air pollutant that is already accounted for as a VOC or as PM10, shall be counted only once in determining the source's actual emissions. ~~[40 CFR § 71.6(a)(7) and § 71.9(c)(1)]~~ [NNOPR Subpart VI §§ 602(A) and (B)(1)]

~~(1)~~**a.** "Actual emissions" means the actual rate of emissions in tpy of any ~~regulated~~ **fee** pollutant ~~(for fee calculation)~~ emitted from a part 71 source over the preceding calendar year. Actual emissions shall be calculated using each emissions unit's actual operating hours, production rates, in-

place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year**. Actual emissions shall not include emissions of any one fee pollutant in excess of 4,000 TPY, or any emissions that come from insignificant activities** [~~40 CFR §71.6(a)(7) and §71.9(c)(6)~~ **NNOPR Subpart I § 102(5)**].

b. Actual emissions shall be computed using methods required by the permit for determining compliance, such as monitoring or source testing data [40 CFR § 71.6(a)(7) and § 71.9(e)(2)].

c. If actual emissions cannot be determined using the compliance methods in the permit, the permittee shall use other federally recognized procedures [40 CFR § 71.6(a)(7) and § 71.9(e)(2)].

d. The term "fee pollutant" is defined in NNOPR Subpart I § 102(24).

e. The term "regulated air pollutant" is defined in NNOPR Subpart I § 102(50), except that for purposes of this permit the term does not include any pollutant that is regulated solely pursuant to 4 N.N.C. § 1121 nor does it include any hazardous air pollutant designated by the Director pursuant to 4 N.N.C. § 1126(B).

f. The permittee should note that the applicable fee is revised each year to account for inflation, and it is available from NNEPA starting on March 1 of each year.

g. The total annual fee due shall be the greater of the applicable minimum fee and the sum of subtotal annual fees for all fee pollutants emitted from the source. [NNOPR Subpart VI § 602(B)(2)]

~~b. The permittee shall exclude the following emissions from the calculation of fees: [40 CFR § 71.6(a)(7) and § 71.9(c)(5)]~~

~~(1) The amount of actual emissions of each regulated pollutant (for fee calculation) that the source emits in excess of 4,000 tons per year;~~

~~(2) Actual emissions of any regulated pollutant (for fee calculation) already included in the fee calculation; and~~

~~(3) The insignificant quantities of actual emissions not required to be listed or calculated in a permit application pursuant to 40 CFR § 71.5(c)(11).~~

2. The references to NNOPR Subpart IV in Section 9.a of the draft SoB were deleted because they were references to the public comment provisions of the NNOPR, which are not applicable under the VCA.