

EXHIBIT B

Navajo Nation Operating Permit Regulations (“NNOPR”)

**NAVAJO NATION
AIR QUALITY CONTROL PROGRAM
OPERATING PERMIT REGULATIONS**

Navajo Nation
Environmental Protection Agency

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Navajo Nation Air Quality Control Program
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Navajo Nation Regulations
Title 4-Environment
Chapter 11-Air Pollution Prevention and Control
Subchapter 2-Air Quality Control Programs
Part H-Permits

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Subpart I - General Provisions

§ 101. Purpose, Scope, Effective Date and Revision [40 CFR §§ 70.1]

- A. **Purpose.** These regulations establish permitting requirements under the Permit Program, Part H, Subchapter 2 of the Navajo Nation Air Pollution Prevention and Control Act, 4 N.N.C. §§ 1134-40 (“Navajo Nation Clean Air Act”).
- B. **Scope.** These regulations apply to those sources specified in § 202 below. Permits issued pursuant to these regulations shall also be consistent with regulations implementing Parts F & G, Subchapter 2 of the Navajo Nation Clean Air Act, 4 N.N.C. §§ 1125-33. Permits may be issued containing both Navajo and federal program requirements. This situation may arise, for example, when a permittee is subject to more than one program under the Clean Air Act and the Navajo Nation has chosen to implement only some but not all of the programs to which the permittee is subject.
- C. **Effective Date.** These regulations shall become effective immediately upon Part 71 delegation or Part 70 approval by USEPA Region IX, whichever is sooner.
- D. **Revision.** Pursuant to the rulemaking procedures of the Navajo Nation Clean Air Act, 4 N.N.C. § 1161(A), and the Uniform Rules the Director shall revise these regulations as necessary and appropriate to accommodate changes in relevant federal and Navajo law.

§ 102. Definitions [40 CFR §§ 70.2, 72.2]

The terms used in these regulations shall have the following meanings:

1. **“Acid rain permit”** means the legally binding document or portion of such document issued by the Director under these regulations and the Navajo Nation Acid Rain Rule, or by the Administrator under Title IV of the Clean Air Act, including any permit revisions, specifying the Acid Rain Program requirements applicable to an acid rain source, to each acid rain unit at an acid rain source, and to the owners and operators and the designated representative of the acid rain source or the acid rain unit.
2. **“Acid Rain Program”** means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established in accordance with Title IV of the Clean Air Act and 40 CFR parts 72-78.
3. **“Acid rain source”** means a source that includes one or more acid rain units.
4. **“Acid rain unit”** means an affected unit as defined in regulations promulgated under Title IV of the Clean Air Act, namely, a unit that is subject to acid rain

emission reduction requirements or limitations under Part G of Subchapter 2 of the Navajo Nation Clean Air Act and under Title IV of the Clean Air Act.

5. **“Actual emissions”** means, for purposes of calculating emissions fees pursuant to § 602 of these regulations, the amount of emissions, including fugitive emissions, from a source that is calculated by using:
 - a. the actual rate of emissions in TPY of any fee pollutant emitted from a Part H source over the preceding calendar year or any other period determined by the Director to be more representative of normal operation and consistent with the fee schedule adopted by the Director and approved by the Administrator; and
 - b. the unit’s actual operating hours, production rates, and in-place control equipment, types of materials processed, stored, or combusted during the preceding calendar year or other period used for this calculation; and
 - c. shall not include emissions of any one fee pollutant in excess of four thousand (4,000) TPY, or any emissions that come from insignificant activities.

6. **“Administrative permit revision”** means a permit revision that:
 - a. corrects typographical errors;
 - b. provides for a minor administrative change at the source, such as a change in the address or phone number of any person identified in the permit
 - c. requires more frequent monitoring or reporting by the permittee;
 - d. indicates a change in ownership or operational control of a source, provided that:
 - (1) 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 Director, and the Director has determined that no other change in the permit is necessary;
 - (2) the new owners have submitted the application information required in § 301(D)(2) of these regulations;
 - (3) no grounds exist for permit reopening, revocation and reissuance,

or termination, pursuant to § 406 of these regulations; and

- (4) 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;
 - e. incorporates into the permit the requirements from preconstruction review permits issued pursuant to an EPA approved pre-construction permitting program, provided that the issuance of such preconstruction review permit(s) complies with the procedural and compliance requirements of these regulations and the Uniform Rules; or
 - f. any other type of change which has been determined by the Director and the Administrator to be similar to those in this definition.
7. **“Administrator”** means the Administrator of the United States Environmental Protection Agency (“USEPA”) or the Administrator’s duly authorized representative.
8. **“Affected program”** means all tribal, state, and local pollution control programs:
- a. whose air quality may be affected and that are contiguous to the Nation, or
 - b. that are within 50 miles of the permitted source.
9. **“Air pollutant”** means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and by product material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant to the extent the Administrator of USEPA has identified such precursor or precursors for the particular purpose for which the term “air pollutant” is used.
10. **“Air pollution control equipment”** means any device, equipment, process or combination thereof, the operation of which would limit, capture, reduce, confine, or otherwise control regulated air pollutants, or convert for the purposes of control, any regulated air pollutant to another form, another chemical, or another physical state. This includes, but is not limited to, sulfur recovery units, acid plants, baghouses, precipitators, scrubbers, cyclones, water sprays, catalytic converters, and steam or water injection.
11. **“Applicable requirement”** means all of the following, as they apply to emissions units at a Part H source (including requirements that have been promulgated or

approved by the Director or the Administrator through rulemaking at the time of permit issuance but that have future compliance dates):

- a. any standard or other requirement provided for in a Navajo Nation implementation plan approved or promulgated by the Administrator through rulemaking under title I of the Clean Air Act to implement the relevant requirements of the Clean Air Act, including any revisions to that plan promulgated in 40 CFR part 52;
- b. any term or condition of any preconstruction permit issued pursuant to 4 N.N.C. §§ 1118, 1124 or to regulations approved or promulgated through rulemaking under Title I, including parts C or D, of the Clean Air Act;
- c. any standard or other requirement under § 111 of the Clean Air Act, 42 U.S.C. § 7411, including § 111(d) thereof, or under 4 N.N.C. § 1121;
- d. any standard or other requirement under § 112 of the Clean Air Act, 42 U.S.C. § 7412, including any requirement concerning accident prevention under § 112(r)(7) thereof, or under part F, Subchapter 2 of the Navajo Nation Clean Air Act;
- e. any standard or other requirement of the acid rain program under Title IV of the Clean Air Act or part G, Subchapter 2 of the Navajo Nation Clean Air Act, or regulations promulgated thereunder;
- f. any requirements established pursuant to § 114(a)(3) or § 504 (b) of the Clean Air Act, 42 U.S.C. §§ 7414(a)(3), 7661c(b), or 4 N.N.C. § 1151(b)(3);
- g. any standard or other requirement governing solid waste incineration under § 129 of the Clean Air Act, 42 U.S.C. § 7429, or 4 N.N.C. § 1121(C);
- h. any standard or other requirement for consumer and commercial products under § 183(e) of the Clean Air Act, 42 U.S.C. § 7511b(e);
- i. any standard or other requirement for tank vessels under § 183(f) of the Clean Air Act, 42 U.S.C. § 7511b(f);
- j. any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Clean Air Act, unless the Administrator has determined that such requirements need not be contained in a Title V permit;

- k. any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Clean Air Act or parts B and C, Subchapter 2 of the Navajo Nation Clean Air Act, but only as it would apply to temporary sources permitted pursuant to § 504(e) of the Clean Air Act, 42 U.S.C. § 7661c(e), or 4 N.N.C. § 1136(D).
12. **“Area source”** means any stationary source of air pollutants that is not a major source, and does not include motor vehicles and nonroad vehicles subject to regulation under Title II of the Clean Air Act.
13. **“CFR”** means the Code of Federal Regulations, as amended.
14. **“Clean Air Act”** means the federal Clean Air Act, 42 U.S.C. §§ 7401-7671q, as amended.
15. **“Consumer Price Index”** means, for any calendar year, the average of the Consumer Price Index for all-urban consumers, or such revision of the Consumer Price Index that is most consistent with the Consumer Price Index for the calendar year 1989, as published by the U.S. Department of Labor as of the close of the 12-month period ending on August 31 of each calendar year.
16. **“Director”** means the Director of the Navajo Nation Environmental Protection Agency, or the Director’s duly authorized representative.
17. **“Draft permit”** means a version of an operating permit that the Director offers for public participation or affected program review.
18. **“Emergency”** means, for purposes of § 305, any situation arising from sudden and reasonably unforeseeable events beyond the control of the permittee, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under its permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.
19. **“Emission limitation”** means a requirement established by the Director or the Administrator that limits the quantity, rate, or concentration, or combination thereof, of emissions of regulated air pollutants on a continuous basis, including any requirements relating to operation or maintenance of a source to assure continuous reduction.

20. **“Emissions allowable under the permit”** means:
- a. any permit term or condition that establishes an emission limitation (including a work practice standard) determined at issuance or renewal to be required by an applicable requirement; or
 - b. any federally enforceable emissions cap that a permittee has assumed to avoid an applicable requirement to which it otherwise would be subject.
21. **“Emissions unit”** means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any air pollutant listed pursuant to § 112(b) of the Clean Air Act, 42 U.S.C. § 7412(b), or 4 N.N.C. § 1126. This term is not meant to alter or affect the definition of the term “unit” for purposes of Title IV of the Clean Air Act or part G, Subchapter 2 of the Navajo Nation Clean Air Act.
22. **“Existing source”** means any stationary source that is not a new source.
23. **“Federally enforceable”** means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR parts 60-61, requirements within an approved Navajo Nation implementation plan, and any permit requirements established pursuant to 40 CFR § 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including 40 CFR §§ 51.165 and 51.166.
24. **“Fee pollutant”** means any regulated air pollutant as defined in this section except:
- a. carbon monoxide;
 - b. any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard established by or promulgated under Title VI of the Clean Air Act;
 - c. any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under § 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r); or
 - d. emissions from insignificant activities and insignificant emissions not required to be listed or calculated in a permit application pursuant to § 301(D).
25. **“Final permit”** means the version of an operating permit issued by the Director

that has met all review requirements of Subpart IV of these regulations.

26. **“Fugitive emissions”** means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
27. **“General permit”** means an operating permit that meets the requirements of § 303 of these regulations.
28. **“Hazardous air pollutant”** means any air pollutant listed as a hazardous air pollutant either under § 112(b) of the Clean Air Act, 42 U.S.C. § 7412(b), or by the Director pursuant to 4 N.N.C. § 1126(B).
29. **“Insignificant activities”** means those activities found by the Administrator to be insignificant, including those listed in 40 C.F.R. § 71.5(c)(11), and those activities that have been listed by the Director and approved by the Administrator as insignificant on the basis of size, emissions, or production rate.
30. **“Insignificant emissions”** means, for regulated air pollutants other than hazardous air pollutants, a potential to emit for any single emissions unit not exceeding 2 tons per year and, for hazardous air pollutants, a potential to emit for any single emissions unit not exceeding 1,000 pounds per year or the de minimis level established under § 112(g) of the Clean Air Act, whichever is less.
31. **“Major source”** means any stationary source or any group of stationary sources that is located on one or more contiguous or adjacent properties, and is under control of the same person (or persons under common control) belonging to a single, major industrial grouping, and that is described in paragraphs a-c of this definition. For the purpose of this definition, a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.
 - a. A major source under § 112(a)(1) of the Clean Air Act, 42 U.S.C. § 7412(a)(1), which is defined as:
 - (1) for pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 TPY or more of any one hazardous air pollutant, 25 TPY or more of any combination of hazardous air pollutants which have been listed pursuant to § 112(b) of the Clean Air Act, 42

U.S.C. § 7412(b), or listed by the Director pursuant to 4 N.N.C. § 1126(B), or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, hazardous emissions from any oil or gas exploration or production well (with its associated equipment) and hazardous emissions from any pipeline compressor or pump station shall not be aggregated with hazardous emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources;

(2) for radionuclides, “major source” shall have the meaning specified by the Administrator by rule.

b. A major stationary source under § 302(j) of the Clean Air Act, 42 U.S.C. § 7602(j), that directly emits or has the potential to emit 100 TPY or more of any regulated air pollutant (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of this subsection, unless the source belongs to one of the following categories of stationary sources:

- (1) coal cleaning plants (with thermal dryers);
- (2) kraft pulp mills;
- (3) portland cement plants;
- (4) primary zinc smelters;
- (5) iron and steel mills;
- (6) primary aluminum ore reduction plants;
- (7) primary copper smelters;
- (8) municipal incinerators capable of charging more than 250 tons of refuse per day;
- (9) hydrofluoric, sulfuric, or nitric acid plants;
- (10) petroleum refineries;
- (11) lime plants;
- (12) phosphate rock processing plants;
- (13) coke oven batteries;
- (14) sulfur recovery plants;
- (15) carbon black plants (furnace process);
- (16) primary lead smelters;
- (17) fuel conversion plants;
- (18) sintering plants;
- (19) secondary metal production plants;
- (20) chemical process plants;

- (21) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units (mmBtu) per hour heat input;
- (22) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (23) taconite ore processing plants;
- (24) glass fiber processing plants;
- (25) charcoal production plants;
- (26) fossil fuel-fired steam electric plants of more than 250 mmBtu per hour heat input;
- (27) any other stationary source category, which as of August 7, 1980 is being regulated under section 111 or 112 of the Act.

c. A major stationary source as defined in part D of Title I of the Clean Air Act, including:

- (1) for ozone nonattainment areas, sources with the potential to emit 100 TPY or more of volatile organic compounds or nitrogen oxides in areas classified as “marginal” or “moderate,” 50 TPY or more in areas classified as “serious,” 25 TPY or more in areas classified as “severe,” and 10 TPY or more in areas classified as “extreme”; provided that the references in this subsection to 100, 50, 25, and 10 TPY of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under § 182(f)(1) or (2) of the Clean Air Act, 42 U.S.C. §§ 7511a(f)(1)-(2), that requirements under § 182(f) of the Clean Air Act do not apply;
- (2) for ozone transport regions established pursuant to § 184 of the Clean Air Act, 42 U.S.C. § 7511c, sources with the potential to emit 50 TPY or more of volatile organic compounds;
- (3) for carbon monoxide nonattainment areas that are classified as “serious,” and in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 TPY or more of carbon monoxide; and
- (4) for particulate matter (PM-10) nonattainment areas classified as “serious,” sources with the potential to emit 70 TPY or more of PM-10.

32. **“Minor permit revision”** means a permit revision that:

- a. does not violate any applicable requirement;

- b. does not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;
 - c. does not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;
 - d. does not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the permittee has assumed to avoid an applicable requirement to which the source would otherwise be subject, including any federally enforceable emissions cap assumed to avoid classification as a modification under Title I of the Clean Air Act and any alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the Clean Air Act, 42 U.S.C. § 7412(i)(5), and 4 N.N.C. § 1129(D)(5);
 - e. is not a Title I modification; and
 - f. is not required by the Director to be processed as a significant permit revision pursuant to § 405(E) of these regulations.
 - g. Notwithstanding the criteria listed in paragraphs (a)-(f), a minor permit revision may include permit revisions involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches to the extent that such minor permit revision procedures are provided in the implementation plans promulgated pursuant to part A of Subchapter 2 of the Navajo Nation Clean Air Act, 4 N.N.C. §§ 1111-13, or in applicable requirements promulgated by the Administrator.
33. **“Nation”** means the Navajo Nation, and shall encompass the area defined in 7 N.N.C. § 254.
34. **“Navajo Nation Acid Rain Rule”** means the regulations issued by the Navajo Nation EPA pursuant to subchapter 2, part G of the Navajo Nation Clean Air Act.
35. **“Navajo Nation Clean Air Act”** means the Navajo Nation Air Pollution Prevention and Control Act, 4 N.N.C. §§ 1101-62, as amended.
36. **“Navajo Nation EPA”** means the Navajo Nation Environmental Protection Agency.

37. **“New source”** has the meaning provided in 4 N.N.C. § 1101(A)(45).
38. **“N.N.C.”** means the Navajo Nation Code, as amended.
39. **“Operating permit”** and **“permit”** (unless the context suggests otherwise) means any permit or group of permits covering a source that is issued, renewed, modified, or revised pursuant to these regulations, or any part 71 permit upon delegation of a part 71 program to NNEPA, where appropriate as specified in § 705 of these regulations.
40. **“Operator”** means any person who operates, controls, or supervises the overall operation of a source.
41. **“Owner”** means any of the following persons:
- a. any holder of any portion of the legal or equitable title in a source;
 - b. any holder of a leasehold interest in a source;
 - c. any purchaser of power from a source under a life-of-the-source, firm power contractual arrangement, provided that unless expressly provided for in a leasehold agreement, “owner” shall not include a passive lessor or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, on the revenues or income from the source; or
 - d. with respect to any Allowance Tracking System general account, any person identified in the submission required by 40 CFR § 73.31(c) that is subject to the binding agreement for the authorized account representative to represent that person’s ownership interest with respect to allowances.
42. **“Part H source”** means any source subject to these regulations, pursuant to subchapter 2, part H of the Navajo Nation Clean Air Act and § 202 of these regulations.
43. **“Permit program costs”** means all reasonable direct and indirect costs related to developing and implementing the operating permit program established under these regulations, including, but not limited to, costs of the following activities:
- a. preparing generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;
 - b. reviewing and acting on any application for a permit issuance, revision, or

renewal, including the development of applicable requirements as part of the processing of such applications;

- c. general administrative costs of running the operating permit program, including the supporting and tracking of permit applications, compliance certification, and related data entry;
 - d. implementing and enforcing the terms of any operating permit, including adequate resources to determine which sources are subject to the program, but not including any court costs or other costs associated with an enforcement action;
 - e. emissions and ambient monitoring;
 - f. modeling, analyses, or demonstrations;
 - g. preparing inventories and tracking emissions; and
 - h. providing direct and indirect support to sources under 4 N.N.C. § 1140 in determining and meeting their obligations under these regulations.
44. **“Permit revision”** means a revision to an operating permit that constitutes a significant permit revision, a minor permit revision, or an administrative permit revision, as defined in this section.
45. **“Permittee”** means the owner, operator, or responsible official at a permitted source, as identified in any permit application or revision.
46. **“Person”** means any public or private corporation, company, partnership, firm, association, or society of persons, the federal or state governments and any of their programs or agencies, the Navajo Nation or any other tribe and any of its agencies, programs, enterprises, companies, or political subdivisions, as well as a natural person.
47. **“Portable source”** means any stationary source that is capable of being transported and operated in more than one location.
48. **“Potential to emit”** means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally enforceable. The potential to emit

for nitrogen dioxide shall be based on total oxides of nitrogen. Secondary emissions do not count in determining the potential to emit of a stationary source.

49. **“Proposed permit”** means the version of an operating permit that the Director proposes to issue and forwards to the Administrator for review in compliance with § 402 of these regulations.
50. **“Regulated air pollutant”** means the following:
- a. nitrogen oxides or any volatile organic compounds;
 - b. any pollutant for which a national ambient air quality standard has been promulgated;
 - c. any pollutant that is subject to any standard promulgated under § 111 of the Clean Air Act, 42 U.S.C. § 7411, or 4 N.N.C. § 1121;
 - d. any pollutant subject to any standard promulgated or any other requirements established under § 112 of the Clean Air Act, 42 U.S.C. § 7412, including the following:
 - (1) any pollutant for which the requirements of § 112(g)(2) of the Clean Air Act have been met, but only with respect to the individual source subject to a § 112(g)(2) requirement;
 - (2) any pollutant subject to requirements under § 112(j) of the Clean Air Act, provided that if the Administrator fails to promulgate a standard by the date established pursuant to § 112(e) of the Clean Air Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to § 112(e) of the Clean Air Act; and
 - (3) any regulated substance subject to requirements under § 112(r) of the Clean Air Act.
 - e. any hazardous air pollutant designated by the Director pursuant to 4 N.N.C. § 1126(B); or
 - f. any Class I or II substance subject to any standard promulgated under or established by Title VI of the Clean Air Act
51. **“Renewal”** means the process by which an operating permit is reissued at the end

of its term.

52. **“Responsible official”** means one of the following:
- a. for a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to an operating permit and either:
 - (1) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), or
 - (2) the delegation of authority to such representative is approved in advance by the Director.
 - b. for a partnership or sole proprietorship: a general partner or the proprietor, respectively.
 - c. for a federal, tribal, state, municipal, or other public agency: a principal executive officer or ranking elected official. For the purposes of these regulations, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the U.S. Environmental Protection Agency).
 - d. for an acid rain source: the designated representative (as defined in § 402(26) of the Clean Air Act, 42 U.S.C. § 7651a(26), and in 4 N.N.C. § 1101(A)(24)) in so far as actions, standards, requirements, or prohibitions under Title IV of the Clean Air Act or the regulations promulgated thereunder are concerned, and for any other purposes under 40 CFR parts 70 and 71.
53. **“Secondary emissions”** means emissions which occur as a result of the construction and operation of a major source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions must be specific, well-defined, quantifiable and impact the same general areas as the stationary source modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result

of the construction or operation of the major source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel, that is regulated under Title II of the Clean Air Act.

54. **“Section 502(b)(10) changes”** means changes that contravene an express permit term but that are authorized under § 502(b)(10) of the Clean Air Act, 42 U.S.C. § 7661a(b)(10). Such changes do not include changes that would violate applicable requirements or contravene operating permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.
55. **“Shutdown”** means the cessation of operation of any air pollution control equipment, process equipment, or process, for any purpose.
56. **“Significant permit revision”** means
 - a. any revision to an operating permit that does not meet the definitions for an administrative permit revision or a minor permit revision;
 - b. any revision that would result in any significant change to existing monitoring permit terms or conditions and any relaxation to existing recordkeeping; or reporting permit terms or conditions;
 - c. any revision for which action on the application would, in the judgment of the Director, require decisions to be made on significant or complex issues;
 - d. any revision that would be required if the existing operating permit specifically prohibits the proposed change; and
 - e. changes in ownership that do not meet the criteria for section (d) of the definition of an administrative permit revision.
57. **“Similar sources”** means sources that are generally similar in terms of operations, processes, and emissions, subject to the same or substantially similar requirements, and not subject to case-by-case standards or requirements.
58. **“Solid waste incineration unit”** means a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels). This term does not include:

- a. incinerators or other units required to have a permit under § 3005 of the federal Resource Conservation and Recovery Act, 42 U.S.C. § 6925;
 - b. materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals;
 - c. qualifying small power production facilities, as defined in § 3(17)(C) of the Federal Power Act, 16 U.S.C. § 796(17)(C), or qualifying cogeneration facilities, as defined in § 3(18)(B) of the Federal Power Act, 16 U.S.C. § 796(18)(B), which burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes; or
 - d. air curtain incinerators, provided that such incinerators only burn wood wastes, yard wastes, and clean lumber and that such air curtain incinerators comply with opacity limitations established by the Administrator by rule.
59. **“Startup”** means the setting into operation of any air pollution control equipment, process equipment, or process, for any purpose.
60. **“Stationary source”** or **“source”** means any building, structure, facility, or installation that emits or may emit any regulated air pollutant and that is not a nonroad engine under Title II of the Clean Air Act.
61. **“Subsidiary”** means a business concern which is owned or controlled by, or is a partner of, an applicant or permittee.
62. **“Temporary source”** means any source that is situated in one location for less than two years, after which it will be dismantled and removed from its current site or relocated to a new site. A temporary source may be semi-permanent, which means that it does not have to meet the requirements of a portable source. Temporary sources may include well head compressors which meet the criteria of this definition.
63. **“Title I modification”** means any modification under §§ 111-12 of the Clean Air Act, 42 U.S.C. §§ 7411-12, and any physical change or change in method of operations that is subject to the preconstruction regulations promulgated under Parts C and D of the Clean Air Act.
64. **“TPY”** means tons per year.

65. **“Uniform Rules”** means the Navajo Nation Environmental Protection Agency Uniform Regulations for Permit Review, Administrative Enforcement Orders, Hearings, and Rulemakings under Navajo Nation Environmental Acts.

§ 103. Certification [40 CFR §§ 70.5(d), 70.6(c)(1)]

- A. Any application, form, report, or compliance certification submitted by an applicant or a permittee pursuant to these regulations shall contain a certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under these regulations shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.
- B. Any document (including reports) required by an operating permit shall contain a certification by a responsible official that meets the requirements of § 103(A).

§ 104. Confidentiality [40 CFR §§ 70.5(a)(3)]

- A. An applicant or permittee who submits material to the Director under a claim of confidentiality:
1. may submit such material separately;
 2. shall precisely identify the material for which the confidentiality claim is asserted; and
 3. shall provide sufficient supporting information to allow evaluation of that claim.
- B. All confidentiality claims made regarding material submitted to the Director under these regulations shall be evaluated under 4 N.N.C. § 1151(D). Information which is emission data, a standard or limitation, or is collected pursuant to § 211(b)(2)(A) of the Act is not eligible for confidential treatment, as provided in 40 C.F.R. § 2.301(e).
- C. The Director may require or permit an applicant or permittee to submit directly to the Administrator a copy of such material for which a confidentiality claim is asserted.
- D. All materials submitted to the Director under these regulations, except to the extent determined confidential pursuant to subsection B, and all operating permits are public records, and not entitled to protection under § 114(c) of the Clean Air Act, 42 U.S.C. § 7414(c).

Subpart II—Applicability

§ 201. Violation [40 CFR §§ 70.1(b)-(c), 70.4(b)(10), (15), 70.5(a)(2), 70.7(b), (c)(1)(ii), 72.32(a)]

- A. Permit Requirement.** No Part H source may operate after the effective date of these regulations without a valid permit issued under these regulations and the Uniform Rules unless:
1. the Part H source is in compliance with an unexpired operating permit issued by the Director or the Administrator including any permit issued under 40 C.F.R. part 71 for which implementation and enforcement has been delegated to the Navajo Nation and is in compliance with paragraph 3 below;
 2. any changes in the operation of a Part H source which are not in compliance with an operating permit issued by the Director or the Administrator fall within the categories of § 404 of these regulations; or
 3. the Part H source has submitted a timely and complete application for permit issuance or renewal consistent with § 301 of these regulations or 40 CFR § 71.5.
 - a. If the Director fails to issue or disapprove a renewal application before the end of the prior permit term, that permit shall not expire and all its terms and conditions shall remain in effect until the renewal application has been issued or disapproved.
 - b. The ability to operate under this subsection shall cease if:
 - (1) the Director takes final action on the application, or
 - (2) the applicant fails to submit by the deadline specified in writing by the Director any additional information identified as being needed to process the application.
- B. Revocation; Termination.** Revocation or termination of a permit by the Director terminates the permittee's right to operate.
- C. Voluntary Discontinuation.** Upon request by the permittee, the Director shall permanently discontinue an operating permit. Permit discontinuance terminates the permittee's right to operate the source under the permit. The Director shall confirm the permit discontinuance by certified letter to the permittee.
- D. Preconstruction Limitation.** Nothing in this section shall be construed to alter any applicable preconstruction requirements under either § 165 of the Clean Air Act, 42 U.S.C. § 7475, or 4 N.N.C. § 1118.

§ 202. Part H Sources [40 CFR §§ 70.3(a)]

Operating permits must be obtained from the Director for the following sources:

- A. any major source;
- B. any acid rain source;
- C. any solid waste incineration unit required to obtain a permit pursuant to § 129(e) of the Clean Air Act, 42 U.S.C. § 7429(e), and 4 N.N.C. § 1121(C)(3);
- D. any source, including any area source, subject to regulation under §§ 111-12 of the Clean Air Act, 42 U.S.C. §§ 7411-12, or under parts D and F of Subchapter 2 of the Navajo Nation Clean Air Act, but not including any source that is exempted under § 203 of these regulations;
- E. any source required to have a permit under parts B or E of subchapter 2 of the Navajo Nation Clean Air Act; and
- F. any stationary source in a source category designated in whole or in part by either the Administrator, pursuant to 40 CFR § 70.3, or the Director, by regulation after notice and comment.

§ 203. Source Category Exemptions [40 CFR §§ 70.3(b), 72.7-8]

- A. **List of Exemptions.** The following sources and source categories are exempt from the obligation to obtain an operating permit:
 - 1. all sources listed in § 202 of these regulations that are not major sources, acid rain sources, or solid waste incineration units required to obtain operating permits pursuant to §129(e) of the Clean Air Act, 42 U.S.C. §7429(e); except that such sources are required to obtain operating permits if they are subject to a standard or other requirement under §§ 111 or 112 of the Clean Air Act, 42 U.S.C. §§ 7411 or 7412, after July 21, 1992 and if that standard or other requirement does not exempt such source from the requirement to obtain an operating permit;
 - 2. all sources that would be required to obtain a permit solely because they are subject to regulations or requirements under § 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r);
 - 3. all sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 60, Subpart AAA—Standards of

Performance for New Residential Wood Heaters;

4. all sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 61, Subpart M—National Emission Standard for Hazardous Air Pollutants for Asbestos, § 61.145, Standard for Demolition and Renovation;
5. any source in a source category exempted by the Administrator, by regulation, after notice and comment; and
6. any new or retired unit exempted by the Director or the Administrator pursuant to 40 CFR §§ 72.7 or 72.8.

Subpart III—Permit Requirements

§ 301. Permit Applications [40 CFR §§ 70.3(d), 70.4(b)(12)(iii), 70.7(b), (c)(1)(ii)]

- A. Duty to Apply.** For each Part H source, the owner or operator shall submit a timely and complete written permit application with the Director in accordance with this section and § 202 of the Uniform Rules. The applicant shall submit 3 copies of the permit application, or more, as requested by the Director.
- B. Timely Application.** A timely application for a source applying for an operating permit is:
 1. for new sources that commence operation after Part 70 program approval by USEPA Region IX, one that is submitted within 1 year after the source commences operation as a Part H source, or as established in subsection 5, below;
 2. for renewal applications, one that is submitted at least 6 months but not more than 18 months prior to the date of permit expiration;
 3. for initial Phase II acid rain permit applications under Title IV of the Clean Air Act and part G, Subchapter 2 of the Navajo Nation Clean Air Act, within 1 year after Part 70 program approval by USEPA Region IX;
 4. for a source subject to the requirements of § 112(g) of the Clean Air Act or 4 N.N.C. §1129(B), or required to have a permit under the preconstruction review program under Part C or D of Title I of the Act after Part 70 program approval by USEPA Region IX, one that is submitted within one year of commencing operation;
 5. for a Part H source that is in operation on or before Part 70 program approval by

USEPA Region IX and does not have a Part 71 permit from USEPA Region IX or the Navajo Nation EPA, one that is submitted within 1 year after such program approval;

6. for an existing area source that becomes subject to part H after Part 70 program approval by USEPA Region IX, as a result of becoming subject to a newly promulgated standard under §§ 111 and/or 112 of the Act, the compliance date as specified in those regulations; and
7. for a source that has an existing Part 71 permit from USEPA, Region IX or from the Navajo Nation EPA (pursuant to a delegated Part 71 program) at the time of Part 70 program approval by USEPA Region IX, within 1 year after such program approval or 6 months prior to the expiration of the part 71 permit, whichever is sooner.

C. Complete Application.

1. To be deemed complete, an application must provide all information required pursuant to § 301(D) of these regulations and § 202 of the Uniform Rules, except that an application for permit revision need supply only such information as is related to the proposed change.
2. A source's ability to operate without a permit pursuant to § 201(A)(3) of these regulations shall be in effect from the date a timely application is submitted until final action is taken on the application, provided that the application is determined or deemed to be complete under § 401(A) of these regulations and the applicant adequately submits any requested additional information by deadlines specified by the Director.
3. The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under Title I of the Clean Air Act.

D. Application Content. All applications shall be made on standard forms provided by the Director, and shall include the following information, provided that acid rain permit applications or portions thereof shall include only the information required under 40 CFR § 72.31, § 302 of the Navajo Nation Acid Rain Rule, and whatever of the following information the Director determines is necessary to review such permit applications:

1. the date of the application;
2. the applicant's name and address (and, if different, plant name and address); the names and addresses of the owner(s), the responsible official(s), and the operator(s) of the source; any subsidiaries or parent companies; the company's

- state of incorporation or principal registration to do business; and the names and telephone numbers of the owners' agent(s) and the plant site manager/contact;
3. the exact location of the source identified by latitude and longitude, or by UTM coordinates, and on a map, such as the 7.5 minute Topographic Quadrangle map published by the United States Geological Survey or the most detailed map available;
 4. a description of the source's processes and products (by Standard Industrial Classification Code), including any associated with alternative scenarios identified by the applicant;
 5. the following emissions-related information, including all calculations and computations on which such information is based:
 - a. all emissions of regulated air pollutants for which the source is major and all emissions of regulated air pollutants, including fugitive emissions and excluding insignificant activities and insignificant emissions (except as provided for in §301(D)(6)), for the source and for each emissions unit;
 - b. a process flow sheet of all components of the facility that would be involved in routine operations and emissions;
 - c. identification and description of all emissions points in sufficient detail to establish the basis for fees and applicability of requirements of the Navajo Nation Clean Air Act and the Clean Air Act;
 - d. emissions rates in TPY, pounds per hour, or in such other terms as are appropriate to establish compliance consistent with the applicable standard reference test method;
 - e. specific information such as that regarding fuels, fuel use, raw materials, or production rates, to the extent needed to determine or regulate emissions;
 - f. identification and full description of all air pollution control equipment and compliance monitoring devices or activities;
 - g. the maximum and standard operating schedules of the source, and any work practice standards or limitations on source operation which affect emissions of regulated air pollutants;
 - h. an operational plan defining the measures to be taken to mitigate source

- emissions during startups, shutdowns, and emergencies;
- i. other relevant information as the Director may reasonably require or which are required by any applicable requirements (including information related to stack height limitations developed pursuant to § 123 of the Clean Air Act, 42 U.S.C. § 7423);
 - j. additional information related to the emissions of air pollutants to verify which requirements are applicable to the source; and
 - k. for each reasonably anticipated alternative operating scenario identified by the applicant, all of the information required in paragraphs (a) through (j) above, as well as additional information determined to be necessary by the Director to define such alternative operating scenarios identified by the source pursuant to §302(H)(2) of these regulations;
6. for insignificant activities which are exempted because of size or production rate, a list of insignificant activities at the source and any information necessary to determine applicable air pollution control requirements and, for insignificant emissions, a listing of such emissions in sufficient detail to identify the emission unit and indicate that the exemption applies. Similar emission units, including similar capacities or sizes, may be listed under a single description. No additional information is required at the time of application, but the Director may request additional information during application processing;
 7. the following information concerning applicable air pollution control requirements:
 - a. citation and description of all applicable requirements,
 - b. description of or reference to any applicable test method for determining compliance with each applicable requirement, and
 - c. explanation of any proposed exemptions from otherwise applicable requirements;
 8. other specific information that may be necessary to implement and enforce other applicable requirements of the Navajo Nation Clean Air Act or the Clean Air Act or to determine the applicability of such requirements, including information necessary to collect any fees owed under Subpart VI of these regulations;
 9. additional information as determined necessary by the Director to define permit terms and conditions concerning trading emissions increases and decreases in the

permitted facility pursuant to § 302(H)(3) of these regulations, and facility changes allowed without permit revisions pursuant to § 404 of these regulations;

10. compliance certification by a responsible official consistent with § 103 of these regulations, including:
 - a. a certification of the source's compliance status for each applicable requirement;
 - b. a statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;
 - c. a schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually; and
 - d. a statement indicating the source's compliance status with any enhanced monitoring and compliance certification requirements of the Clean Air Act;

11. A compliance plan and schedule that contain:
 - a. a description of the compliance status of the source with respect to all applicable requirements;
 - b. for applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements, and for requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements;
 - c. for applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis;
 - d. a compliance schedule for sources that are not in compliance with all applicable requirements at the time of permit issuance, including a remedial measures schedule, with an enforceable sequence of actions with milestones, leading to compliance with such applicable requirements, provided that the compliance schedule shall be at least as stringent as that contained in any consent decree or administrative order to which the source is subject, and the obligations of any consent decree or administrative order shall not be in any way diminished by the compliance

schedule, and that any such compliance schedule shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based; and

- e. a schedule for submission of certified progress reports no less frequently than every 6 months.

The compliance plan requirements specified in this subsection shall apply to and be included in the acid rain portion of the compliance plan for an acid rain source, except as specifically superseded by regulations promulgated under Title IV of the Clean Air Act or part G, Subchapter 2 of the Navajo Nation Clean Air Act with regard to the schedule and method(s) the source will use to achieve compliance with acid rain emissions limitations.

E. Duty to Supplement and Correct. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application or in a supplemental submittal shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide further information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

§ 302. Permit Content [40 CFR §§ 70.3(d), 70.4(b)(12)(ii)-(iii), 70.6, 70.7(b), (f)(1), 72.50]

A. Standard Requirements. Each operating permit shall include the following:

1. the date of issuance and the permit term, provided that the Director shall issue all operating permits for a fixed term of 5 years. Notwithstanding this requirement, the permitting authority shall issue permits for solid waste incineration units combusting municipal waste subject to standards under §129(e) of the Act for a period not to exceed 12 years and shall review such permits at least every 5 years;
2. for major sources, all applicable requirements for all relevant emissions units in the major source and, for non-major sources subject to these regulations pursuant to §202 or 203(a), all applicable requirements applicable to emissions units that cause the source to be subject to these regulations;
3. fugitive emissions from a Part H source, which shall be included in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source;
4. emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance and as specified in the approved compliance schedule, provided

that the permit shall:

- a. specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based; and
 - b. state that, where an applicable requirement of the Clean Air Act is more stringent than an applicable requirement of regulations promulgated under Title IV of the Clean Air Act, both provisions shall be incorporated into the permit and shall be enforceable by the Administrator;
5. a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit;
 6. a provision specifying the conditions under which the permit will be reopened prior to expiration pursuant to § 406 of these regulations; and
 7. a provision to ensure that the permittee pays fees to the Director consistent with the annual fee schedule in § 602 of these regulations.

B. Required Statements. Each operating permit shall include provisions stating the following:

1. the permittee shall comply with all terms and conditions of the permit; noncompliance with federally enforceable permit conditions constitutes a violation of the Clean Air Act and the Navajo Nation Clean Air Act, and any permit noncompliance constitutes grounds for enforcement action, permit termination, revocation and reissuance, or modification or for denial of a permit renewal application;
2. it shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit;
3. the permit may be modified, reopened and revised, revoked and reissued, or terminated for cause in accordance with § 406 of these regulations;
4. the filing by the permittee of a request for a permit revision, reissuance, or termination, or of a notification of planned changes or anticipated noncompliance shall not stay any permit condition;
5. the permit does not convey any property rights of any sort, or any exclusive privilege;

6. all permit terms and conditions which are required under the Clean Air Act or under any of its applicable requirements, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator and citizens under the Clean Air Act, except that the permit shall specifically designate as not being federally enforceable under the Clean Air Act any terms or conditions included in the permit that are not required under the Clean Air Act or under any of its applicable requirements; and
7. the issuance of a permit, or the filing or approval of a compliance plan, does not relieve any person from civil or criminal liability for failure to comply with the provisions of the Navajo Nation Clean Air Act and the Clean Air Act, applicable regulations thereunder, and any other applicable law or regulation.

C. Hazardous Air Pollutant Requirements. Each operating permit for sources of hazardous air pollutants shall include the following elements:

1. a permit condition prohibiting exceeding any emission standard promulgated pursuant to 4 N.N.C. § 1128 or § 112(d) or (f) of the Clean Air Act, 42 U.S.C. § 7412(d), including but not limited to those emission standards currently promulgated at 40 CFR Parts 61 and 63, provided that if the Administrator fails to promulgate a standard for the applicant's or permittee's major source category or subcategory by the date established pursuant to § 112(e)(1) and (3) of the Clean Air Act, 42 U.S.C. § 7412(e)(1), (3), the permit for that source shall contain emission limitations determined pursuant to 4 N.N.C. § 1129(E)(3)-(4) and consistent with § 112(j) of the Clean Air Act, 42 U.S.C. § 7412(j), and federal regulations promulgated thereunder;
2. if the permitted source is a major source of hazardous air pollutants or an area source in a category listed under 4 N.N.C. § 1127, a permit condition prohibiting modification, construction, or reconstruction of the source, unless the Director determines pursuant to § 112(g) of the Clean Air Act, 42 U.S.C. § 7412(g), and 4 N.N.C. §§ 1128 and 1129(B)-(C) that the appropriate maximum achievable control technology emission limitation under §112 of the CAA and 4 N.N.C. § 1128 and 1129 will be met;
3. a compliance schedule determined by the Director pursuant to 4 N.N.C. § 1129(D), including but not limited to early reductions and/or alternative emissions limitations consistent with § 112(i)(5) of the Clean Air Act, 42 U.S.C. § 7412(i)(5), and federal regulations promulgated thereunder;
4. incorporation of specialty permits issued under 40 C.F.R. part 71, subpart B (whether issued by the Administrator or the Director, under delegated authority);

and

5. a permit condition governing accidental releases consistent with § 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and 40 CFR part 68, provided that a source which fails to submit a required risk management plan shall specify in its compliance schedule when it will submit that plan.

D. Acid Rain Requirements. Each operating permit for acid rain sources shall comply with the requirements of § 408(a) of the Clean Air Act, 42 U.S.C. § 7651g(a), and shall include the following elements:

1. a permit condition prohibiting emissions exceeding any allowances that the acid rain source lawfully holds under Title IV of the Clean Air Act or regulations promulgated thereunder;
2. no operating permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement;
3. no limit shall be placed on the number of allowances held by the acid rain source, provided that the permittee may not use allowances as a defense to noncompliance with any other applicable requirement;
4. any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Clean Air Act; and
5. conditions prohibiting exceedances of applicable emission rates and the use of any allowance before the year for which it was allocated.

E. Monitoring Requirements. Each operating permit shall include the following requirements:

1. all emissions monitoring requirements and analysis procedures or test methods required under applicable monitoring and testing requirements, including 40 C.F.R. part 64, and any other procedures and methods promulgated by the Administrator pursuant to §114(a)(3) or 504(b) of the Clean Air Act or by the Director pursuant to the Navajo Nation Clean Air Act, 4 NNC §1151(B)(3) or 1136(B). If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided that the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;

2. where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time periods that are representative of the source's compliance with the permit, as reported pursuant to subsection G of this section, provided that such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph;
3. as necessary, requirements concerning the use, maintenance, and, when appropriate, installation of monitoring equipment or methods; and
4. such additional requirements as may be specified pursuant to §§ 114(a)(3) and 504(b) of the Clean Air Act, 42 U.S.C. §§ 7414(a)(3) and 7661c(b).

F. Recordkeeping Requirements.

1. The permit shall require recordkeeping sufficient to assure and verify compliance with the terms and conditions of the permit, including incorporation of all applicable recordkeeping requirements, and shall require, where applicable, recordkeeping of:
 - a. the date, place as defined in the permit, and time of sampling or measurements;
 - b. the date(s) analyses were performed;
 - c. the company or entity that performed the analyses;
 - d. the analytical techniques or methods used;
 - e. the results of such analyses; and
 - f. the operating conditions existing at the time of sampling or measurement.
2. Records of all monitoring data and support information shall be retained for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

G. Reporting Requirements. The permit shall require reporting sufficient to assure and verify compliance with the terms and conditions of the permit and all applicable requirements, including incorporation of all applicable reporting requirements and:

1. Submittal of reports of any required monitoring at least every 6 months, which reports shall be certified by a responsible official consistent with § 103 of these regulations and shall clearly identify all instances of deviations from permit requirements, including emergencies;
2. Prompt reporting of all deviations from permit requirements (including emergencies), including the date, time, duration, and probable cause of such deviations, the quantity and pollutant type of excess emissions resulting from the deviation, and any preventative, mitigative, or corrective actions or measures taken. Where the underlying applicable requirement contains a definition of “prompt” or otherwise specifies a time frame for reporting deviations, that definition or time frame shall govern. Where the underlying applicable requirement fails to address the time frame for reporting deviations, reports of deviations shall be submitted based on the following schedule:
 - a. for emissions of a hazardous air pollutant or a toxic air pollutant (as identified in an applicable regulation) that continue for more than an hour in excess of permit requirements, the report must be made by telephone, verbal, or facsimile communication within 24 hours of the occurrence and in writing within 10 working days from the occurrence;
 - b. for emissions of any regulated air pollutant, excluding those listed in paragraph (G)(2)(a), that continue for more than 2 hours in excess of permit requirements, the report must be made by telephone, verbal, or facsimile communication within 48 hours of the occurrence and in writing within 10 working days from the occurrence;
 - c. or all other deviations from permit requirements, the report shall be contained in the report submitted in accordance with the time frame given in paragraph (G)(1) of this section.
3. A permit may contain a more stringent reporting requirement than required by paragraph (G)(2) of this section.
4. For purposes of this section, the term “deviation” shall have the meaning prescribed in 40 C.F.R. § 71.6(a)(3)(C).
5. When requested by the Director in writing and within the period specified by the Director, the permittee shall furnish to the Director copies of records required by

the permit to be maintained, and any information that the Director may deem necessary to determine whether cause exists for reopening and revising, revoking and reissuing, or terminating the permit or to determine compliance with the permit.

H. Operational Flexibility Requirements. Each operating permit shall include the following:

1. a provision stating that no permit revision shall be required for changes that are provided for in the permit under any approved economic incentives, marketable permits, emissions trading, and other similar programs or processes;
2. terms and conditions for all reasonably anticipated alternative operating scenarios identified in the application and approved by the Director, provided that such terms and conditions shall:
 - a. require the permittee to maintain, contemporaneously with any change from one operating scenario to another, a log at the permitted facility which documents the scenario under which the facility is operating; and
 - b. ensure that each such alternative scenario meet all applicable requirements and the requirements of these regulations.
3. terms and conditions identified in the application and approved by the Director for the trading of emissions increases and decreases within the permitted facility, provided that such trading shall be authorized solely for the purpose of complying with a federally enforceable emissions cap established in the permit independent of otherwise applicable requirements, and provided further that such terms and conditions shall:
 - a. be issued only to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval;
 - b. require compliance with all applicable requirements and include all terms and conditions required under this section to determine compliance, provided that the applicant shall include in the application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable, and the Director shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades; and
 - c. require for each such proposed change that the permittee provide written

notification to the Director and the Administrator at least 7 days in advance thereof, which notice the permittee and Director shall attach to their copies of the relevant permit. Such notice shall specify when the proposed change will occur; shall describe the proposed change, including the resulting emissions changes and the pollutants emitted subject to the emissions trade, and how the change will comply with the terms and conditions of the permit; and shall specify the provisions of these regulations with which the source will comply in making the change.

I. Compliance Requirements. Each operating permit shall include the following requirements:

1. compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms of the permit. Any document (including reports) required by a part 70 permit shall contain a certification by a responsible official that meets the requirements of §103;
2. upon presentation of credentials and other documents as may be required by law, the permittee shall allow authorized representatives of the Director to perform the following:
 - a. enter the permittee's premises where a source is located or an emissions-related activity is conducted, or where records must be kept under the conditions of the permit;
 - b. have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;
 - c. inspect, at reasonable times, any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and
 - d. sample or monitor, at reasonable times, any substances or parameters for the purpose of assuring compliance with the permit or applicable requirements as authorized by the Clean Air Act;
3. semiannual submittal of compliance certifications to the Director and the Administrator, which shall certify the source's compliance status with all permit terms and conditions and all applicable requirements relevant to the source, including those related to emission limitations, standards, or work practices, and shall include:
 - a. the identification of each term or condition of the permit that is the basis

- of the certification;
 - b. the compliance status of the source;
 - c. whether compliance was continuous or intermittent;
 - d. the method(s) used for determining the compliance status of the source, currently and during the reporting period identified in the permit. Such methods shall include, at a minimum, the methods required under subsections (E) through (G) of this section;
 - e. an identification of each deviation, which shall be taken into account in the compliance certification, and an identification as possible exceptions to compliance of any periods during which compliance is required and in which an excursion or exceedance as defined under 40 C.F.R. part 64 occurred; and
 - f. such other facts as the Director may require to determine the compliance status of the source, and such additional requirements as may be specified pursuant to §§ 114(a)(3) and/or 504(b) of the Clean Air Act, 42 U.S.C. §§ 7114(a)(3), 7661c(b);
4. consistent with § 301(D)(11) of these regulations, for sources to which that provision applies:
- a. a compliance schedule; and
 - b. a requirement that such sources submit progress reports at least semiannually, or at a more frequent period if specified in the applicable requirement or by the Director, which progress reports shall contain:
 - (1) dates for achieving the activities, milestones, or compliance required in the compliance schedule, and dates when such activities, milestones, or compliance were achieved; and
 - (2) an explanation of why any dates in the compliance schedule were not or will not be met, and any preventive or corrective measures adopted; and
5. such additional compliance requirements as the Director may specify.

J. Permit Shield.

1. Except as provided in these regulations, the Director, if requested by the applicant, may expressly include in an operating permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:
 - a. such applicable requirements are included and specifically identified in the permit; or
 - b. the Director, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.
2. An operating permit that does not expressly state that a permit shield exists for a specific provision shall be presumed not to provide such a shield for that provision.
3. Nothing in this section or in any operating permit shall alter or affect the following:
 - a. the provisions of § 303 of the Clean Air Act, 42 U.S.C. § 7603, or 4 N.N.C. § 1105, both concerning emergency powers, including the respective authorities of the Administrator and the Director under those sections;
 - b. the liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;
 - c. the applicable requirements of the Acid Rain Program, consistent with § 408(a) of the Clean Air Act, 42 U.S.C. § 7651g(a), provided that operation of an acid rain unit in accordance with its acid rain permit or portion thereof shall be deemed compliance with the Acid Rain Program except as provided in 40 CFR § 72.9(g)(6); or
 - d. the ability of the Administrator and the Director respectively to obtain information from a source pursuant to § 114 of the Clean Air Act, 42 U.S.C. § 7414, and 4 N.N.C. § 1151.
4. The permit shield shall remain in effect if the permit terms and conditions are extended past the expiration date of the permit pursuant to § 201(A)(3) of these regulations.
5. The permit shield may extend to terms and conditions concerning operational

flexibility requirements issued pursuant to §302(H) of these regulations.

6. The permit shield shall not extend to §502(b)(10) changes and off-permit changes under § 404 of these regulations, administrative or minor permit revisions under § 405(C)-(D) of these regulations, or permit terms or conditions for which notice has been given to reopen or revoke all or part under § 406 of these regulations.

§ 303. General Permits [40 CFR §§ 70.6(d)]

A. Issuance.

1. The Director may, after notice and opportunity for public participation and review by the Administrator and affected programs, issue a general permit covering numerous similar sources.
2. Any general permit shall comply with all requirements applicable to other operating permits and shall identify criteria by which sources may qualify for the general permit.

B. Application.

1. The owner or operator of a Part H source that would qualify for a general permit must:
 - a. apply to the Director for coverage under the terms of the general permit; or
 - b. apply for an operating permit consistent with § 301 of these regulations.
2. The Director may, in the general permit, provide for applications which deviate from the requirements of § 301 of these regulations, provided that such applications meet the requirements of Title V of the Clean Air Act and include all information necessary to determine qualification for, and to assure compliance with, the general permit.

C. Review and Operation.

1. The Director shall authorize qualifying sources that apply for coverage under a general permit to operate under the terms and conditions of such general permit.
2. The Director may grant a request for authorization to operate under a general permit without repeating the public participation procedures required under § 403 of these regulations. Such grant shall not constitute a final action for purposes of judicial review under 4 N.N.C. § 1162.

3. Authorization to operate under a general permit shall not be granted for acid rain sources unless otherwise provided in regulations promulgated under Title IV of the Clean Air Act.
4. Notwithstanding § 302(J) of these regulations, the permittee shall be subject to enforcement action for operation without an operating permit if the source is later determined not to qualify for the conditions and terms of the general permit.

§304. Portable and Temporary Source Permits [40 CFR §§ 70.6(e)]

- A. **Authorization.** The Director may issue permits for portable and temporary sources that authorize emissions from similar operations by the same source owner or operator at multiple temporary locations and authorize such sources to relocate without undergoing a permit revision, provided that such permits shall not apply to acid rain sources.
- B. **Limitations.** Permits issued pursuant to this section shall include conditions to assure that:
 1. the source is installed at all locations in a manner conforming with the permit;
 2. the source shall comply with all applicable requirements and all other provisions of these regulations at all authorized locations;
 3. the owner or operator shall notify the Director in writing at least 10 days in advance of each change in location, provided that such notice shall include a legal description of where the source is to be relocated and how long, to the best of the owner or operator's knowledge, it will be located there; and
 4. emissions from the source shall not, at any location, result in or contribute to an exceedance of a national ambient air quality standard or increment or visibility requirement under Part C of Title I of the Clean Air Act.

§ 305. Emergency Situations [40 CFR §§ 70.6(g)]

- A. An emergency, as defined in § 102(19), constitutes an affirmative defense to an action brought for noncompliance with relevant technology-based emission limitations if the permittee demonstrates through properly signed, contemporaneous operating logs or other relevant evidence that:
 1. an emergency occurred and the permittee can identify the cause(s) of the emergency;

2. the permitted facility was being properly operated at the time;
 3. during the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in the permit; and
 4. the permittee reported the emergency to the Director in compliance with § 302(G)(2) of these regulations.
- B. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency bears the burden of proof.
- C. This provision is in addition to any emergency or upset provision contained in any applicable requirement.

Subpart IV—Permit Processing

§ 401. Action on Permit Applications [40 CFR §§ 70.4(b)(6), 70.7(a), (c)(1)(I), 72.72(b)(1)(xiv)]

A. Completeness Determinations.

1. The Director shall determine whether an application for a permit, significant revision, or renewal, or a submission of additional information in response to a notification of incompleteness, is complete under § 301 of these regulations within 30 days of receipt of the application, or such longer time as the Director may deem necessary but not to exceed 60 days, notwithstanding the provisions of § 202(d) of the Uniform Rules. The Director shall promptly notify the applicant of that determination by certified mail, provided that any incompleteness notice shall also state what additional information or points of clarification are necessary for the application to be determined complete.
2. Unless the Director requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application or requested information, the application shall be deemed complete.
3. If, while processing an application, regardless of whether it has been determined or deemed to be complete, the Director determines that additional information is necessary to evaluate or take final action on that application, the Director may request such information in writing and set a reasonable deadline for a response, consistent with § 202(d) of the Uniform Rules.

B. Federal Review. The Director shall prepare, pursuant to §§ 205 and 206 of the Uniform

Rules, a fact sheet for each application that includes among other things, the legal and factual basis for the draft permit conditions (including references to applicable statutory and/or regulatory provisions), and shall make this fact sheet available to any person who requests it pursuant to § 206 of the Uniform Rules. The Director shall submit the fact sheet, along with the proposed permit, to the Administrator for review.

C. Decision and Notification.

1. The Director shall grant or disapprove the permit based on information contained in the Director's administrative record. The administrative record shall comply with § 213(b) of the Navajo Nation Uniform Rules and shall include the application, any additional information submitted by the applicant, any evidence or written comments submitted by interested persons or affected programs, any other relevant and appropriate evidence considered by the Director, and, if a public hearing is held, the evidence submitted at the hearing.
2. If the Director grants or disapproves a permit or permit revision, the Director shall notify the applicant by certified mail of the action taken and the reasons therefor. If the Director grants a permit or revision, the Director shall mail the permit or revision, including all terms and conditions, to the applicant by certified mail.

D. Final Action. The Director shall take final action on all permit applications for initial permits, permit modifications or renewals within 18 months after an application is determined or deemed to be complete, except that:

1. For existing Part H sources at the time of Part 70 program approval by USEPA Region IX, the Director shall take final action in accordance with the Navajo Nation transition plan for Part 70 permit issuance.
2. for applications for permits authorizing early reductions and/or alternative emissions limitations consistent with § 112(i)(5) of the Clean Air Act, 42 U.S.C. § 7412(i)(5), the Director shall take final action on applications within 9 months of receipt of the complete application;
3. acid rain permits shall be acted upon in accordance with the deadlines in Title IV of the Clean Air Act and part G, Subchapter 2 of the Navajo Nation Clean Air Act and regulations promulgated thereunder; and
4. to the extent possible consistent with other time limits of this section, the Director shall give priority to action on applications for construction or modification under parts C and D of Title I of the Clean Air Act.

E. Issuance. A permit, permit revision, or permit renewal shall only be issued if all of the

following conditions have been met:

1. the Director has received a complete application for a permit, permit revision, or permit renewal, except that a complete application need not be received before issuance of a general permit under § 303 of these regulations;
 2. except for administrative permit revisions, the Director has complied with the requirements for notifying and responding to affected programs under § 402 of these regulations;
 3. except for administrative and minor permit revisions, the Director has complied with the requirements for public participation procedures under § 403 of these regulations;
 4. the conditions of the permit provide for compliance with all applicable requirements and the requirements of these regulations; and
 5. the Administrator has received a copy of the proposed permit and any notices required under § 402 of these regulations, and has not objected to issuance of the permit within the time period and manner specified in that section.
- F. Renewal.** Permits being renewed are subject to the same procedures, including those for public participation and affected program and EPA review, as those that apply to initial permit issuance. If the Director fails to act in a timely way on a permit renewal, EPA may invoke its authority under §505(e) of the Clean Air Act to terminate or revoke and reissue the permit.
- G. Nonaction.** No permit, revision, or renewal shall be issued by failure of the Director to act on an application.

§ 402. Review by the Administrator and Affected Programs [40 CFR §§ 70.8(a)-(c), (e)]

- A. Applicability.** The Director shall not issue any operating permit, revision, or renewal for any source until the Administrator and affected programs have had an opportunity to review the proposed permit as required under this section. Permits for source categories waived by the Administrator from this requirement and any permit terms or conditions which are not required under the Clean Air Act or under any of its applicable requirements are not subject to Administrator review or approval.
- B. Transmittal**
1. Within 5 days after receipt of notification that an application described in Section 401 has been determined or deemed complete, the applicant shall transmit a copy

of the complete permit application (including the compliance plan and all additional materials submitted to the Director) directly to the Administrator. To the extent practicable, the preceding information shall be provided in a computer-readable format compatible with the Administrator's national database management system. The applicant shall provide certification of such transmittal to the Director. The Director shall provide to the Administrator a copy of each draft permit, each proposed permit, each final operating permit, and any other relevant information requested by the Administrator.

2. The Director shall provide notice of each draft and proposed permit transmitted to the Administrator under this section to every affected program on or before the time that the Director provides such notice to the public under § 403 of these regulations, except to the extent that minor permit revision procedures authorize different notice procedures.
3. The Director shall keep for 5 years such records and submit to the Administrator such information as the Administrator may reasonably require to ascertain whether this program complies with the requirements of the Clean Air Act, 40 C.F.R. Part 70, or related applicable requirements.

C. Responses to Objections.

1. No permit for which an application must be transmitted to the Administrator under this section shall be issued by the Director if the Administrator determines that issuance of the proposed permit would not be in compliance with applicable requirements, these regulations or 40 C.F.R. Part 71 (for Part 71 permits only) and so objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information.
2. The Director, as part of the submittal of a proposed permit to the Administrator (or as soon as possible after the submittal for minor permit revision procedures under § 405(D) of these regulations), shall notify the Administrator and any affected program in writing of any refusal by the Director to accept all recommendations for the proposed permit that the affected program submitted during the public or affected program review period. The notice shall include the Director's reasons for not accepting any such recommendation. The Director is not required to accept recommendations that are not based on federally enforceable applicable requirements, these regulations or 40 C.F.R. Part 71 (for Part 71 permits only).
3. Unless the following requirements are waived by the Administrator pursuant to § 505(d) of the Clean Air Act, 42 U.S.C. § 7661d(d):

- a. the Director shall respond in writing to any objection by the Administrator to the issuance of a permit, pursuant to § 505(b) of the Clean Air Act, 42 U.S.C. § 7661d(b), and these regulations;
- b. upon receipt of an objection by the Administrator under § 505(b) of the Clean Air Act, 42 U.S.C. § 7661d(b), the Director may not issue the permit unless it is revised and issued in accordance with subsection D of this section; and
- c. if the Director has issued a permit before receipt of an objection by the Administrator under § 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), the Director may issue a revised permit in accordance with subsection D of this section.

D. Issuance or Denial.

- 1. The Director shall, within 90 days after the date of an objection under § 505(b) of the Clean Air Act, 42 U.S.C. § 7661d(b), submit to the Administrator a proposed permit revised to meet the objection.
- 2. If the Administrator notifies the Director that cause exists to terminate, modify, or revoke and reissue a permit, the Director shall, within 90 days after receipt of such notification, forward to the Administrator a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Director may request a 90-day extension for this submittal, in accordance with § 505(e) of the Clean Air Act, 42 U.S.C. § 7661d(e).

§ 403. Public Notice and Participation [40 CFR §§ 70.7(h), 70.8(d)]

- A. Applicability.** Proceedings for all initial permit issuances, significant permit revisions, renewals, reopenings, revocations, and terminations, and all changes to the Director’s list of insignificant activities, shall include public notice and provide an opportunity for public comment. The Director may hold a public hearing for draft permits, proposals to suspend, reopen, revoke, or terminate a permit, or for any reason the Director deems appropriate, and shall hold such a hearing in the event of significant public interest.
- B. Timing.** The Director shall provide 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing, pursuant to § 207(b) of the Uniform Rules.
- C. Scope of Notice.** Public notice, whether for comment or hearing, shall be given pursuant to § 207(c) of the Uniform Rules.

D. Notice Content. The public notice shall include the items listed in § 207(d) of the Uniform Rules and, for permit revisions, the emissions change(s) involved in any permit revision.

E. Hearings. Public hearings shall be conducted pursuant to § 209 of the Uniform Rules.

F. Recordkeeping. The Director shall keep a record of commenters involved and issues raised during the public participation process so that the Administrator may fulfill his or her obligation under § 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), to determine whether a citizen petition may be granted. Such records shall be available to the public upon request.

G. Response to Comments.

1. At the time any final permit decision is issued, the Director shall issue a response to public comments, pursuant to § 213 of the Uniform Rules.
2. Any documents cited in the response to comments shall be included in the administrative record for the final permit decision pursuant to § 401(C) of these regulations and § 213(b) of the Uniform Rules. If new points are raised or new material supplied during the public comment period, the Director may document the response to those matters by adding new materials to the administrative record.
3. The Director shall notify in writing any affected program of any refusal to accept recommendations for the permit that the affected program submitted during the public comment and affected program review periods.

H. Public Petitions to the Administrator.

1. If the Administrator does not object in writing under § 402(C)(1) of these regulations, any person may petition the Administrator within 60 days after expiration of the Administrator's 45-day review period to make such objection.
2. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment periods provided for in §403(B) and (E) of these regulations, unless the petitioner demonstrates that it was impracticable to raise such objections within such periods, or unless the grounds for such objection arose after such periods.
3. If the Administrator objects to a permit as a result of a petition filed under this subsection, the Director shall not issue the permit until the Administrator's objection has been resolved, except that a petition for review does not stay the

effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and before the Administrator's objection.

4. Pending resolution of any public petition to the Administrator under this subsection, the relevant source will not be in violation of the requirement to submit a timely and complete application.

I. Judicial Review. Any person adversely affected by a final action of the Director under these regulations may appeal to the Navajo Nation Supreme Court in accordance with 4 N.N.C. § 1162 and § 214 of the Uniform Rules.

§ 404. Facility Changes Allowed Without Permit Revisions [40 CFR §§ 70.4(b)(12)(i), (b)(14), (15)]

In addition to changes authorized pursuant to § 302(H) of these regulations, any permittee may make the following facility changes without a permit revision, notwithstanding any provisions to the contrary in §204 of the Uniform Rules:

A. Section 502(b)(10) Changes.

1. The permittee may make Clean Air Act § 502(b)(10) changes without applying for a permit revision if those changes are not modifications under Title I of the Clean Air Act and do not cause the facility to exceed emissions allowable under the permit (whether expressed as a rate of emissions or in terms of total emissions).
2. 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.
3. Upon receiving notice of a proposed § 502(b)(10) change pursuant to the preceding provision, the Director shall promptly determine whether the proposed change qualifies as a §502(b)(10) change and whether the notice meets the requirements of the preceding paragraph, and shall promptly notify the permittee of this determination.
4. If the proposed change and the notice is sufficient, the permittee is not required to comply with permit terms and conditions it has identified that restrict the change, and the permittee and Director shall attach each such notice to their copy of the relevant permit. If the change is determined not to qualify and/or the notice is not sufficient, the original terms of the permit remain fully enforceable.

B. Off-Permit Changes.

1. Permittees are allowed to make, without a permit revision, changes that are not addressed or prohibited by the operating permit, if:
 - a. each such change meets all applicable requirements and shall not violate any existing permit term or condition;
 - b. such changes are not subject to any requirements under Title IV of the Clean Air Act and are not modifications under Title I of the Clean Air Act;
 - c. such changes are not subject to permit revision procedures under § 405 of these regulations; and
 - d. the permittee provides contemporaneous written notice to the Director and the Administrator of each such change, except for changes that qualify as insignificant activities. Such notice shall state when the change occurred and shall describe the change, any resulting emissions change, pollutants emitted, and any applicable requirement that would apply as a result of the change.
2. The permittee shall keep a record describing changes made at the source that result in emissions of any regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

§ 405. Permit Revisions [40 CFR §§ 70.7(d)-(e)]

- A. Hazardous Air Pollutant Sources.** Any permit revision concerning the hazardous air pollutant portion of a permit shall be governed by these regulations, § 112 of the Clean Air Act, 42 U.S.C. § 7412, and 4 N.N.C. § 1129.
- B. Acid Rain Sources.** Any permit revision concerning the acid rain portion of a permit shall be governed by regulations promulgated under Title IV of the Clean Air Act and part G, Subchapter 2 of the Navajo Nation Clean Air Act.
- C. Administrative Permit Revisions.**
 1. Notwithstanding any provisions to the contrary in § 202 of the Uniform Rules, the Director may incorporate administrative permit revisions without providing notice to the public or affected programs, provided that the Director designates any such permit revision as having been made pursuant to this subsection. The Director shall submit a copy of the revised permit to the Administrator.

2. The Director shall take no more than 60 days from receipt of a request for an administrative permit revision to take final action on such request.
3. The permittee may implement the changes outlined in § 102(6)(a) through (e) of these regulations immediately upon submittal of the request for the administrative revision.

D. Minor Permit Revisions.

1. **Application.** A permittee may apply to the Director for a minor permit revision in compliance with § 301(D) of these regulations, provided that such application shall include:
 - a. a request for a minor permit revision;
 - b. a description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;
 - c. the permittee's suggested draft permit;
 - d. certification by a responsible official, consistent with § 103 of these regulations, that the proposed revision meets the criteria for use of minor permit revision procedures; and
 - e. 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.
2. **Limitation.** A permittee shall not submit multiple minor permit revision applications that may conceal a larger revision that would not constitute a minor permit revision. The Director may require that multiple related minor permit revision applications be submitted as a single significant permit revision application.
3. **Completeness.** The Director shall, within 30 days after receipt of an application for a minor permit revision, notwithstanding any provision to the contrary in § 202 of the Uniform Rules, review such application for completeness. The Director shall notify the applicant of that determination by certified mail, provided that any incompleteness notice shall also state what additional information or points of clarification are necessary for the application to be determined complete. Unless the Director determines that such an application is not complete, requests additional information, or otherwise notifies the applicant of incompleteness

within that time period, the application shall be deemed complete.

4. **EPA and Affected Program Review.** Within 5 working days after receipt of notification by the Director that a minor permit revision application has been determined or deemed complete, the applicant shall meet its obligation under § 402(B)(1) of these regulations to notify the Administrator of the requested permit modification, and the Director shall send any notice required under § 402(B) of these regulations to the Administrator and affected programs. Within 5 days after completion of the preceding review process, the Director shall send to the Administrator any notice required under § 402(C)(2) of these regulations.
5. **Permittee's Ability to Make Change.** The permittee may make the change proposed in its minor permit revision application immediately after submittal of such application. After the permittee makes the change allowed by the preceding sentence, and until the Director takes any of the actions specified in the following subsection, the permittee must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this period, the permittee need not comply with the existing permit terms and conditions it seeks to modify. If the permittee fails to comply with its proposed permit terms and conditions during this period, however, the existing permit terms and conditions it seeks to modify may be enforced against it.
6. **Timetable.** The Director may not issue a final minor permit revision until after the end of the Administrator's 45-day review period of the proposed permit revision, or until the Administrator has notified the Director that the Administrator will not object to issuance of the permit revision, whichever is first, although the Director may approve the permit revision before then. Within 90 days after receipt of a minor permit revision application, or within 15 days after the end of the Administrator's 45-day review period, whichever is later, the Director shall:
 - a. issue the minor permit revision as proposed;
 - b. disapprove the minor permit revision application;
 - c. determine that the requested revision does not constitute a minor permit revision and should be reviewed as a proposed significant permit revision;
or
 - d. revise the draft permit revision and transmit to the Administrator the new proposed permit revision as required by § 402(B) of these regulations.

E. Significant Permit Revisions.

1. Significant permit revisions shall meet all requirements of these regulations for permit issuance and renewal, including those for applications, review by the Administrator and affected programs, and public participation.
2. The Director shall complete review on the majority of significant permit revision applications within 9 months after such applications are determined or deemed to be complete.

§ 406. Permit Reopenings, Revocations and Reissuances, and Terminations [40 CFR §§ 70.7(f)-(g)]

A. Action by the Director.

1. **Reopening and Revocation and Reissuance Standards.** The Director shall reopen and revise, pursuant to § 204 of the Uniform Rules (except as provided in paragraph 2 below), all permits issued under these regulations for any of the reasons listed in paragraphs (a) through (d) of this subsection. Alternatively, the Director may revoke and reissue permits for the reasons listed in paragraphs (c) and (d):
 - a. additional applicable requirements under the Navajo Nation Clean Air Act or Clean Air Act become applicable to a major source with a remaining permit term of 3 or more years, provided that the Director shall revise such permits to incorporate such additional requirements no later than 18 months after promulgation of such requirements, and no such reopening is required if the effective date of the requirement is later than the permit expiration date unless the original permit or any of its terms or conditions have been extended past the permit expiration date pursuant to § 201(A)(3) of these regulations;
 - b. additional requirements (including excess emissions requirements) become applicable to a source under the Acid Rain Program, provided that upon approval by the Administrator, excess emissions offset plans shall be deemed to be incorporated into the permit;
 - c. the Director or the Administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the terms or conditions of the permit; or
 - d. the Director or the Administrator determines that the permit must be revised or revoked and reissued to assure compliance with applicable requirements.

2. **Reopening and Revocation and Reissuance Limitations.** Proceedings to reopen and revise, or revoke and reissue, a permit shall comply with the procedural requirements for initial permit issuance, and shall affect only those parts of the permit for which cause to reopen or revoke exists, notwithstanding §204(c)(2) of the Uniform Rules. Units for which permit conditions have been revoked shall not be operated until permit reissuance. Reopenings shall be made as expeditiously as practicable.
3. **Termination.** A permit, or an authorization to operate under a general permit, may be terminated when:
 - a. the permittee fails to meet the requirements of an approved compliance plan;
 - b. the permittee has been in significant or repetitious noncompliance with the operating permit terms or conditions;
 - c. the applicant or permittee has exhibited a history of willful disregard for environmental laws of any tribal or state authority, or of the United States;
 - d. the applicant or permittee has knowingly misrepresented a material fact in any application, record, report, plan, or other document filed or required to be maintained under the permit;
 - e. the permittee falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under the permit;
 - f. the permittee fails to pay fees required under Subpart VI of these regulations; or
 - g. the Administrator has found that cause exists to terminate the permit.
4. **Notification.** In addition to providing notice of intent to terminate a permit pursuant to § 204(d) of the Uniform Rules, the Director shall provide a notice of intent to a permittee to reopen or revoke and reissue a permit. Notice shall be provided by certified mail at least 30 days before the date on which the permit is to be reopened, revoked, or terminated, except that the Director may provide less advance notice in the case of an emergency. The notice shall state that the permittee may, within 30 days of receipt, or in less time in the case of an emergency, submit comments or request a hearing on the proposed permit action.

B. Action by the Administrator. Within 90 days, or longer if the Administrator extends

this period, after receipt of written notification that the Administrator has found that cause exists to terminate, modify, or revoke and reissue a permit, the Director shall forward to the Administrator a proposed determination of termination, modification, or revocation and reissuance, as appropriate. Within 90 days from receipt of an objection by the Administrator to a proposed determination, the Director shall address and act upon such objection.

Subpart V—Enforcement

§ 501. Generally [40 CFR § 70.6(b)]

- A. Authority.** All terms and conditions in a permit, including but not limited to provisions designed to limit a source's potential to emit, shall be enforceable by the Administrator, by the Director pursuant to this Subpart, Subpart 3 of the Uniform Rules and Subchapter 3 of the Navajo Nation Clean Air Act, 4 N.N.C. §§ 1151-56, and by persons pursuant to 4 N.N.C. § 1156 and § 304 of the Clean Air Act, 42 U.S.C. § 7604.
- B. Limitation.** Notwithstanding any other provision of these regulations, (1) any terms and conditions in a permit that are not required under the Clean Air Act or under any of its applicable requirements are not enforceable under the Clean Air Act, and shall be identified as such in the permit; and (2) enforcement actions against the federal government or other tribes or against any of their agencies, officers, agents, or employees are limited to those actions authorized by the Clean Air Act and federal Indian law.

§ 502. Enforcement Authority [40 CFR §§ 70.11(a), (c)]

Pursuant to the enforcement authority enumerated in Subchapter 3 of the Navajo Nation Clean Air Act and applicable provisions of the Clean Air Act, the Director has the following authority to prevent and address violations of these regulations by Part H sources:

- A.** to restrain or enjoin immediately and effectively any person by order or by suit in court from engaging in any activity in violation of a permit that is presenting an imminent and substantial endangerment to the public health or welfare, or the environment;
- B.** to seek injunctive relief in court to enjoin any violation of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit; and
- C.** to assess civil penalties or recover civil damages according to the following:
 - 1.** civil penalties or damages assessed, sought, or agreed upon by the Director under this subsection shall be appropriate to the violation;
 - 2.** these penalties or damages shall be separately recoverable in maximum amounts

of not less than \$10,000 per day per violation;

3. civil penalties or damages shall be recoverable for the violation of any applicable requirement; any permit condition; any fee or filing requirement; any duty to allow or carry out inspection, entry, or monitoring activities; or any regulation or orders issued by the Director; provided that Navajo law shall not include mental state as an element of proof for civil violations

D. to sue to recover in court criminal remedies, including fines, according to the following:

1. a criminal fine sought by the Director under this subsection shall be appropriate to the violation;
2. these fines shall be separately recoverable in maximum amounts of not less than \$10,000.00 per day per violation or, if smaller, the largest amount permissible under applicable law;
3. criminal fines shall be recoverable against any person who knowingly violates any applicable requirement, any permit condition, or any fee or filing requirement; and
4. criminal fines shall be recoverable against any person who knowingly makes any false material statement, representation, or certification in any form, in any notes or report required by a permit, or who knowingly renders inaccurate any required monitoring device or method.

§ 503. Enforcement Evidence [40 CFR §§ 70.11(b)]

The burden of proof and degree of knowledge or intent required for establishing violations of these regulations shall be no greater than the burden of proof or degree of knowledge or intent required under the Navajo Nation Clean Air Act and the Clean Air Act, regardless of any contrary provisions of Navajo law.

§ 504. Compliance Tracking [40 CFR § 70.4(b)(5)]

- A. **Generally.** The Director shall compile and maintain for at least five years all information received pursuant to § 302(G) of these regulations as necessary and appropriate to determine ongoing compliance by Part H sources with these regulations and the Navajo Nation Clean Air Act and Clean Air Act, and shall provide any such information or compilation thereof to the Administrator when so requested by the Administrator.
- B. **Agreement.** The Director may enter into an agreement with the Administrator concerning provision of the compliance tracking information compiled pursuant to this section.

§ 505. Enforcement Reporting [40 CFR § 70.5(b)(9)]

- A. Requirement.** The Director shall record and submit to the Administrator at least annually beginning no later than one year after the effective date of these regulations information regarding the Director's enforcement activities taken pursuant to these regulations and Subchapter 3 of the Navajo Nation Clean Air Act, 4 N.N.C. §§ 1151-56, including but not limited to the following:
1. the number of criminal and civil, judicial and administrative enforcement actions either commenced or concluded;
 2. the penalties, fines, and sentences obtained in those actions; and
 3. the number of administrative orders issued.
- B. Method.** The Director shall consult with the Administrator regarding the preferred method for recording information required to be recorded pursuant to this section.

Subpart VI—Permit Fees

§ 601. Fee Requirement [40 CFR §§ 70.9(a)]

- A. Annual Fees.** An annual operating permit emission fee shall be paid to the Navajo Nation by each owner or operator subject to these regulations. Such fee shall be assessed:
1. for a major source, for all emissions units; and
 2. for all other sources, for emissions units that cause the source to be subject to these regulations.
- B. Other Fees.** The Director may establish a schedule of fees for applications for permit issuances, revisions, and renewals.

§602. Annual Fee Schedule [40 CFR §§ 70.9(a)-(d)]

- A. Emission and Minimum Fees.**
1. **Initial Emission Fees.** Unless otherwise set pursuant to this section, emission fees for all sources required to have operating permits under these regulations shall be \$38.72 per ton of actual emissions for all fee pollutants.
 2. **Initial Minimum Fees.** The Director may set, pursuant to this section, minimum fees for all sources required to have an operating permit under these regulations.

3. **Adjustments to Fees.** The Director may alter or adjust the above emission and minimum fees in dollars per ton in the interest of program administration and/or to ensure that fees paid under these regulations are sufficient to cover permit program costs, as those costs or the number or types of permitted sources may change over time.
4. **Indexing.** The emission and minimum fees set under the preceding subsections shall be adjusted at the beginning of each calendar year to reflect any percentage increase by which the Consumer Price Index for the most recent year exceeds the Consumer Price Index for the year 2004.

B. Fee Calculation.

1. Subtotal annual fees shall be calculated by multiplying the applicable emission fee set pursuant to subsection A of this section times the total tons of actual emissions for each fee pollutant. 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.
2. The total annual fee due under this Subpart shall be the greater of the applicable minimum fee and the sum of subtotal annual fees for all fee pollutants emitted from the source.

- C. Fee Demonstration.** The Director shall provide a demonstration to the Administrator that the fee schedule established pursuant to this section, in conjunction with any application fees established by the Director pursuant to this Subpart, will result in the collection and retention of fees in an amount sufficient to cover permit program costs. Such demonstration shall also contain an initial accounting (and periodic updates as required by the Administrator) of how required fee revenues are used solely to cover permit program costs.

§ 603. Annual Fee Payment [40 CFR §§ 70.9(a), (b)(4)]

A. Payment Schedule.

1. The first annual fee to be paid by a source to the Navajo Nation EPA Air Quality Control Program shall be determined and paid as follows:
 - a. For sources in operation before the effective date of these regulations, the first annual fee shall be based on the emissions inventory for the preceding calendar year or the applicable minimum fee, whichever is greater. The fee

shall be due on the date specified in the source's part 71 permit. If a part 71 permit has not been issued to a source, the fee shall be due on the anniversary date of the source's original part 71 application to USEPA Region IX.

- b. For sources that begin operation after the effective date of these regulations, and for sources that become subject to a permit requirement pursuant to title V of the Clean Air Act through promulgation of the Administrator after the effective date of these regulations, the first annual fee shall be based on the applicable minimum fee. The fee shall be due on the 60th day after that source commences operation.
 - c. If no emissions inventory is available, the first annual fee shall be based on estimated emissions using approved estimation methods.
2. All annual emission fees other than the first shall be due each year on the anniversary date of the initial fee payment by the source to the Navajo Nation EPA.
 3. Notwithstanding any other provision of this section, no annual emission fee shall be required to be paid based on emissions from any acid rain unit before January 1, 2000.

B. Payment Form, Processing, and Use.

1. Fee payments due under this section shall be remitted in the form of a certified check or money order made payable to the Navajo Nation Environmental Protection Agency and submitted to the Air Quality Control Program.
2. Upon receipt of fee payments due under this section, such payments shall be deposited in the Permit Fund established pursuant to 4 N.N.C. § 1139.
3. Fee payments collected under this section shall not be utilized for any purpose not authorized under the Navajo Nation Clean Air Act or the Clean Air Act.

C. Nonpayment. Failure to remit the full fee required by the due dates specified in this section constitutes a violation of these regulations and may subject the owner or operator to enforcement under Subchapter 3 of the Navajo Nation Clean Air Act, including, but not limited to, civil penalties for each day of noncompliance pursuant to 4 N.N.C. § 1155.

Subpart VII–Part 71 Program Delegation

§ 701. Authority to Implement Part 71 Program [40 C.F.R. § 71.10]

Upon delegation of a Part 71 program by USEPA Region IX to the Navajo Nation EPA, the Navajo Nation EPA shall have the authority to issue, amend, revoke, reissue, modify, enforce and renew Part 71 permits to Part H sources pursuant to the procedures set forth both in these regulations and 40 C.F.R. part 71.

§ 702. Fees Pursuant to a Delegated Part 71 Program [40 C.F.R. § 71.9]

Upon delegation of a part 71 program by USEPA Region IX to the Navajo Nation EPA, each part H source holding a part 71 permit shall pay initial and annual fees to the Navajo Nation EPA Air Quality Control Program in accordance with Subpart VI of these regulations.

§ 703. Transition from Delegated Part 71 Program to Part 70 Program

Upon approval of the Navajo Nation's primacy application for a part 70 operating permit program, each part H source holding a part 71 permit (including any source with a part 71 permit issued by the Navajo Nation EPA) shall submit an application to the Navajo Nation EPA for a part 70 permit by the date specified in § 301 of these regulations.

§ 704. Part 71 Incorporation by Reference

A. 40 C.F.R. part 71 is incorporated by reference into this regulation for purposes of administering the delegated Part 71 program, except for the following parts:

- (1) 40 C.F.R. § 71.4(a)-(k) and (m);
- (2) 40 C.F.R. § 71.9;
- (3) 40 C.F.R. § 71.10(b), (d)(2), (g), (h) and (j).

B. Notwithstanding subsection A of this section, the Navajo Nation procedures set forth in the sections listed under § 705 shall apply to part 71 permits in addition to the part 71 procedures.

§ 705. Applicable Sections for Part 71 Permits

Part 71 permits shall be administered and enforced in compliance with the following sections:

- Confidentiality §104
- Violation §201
- Emergency Situations §305
- Subpart IV - Permit Processing §§ 401-406
- Subpart V–Enforcement §§501-505
- Subpart VI– Permit Fees §§601-603