

EXHIBIT I

NNEPA-issued Revised Statement of Basis (April 2011)



Navajo Nation Environmental Protection Agency – Air Quality Control/Operating Permit Program
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Detailed Information

Permitting Authority: Navajo Nation Environmental Protection Agency

County: Navajo State: Arizona AFS Plant ID: 04-017-NAV01

Facility: Peabody Western Coal Company – Kayenta Complex

Document Type: REVISED STATEMENT OF BASIS

**PART 71 FEDERAL OPERATING PERMIT
REVISED STATEMENT OF BASIS
Peabody Western Coal Company – Kayenta Complex
Permit No. NN-OP 08-010-A**

1. Facility Information

a. Permittee

Peabody Western Coal Company – Kayenta Complex
20 miles SSW of Kayenta, Arizona

Mailing Address:
P.O. Box 650
Kayenta, Arizona 86033

Parent Company Name:
Peabody Holding Company, LLC

Parent Company Mailing Address:
701 Market Street
St. Louis, Missouri 63101-1826

b. Contact Information

Facility Contact: Gary Wendt, Manager – Environmental
Phone: (928) 677-5130
Facsimile: (928) 677-5083

Responsible Official: G. Bradley Brown, President
Phone: (928) 913-9201

c. Description of Operations, Products

The Kayenta Complex (the "Complex") consists of two contiguous surface coal mines, the Black Mesa Mine and the Kayenta Mine; coal preparation and sampling facilities at the Black Mesa Mine; coal processing and overland conveyor systems at the Kayenta Mine; and various petroleum and other storage tanks. The Navajo Nation Environmental Protection Agency ("NNEPA") views the Complex as a single source under the Clean Air Act. Surface coal mining is the primary activity of the source, and the coal preparation plant serves as a support facility for the two mines.

d. Permitting and Construction History

The original emission units at the Complex were constructed from 1968 to 1973. The Black Mesa Mine began operations in 1970, followed by the Kayenta Mine in 1973. The Black Mesa mining operation supplied approximately 5.0 million tons of coal to the Mohave Generating Station near Laughlin, Nevada from 1970 until December 2005, when the Black Mesa mining operation ceased delivering coal due to the suspension of operations at the Mohave Generating Station. The Kayenta mining operation produces approximately 8.5 million tons of coal per year exclusively for use at the Navajo Generating Station near Page, Arizona. The construction of the Black Mesa coal mine operation predated the United States Environmental Protection Agency's ("USEPA") preconstruction permit regulations, the prevention of significant deterioration ("PSD") permit program. Therefore, this facility has not been required to obtain a preconstruction permit. The initial coal preparation facilities at the Kayenta mining operation were constructed prior to 1973, also predating the applicability of the PSD permit program. Therefore, this source has not been required to obtain a preconstruction permit.

USEPA issued an initial Title V permit for this source on September 23, 2003. On October 15, 2004, USEPA delegated the Part 71 operating permit program to NNEPA for sources located in the Delegated Program Area, as defined in the Part 71 Delegation Agreement between USEPA and NNEPA, including the source now at issue. NNEPA issued a First Administrative Amendment to the source on February 13, 2007, and a Part 71 renewal permit on December 7, 2009. Peabody Western Coal Company ("PWCC") petitioned to the Environmental Appeals Board ("EAB") for review of certain portions of the permit, and NNEPA moved for a voluntary remand of the permit because it intended to propose revisions to the permit. The EAB granted NNEPA's motion and remanded the permit to NNEPA, for NNEPA to issue a revised final permit. *Peabody Western Coal Co.*, CAA Appeal No. 10-01 (Order issued August 13, 2010).

2. NNEPA Authority

Authority to administer the Part 71 Permit Program was delegated to NNEPA by USEPA

in part on October 13, 2004 (for all sources except the Four Corners Power Plant and the Navajo Generating Station), and in whole on March 21, 2006 (for the two power plants).

3. Revisions to Portions of the Title V Permit

NNEPA has reconsidered and revised certain portions of this permit pursuant to the EAB Order of August 13, 2010 in *Peabody Western Coal Co.*, CAA Appeal No. 10-01, and 40 C.F.R. § 71.11(i)(2)(ii). The revised provisions are listed in Section 4(a) below.

NNEPA has revised the permit sections listed in Section 4(a) of this Statement of Basis to clarify the legal authorities for those provisions. Specifically, in delegating to NNEPA the authority to administer the Part 71 operating permit program, USEPA determined that NNEPA had adequate independent authority to administer the program, as required by 40 C.F.R. § 71.10(a). USEPA found such authority consisted of having adequate permit processing requirements and adequate permit enforcement-related investigatory authorities. Deleg. Agr. §§ IV, V, VI.1, IX.2. There are therefore references to both federal and tribal provisions in this permit. However, the provisions of Navajo law referenced in the permit are tribally enforceable only, under the Navajo Nation Operating Permit Regulations (“NNOPR”) and the Navajo Nation Air Pollution Prevention and Control Act, 4 N.N.C. §§ 1101-1162, which the final revisions make clear.

All the terms and conditions of the Part 71 permit are federally enforceable, as provided by 40 C.F.R. § 71.6(b), pursuant to the specific federal authorities cited in the permit. When federal and tribal provisions are cited in parallel, the tribal provisions are identical to the federal provisions and NNEPA has determined that compliance with the federal provisions will constitute compliance with the tribal counterparts. These parallel tribal citations do not create any new requirements, nor do they impact the federal enforceability of the cited Part 71 requirements.

Section IV.A of the permit (Fee Payment) cites only the NNOPR as its source of authority. USEPA determined that NNEPA could collect sufficient revenue under its own authorities to fund a delegated Part 71 Program. Deleg. Agr. at 1 and § II.2. USEPA therefore waived collection of federal permit fees, pursuant to 40 C.F.R. § 71.9(c)(2)(ii). These revisions clarify that the fee provision in § IV.A of the permit is not a term or condition of the Part 71 permit, but rather of the tribal component of the permit, and so is not federally enforceable.

Section IV.C (Compliance Certifications) has been revised so that compliance certifications are provided to both NNEPA and USEPA on a semiannual basis, instead of requiring different schedules for each agency. This revision is consistent with 40 C.F.R. § 71.6(c)(5)(i). NNEPA, as the delegated permitting authority, has determined that semiannual rather than annual compliance certification is appropriate because it provides greater assurance that the facility is operating in compliance on an ongoing basis. Accordingly, the previous § IV.C.2, which was a tribally enforceable-only compliance certification requirement, has been deleted. Also, as an administrative amendment, this condition clarifies the timing of the submittal of the semiannual reports.

Finally, as an administrative amendment to the permit, the revised final permit removes the reference to "NNEPA" in § II.A.1. The provision simply requires the submittal of New Source Performance Standard compliance correspondence to USEPA, and the reference to NNEPA was a typographical error.

4. Public Participation

a. Public Notice

The EAB Order of August 13, 2010 instructs NNEPA, in reconsidering and revising the challenged portions of the permit, to act in accordance with the same procedures and authorities it used for initial permit issuance. Slip op. at 14. As required by NNOPR § 403(A), the proposed revisions to these portions of the permit were publicly noticed and made available for public comment. The content, methods, and timing of public notice are described in NNOPR § 403(B)-(D), and include a 30-day public comment period. *See also* 40 C.F.R. § 71.11(d) (equivalent public notice and comment provisions).

NNEPA proposed revisions to and therefore considered comments on the following sections of the permit only:

- III.B. Reporting Requirements
- IV.A. Fee Payment
- IV.B. Blanket Compliance Statement
- IV.C. Compliance Certifications
- IV.D. Duty to Provide and Supplement Information
- IV.E. Submissions
- IV.G. Permit Actions
- IV.H. Administrative Permit Amendments
- IV.I. Minor Permit Modifications
- IV.K. Significant Permit Modifications
- IV.L. Reopening for Cause
- IV.Q. Off Permit Changes¹

Public notice of this proposed permit action was provided by mailing a copy of the notice to the permittee, USEPA Region 9, and the affected state (Arizona). A copy of the notice was also provided to all persons who submitted a written request to be included on the mailing list to the following individual:

¹ In addition, NNEPA has used this opportunity to make a few revisions to the permit in the nature of administrative permit amendments, which are not subject to public notice and comment. *See* 40 C.F.R. § 71.7(d), NNOPR § 405(C). These revisions consist of corrections to typographical errors, citations, and grammatical errors and are indicated by red-lining. They are in permit conditions II(A)(1); III(B)(1)(c); IV(A)(1), (4), (6); IV(C)(1), IV(E); and IV(Q)(3) - (5), some of which are discussed above.

Charlene Nelson (Program Supervisor)
Navajo Air Quality Control Program
Operating Permit Program Section
P.O. Box 529
Fort Defiance, AZ 86504
E-mail: charlenenelson@navajo.org

Public notice was published in a daily or weekly newspaper of general circulation in the area affected by this source.

b. Response to Comments

See Appendix A for NNEPA responses to all significant comments received on the proposed revisions to the draft Part 71 permit.