EXHIBIT E

Peabody's Comments on NNEPA-issued Draft Part 71 Permit
and Draft Statement of Basis (August 2009)

Peabody Western Coal Company

Comments on

DRAFT PART 71 OPERATING PERMIT
and
DRAFT STATEMENT OF BASIS

for

BLACK MESA COMPLEX
PERMIT # NN-OP 08-010

Submitted to

NAVAJO NATION
ENVIRONMENTAL PROTECTION AGENCY

August 2009

COMMENTS OF PEABODY WESTERN COAL COMPANY

I. INTRODUCTION

On July 15, 2009 the Navajo Nation Environmental Protection Agency (NNEPA), a delegate agency for the federal Part 71 program under the Clean Air Act, released a draft Title V operating permit to revise and renew the current Title V permit for Peabody Western Coal Company's (PWCC's) Black Mesa Complex. A draft statement of basis accompanied that draft permit. NNEPA is now seeking comments on those draft documents. Although a public notice by NNEPA identified an August 15, 2009 deadline for public comments on the draft documents, NNEPA subsequently advised PWCC that the subject comment period would not close until August 17, 2009.

As the owner and operator of Black Mesa Complex, PWCC has substantial interest in the contents of those documents. We thank the NNEPA for the opportunity to review and comment on those materials.

The Company's written comments herein are organized into five basic sections. After this brief Section I introduction, PWCC outlines its major concerns with NNEPA's proposed action in Section II. Sections III and IV address the Company's comments on specific conditions within the draft permit and on specific sections within the draft statement of basis, respectively. More details in either one or both of those Sections have been used to supplement the discussions of our major concerns in Section II. Finally, Section V comments are more ministerial in nature, i.e., they seek to revise or correct certain statements in the NNEPA draft documents, including incorrect equipment identifications, incomplete citations, missing words, etc.

II. PWCC MAJOR CONCERNS

A. Scope of NSPS Subpart Y Applicability

Subpart Y regulates coal preparation plants. However, not all pollutant-emitting activities at a coal preparation plant have been designated as "affected facilities" which are subject to Subpart Y. A Subpart Y affected facility is a particular type of coal preparation facility that has been constructed, modified or reconstructed after October 24, 1974. In addition, an "affected facility" at a coal preparation plant is one that meets the definition of one of the particular types of activities that are covered by Subpart Y. Thus, Black Mesa Complex has Subpart Y affected facilities that consist of "coal processing and conveying equipment." However, Black Mesa Complex does not include any facilities that were constructed, modified, or reconstructed after October 24, 1974 ***and*** that are designated as "thermal dryers," pneumatic coal-cleaning equipment (air tables)," "coal storage systems," or "coal transfer and loading systems." 40 C.F.R. § 60.250(a).

Subpart Y "coal processing equipment" is defined as "any machinery used to reduce the size of coal or to separate coal from refuse." 40 C.F.R. § 60.251(g). And, Subpart Y "conveying equipment" is defined as "the equipment used to convey coal to or remove coal and refuse from the [processing] machinery." *Id.* Consequently, a post-1974 conveyor at a coal preparation plant will not be subject to Subpart Y if it does not convey coal to or remove coal and refuse from machinery used to reduce the size of coal or to separate coal from refuse. For example, a conveyor belt conveying coal to a storage pile could not be subject to Subpart Y because it does not meet that NSPS definition of "conveying equipment." *See* 63 Fed. Reg. 53,289 (Oct. 5, 1998) (interpreting the meaning of "processing and conveying equipment"). *See also* letter from George Czerniak, EPA Region V, to Frank Prager, Xcel Energy, of June 30, 2003; letter from Douglas Neeley, EPA Region IV, to Shannon Vogel, North Carolina Dep't of Environment, Health and Natural resources, of Apr. 16, 1998.

Previously, no attempt had been made to distinguish Subpart Y "conveying equipment" at Black Mesa Complex from conveyors at that source which are not subject to Subpart Y. However, in its comments herein to Condition II.B of the draft permit, PWCC has provided those distinctions for individual conveying equipment, documenting how certain conveyors were either not constructed, modified or reconstructed after October 24, 1974 and/or do not satisfy the Subpart Y definition of "conveying equipment." Accordingly, PWCC requests that such conveyors that do not qualify as Subpart Y affected facilities because of their age and/or their function be removed from the permit's list of NSPS affected facilities at Black Mesa Complex.

B. <u>"Grandfathered" Facilities</u>

As discussions in the draft permit and draft statement of basis acknowledge, numerous facilities at the Black Mesa Complex have never been subject to new source review or any other form of permitting under the Clean Air Act. Moreover, those same sources have not been subject to any federally enforceable regulatory provisions of either a tribal implementation plan or a federal implementation plan. Consequently, in the vernacular of Title V, those facilities have no "applicable requirements." While the amounts of their emissions must be included, as appropriate, in a determination of the source's potential to emit or in a calculation of "fee pollutants," there is no other provision of Black Mesa Complex's Title V permit that applies to such facilities.

PWCC requests that the "no applicable requirement" status of those so-called "grandfathered" facilities be prominently recognized within the Title V permit. In particular, in the Condition I listing of significant emission units, an appropriate designation or label must be provided for the "Maximum Capacity" and the "Control Method" entries for each grandfathered facility in order to make clear that information for such facilities is not enforceable but instead has been supplied for informational purposes only.

As further recognition of the grandfathered status of certain facilities at Black Mesa Complex, and in accordance with 40 C.F.R. § 71.6(f), PWCC requests the permit provide a permit shield containing NNEPA's determination that, except for the potential to emit and the fee pollutant calculations, no requirements under the CAA are applicable to those grandfathered facilities. Grandfathered facilities at Black Mesa Complex are those particular significant

emission units that process, convey, store, transfer, load, or otherwise "handle" coal but are not subject to Subpart Y because they were constructed before October 24, 1974.

C. Reliance on Navajo Nation Operating Permit Regulations (NNOPR)

The regulatory action of interest at the present time is the renewal of a Title V permit for the Black Mesa Complex. That permit is subject to the requirements of 40 C.F.R. Part 71. EPA Region 9 has delegated federal authority to the NNEPA to issue that Part 71 renewal permit to include all applicable Part 71 requirements.

The Navajo Nation Operating Permit Regulations have now been effective for several years. With one exception, the Part 71 permit requirements for Black Mesa Complex are completely separate from any permitting requirements of NNOPR that may apply to that source. In particular, the Delegation Agreement between Region 9 and NNEPA obligates NNEPA "to collect permit fees from all Part 71 sources in a manner consistent with Subpart VI of the [NNOPR]." Thus, aside from the NNOPR's Subpart VI procedures to collect Part 71 permit fees, the Part 71 requirements applicable to Black Mesa Complex rely on no other authorities under the NNOPR.

Nevertheless, in the draft Part 71 permit for Black Mesa Complex, NNEPA has cited provisions within Part 71 as well as within the NNOPR as authorities for several permit conditions. Because the NNOPR does not provide authority for any requirement within the Part 71 permit except for the procedure for collection of the Part 71 fee, those other citations to NNOPR authority have no place in the Part 71 permit. Furthermore, as explained below, the cited NNOPR provisions authorize specific requirements to be contained *in permits issued under NNOPR*. Black Mesa Complex is not required to have a NNOPR permit at this time. Thus, with the exception of NNOPR Subpart VI, as explained herein, no other NNOPR provision can currently apply to Black Mesa Complex.

For example, the Reporting Requirements of Condition III.C in the draft permit cite to both 40 CFR § 71.6(a)(3)(iii) and NNOPR §302(G) as authorities for that permit condition. The actual reporting requirement of that permit condition relates to the submission of "reports of any monitoring *required under 40 CFR § 71.6(a)(3)(i)(A), (B), or (C)*[.]" Neither Part 71 nor the Part 71 Delegation Agreement provides authority under NNOPR to require reports of Part 71 monitoring.

And, although NNOPR § 302(G) also addresses the submittal of reports of monitoring required by permit, the "permit" referred to in § 302(G) is not a Part 71 permit but rather a "valid permit issued under [NNOPR] and the Uniform Rules." NNOPR § 201(A). NNEPA simply has no authority to apply a requirement intended for a NNOPR permit to a Part 71 permit instead. .

Even the Compliance Certification provision of Condition IV.C.2, "enforceable by NNEPA only" has no force of law with respect to Black Mesa Complex. The cited authority, NNOPR § 302(I), refers to each operating permit including requirements for compliance certification, etc. But, the "operating permit" addressed by NNOPR § 302(I) is not a Part 71 operating permit. Instead, the "operating permit" addressed by NNOPR is one issued under

authority of NNOPR. Because Black Mesa Complex is not currently required to hold an operating permit issued under NNOPR, § 302(I) has no applicability with respect to that source.

In summary, with the exception of the Part 71 delegation that requires collection of Part 71 fees consistent with NNOPR Subpart VI, the NNEPA have no authority at the present time, either federal or tribal, to apply requirements under the NNOPR to Black Mesa Complex. First, in keeping with the provisions of Part 71, in general, and those of 40 C.F.R. § 71.10 and the EPA-NNEPA Part 71 Delegation Agreement, in particular, NNEPA has no authority under NNOPR to require any condition in the Part 71 permit. Second, because Black Mesa Complex is not currently required to have a permit under NNOPR, NNEPA has no authority to apply any provision under NNOPR to that particular source.

As a result, the NNOPR citations included in the Part 71 permit for Black Mesa Complex are not enforceable, nor do they provide the legal clarity, consistency and certainty that is expected in a Title V permit. With the exception of the citation in Condition IV.a to NNOPR Subpart VI, PWCC respectfully requests that all other citations to NNOPR provisions be deleted from the Title V renewal permit for Black Mesa Complex.

D. "Enforcement Issue"

Section 1.j of the draft statement of basis identifies an "enforcement issue" as a result of PWCC's alleged failure to submit the application to renew Black Mesa Complex's Title V permit in a timely manner. PWCC strongly disputes that assertion and conclusion and has demonstrated, in a letter to NNEPA dated August 7, 2009 that submittal of the subject permit renewal application was timely. That letter is incorporated herein by reference, and PWCC reiterates its request for NNEPA to take the immediate follow-up actions identified in that letter.

III. PWCC COMMENTS ON THE DRAFT PERMIT

Condition No.	Comment
Cover Letter	- As explained in our General Comments above, PWCC believes the subject permit must consist solely of a federal Part 71 permit issued under EPA's authority and the "Delegation of Authority to Administer a Part 71 Operating Permits Program" that was executed between NNEPA and EPA on October 15, 2004. Moreover, because Black Mesa Complex is currently not required to hold an operating permit under NNOPR § 201(A), there is no permit for that source to which the cited provisions of NNOPR apply. Accordingly, the following phrases should be deleted: • 1st ¶: ". . . Navajo Nation Operating Permits Regulations, and all other applicable rules and regulations . . ."; • 2nd ¶: ". . . either or both the Navajo Nation Clean Air Act and . . ."; • 2nd ¶: ". . , as applicable".

- Because a Title V permit's effective date often comes after its issuance date, if that permit is to run for a full five years, then it should expire, without appropriate action to renew it, on a date five years from its *effective* date and not from its issuance date.

I

- The asterisk affixed to the "Maximum Capacity" of several units needs its corresponding explanation at the end of the table of Significant Emission Units.

- As explained in our General Comments above, the list of Significant Emission Units includes a number of "grandfathered" facilities that are not subject to any "applicable requirements." Nevertheless, they must be shown in the Title permit. Therefore, for each "grandfathered" unit listed in the table of Significant Emission Units, PWCC requests the entries for "Maximum Capacity" and "Control Method" be marked with an identifying symbol (**) to denote that particular information for that specific unit is provided for informational purposes only.

- PWCC objects to identifying several of the areas as "coal processing." Under NSPS Subpart Y, the term "processing equipment" means "any machinery used to reduce the size of coal or to separate coal from refuse." 40 CFR §60.251(g). Because the areas in questions have pollutant-emitting activities other than "processing," PWCC requests that they be identified as "coal *preparation* areas."

- In the N-8 area of the table of Significant Emission Units, the "Construction Date" for Belt #3A should be 1970-1973 instead of 1983-1984.

II.A.8

- NNEPA has been delegated federal authority to administer the Part 71 program with respect to the Black Mesa Complex. PWCC does not believe, however, the scope of that delegation includes authority to act under Part 60, NSPS. Therefore, we question whether this condition can require PWCC to provide written notification to NNEPA and whether the use of electronic notification in lieu of written notification must be acceptable to NNEPA.

II.B

- The title of the table and the first column in the table itself refer to "Emission Points/Units." Because the subject matter of this condition is pollutant-emitting activities subject to NSPS Subpart Y, PWCC requests that those activities be identified consistently with the conventional terminology, i.e., as "Affected Facilities."

- As explained above, PWCC requests the subject areas identified in the table be designated as "coal preparation areas" and not as "coal processing areas."

- For the J-28 area, the second belt should be labeled "Belt #1-S".

- For the N-11 area, "Belts #34-26" should be "Belts #34-36".

- For the N-8 area, the following conveyors belts were constructed prior to October 24, 1974 and therefore are not subject to Subpart Y: Belts #3A, #14, #27, #28, #30 and #32. Therefore, please remove those conveyors from this list of Affected Facilities.

- For the N-8 area, several conveyors do not meet the Subpart Y definition of "conveying equipment," i.e., "equipment used to convey coal to or remove coal and refuse from the [processing] machinery." Therefore, please remove the following conveyors from the list of Affected Facilities": Belts #11, #12, #15, #16, and #18. Change the corresponding Description to "Two (2) Conveyors".

- For the Overland Conveyor System, the conveying equipment collectively identified as OCTP21 was constructed prior to October 24, 1974 and must be removed from the list of "Affected Facilities." Also, the individual conveyor belts and their transfer points that collectively make-up OCTP20 are not used to convey coal to or remove coal and refuse from machinery used to reduce the size of coal or to separate coal from refuse. Since the activities of OCTP20 do not meet the definition of "conveying equipment," please delete OCTP20 from the list of Affected Facilities. A separate reason for removing those facilities from the list of Subpart Y affected facilities at Black Mesa Complex is because they are not part of any preparation plant, but rather are coal transport devices for the mines that are used as an alternative to haul trucks.

- For the Black Mesa Preparation Plant, a number of those pollutant-emitting activities were constructed prior to October 24, 1974. Therefore, please remove the following activities from the list of Affected Facilities: BMPC, CONV#2, CONV#4, CONV#5, CONV#11, CONV#7, CONV#8, BMCTEC, CONV#9, CONV#9A AND CONV#10.

- In the first line of the sentence following Table 1, replace the words "the emission units" with "each affected facility". (Also, after the word "above," add the word "in".)

II.C.1	- Because Belt #18 is not subject to Subpart Y (see above), "the tail end of Belt 18 from high sulfur stockpile K-3" must be deleted from this condition.
II.C.2	- Because Belt #18 is not subject to Subpart Y (see above), "the tail end of Belt 18 from high sulfur stockpile K-3" must be deleted from this condition. - At the end of the last sentence, add the words "in lieu of a Method 9 observation on each such affected facility."
III.A	- Testing is not required for any pollutant-emitting activity at Black Mesa Complex. Therefore, this condition is irrelevant and should be deleted from the Title V permit.
III.B	- All of the monitoring requirements of the permit (§ II.C) and all of the recordkeeping requirements of the permit (§ II.D) are unit-specific. Therefore, this generic condition is irrelevant and should be deleted from the Title V permit.
III.C title	- As explained previously, delete reference to "NNOPR § 302(G)".
III.C.1	- The date "December 31, 2008" must be revised to be consistent with the eventual effective date of the renewed permit.
III.C.1.a.v:	- Because the CAM requirements do not apply to any emission units at Black Mesa Complex, the phrase "and including exceedances as defined under 40 CFR § [sic] 64" should be deleted.
III.C.1.a.vii	- PWCC seeks clarification of the meaning of the words "the total time when such monitoring was not performed." Is that time of non-performance measured against the total time that monitoring *should have occurred* to satisfy the periodic monitoring requirement?
III.C.1.b	- There are no other reports required of Black Mesa Complex that satisfy the criteria of this section, so this provision should be deleted in its entirety.
III.C.1.c.iv	- Because the CAM requirements of Part 64 do not apply to Black Mesa Complex, this provision should be deleted in its entirety.
III.C.2.b.i	- Because there are no permit terms for emissions of hazardous air pollutants from Black Mesa Complex, this provision should be deleted in its entirety.

III.H

- In addition to this permit retaining the permit shield with respect to NSPS Subpart Y and Subpart Kb, PWCC requests that this permit condition expand the shield for Subpart Y requirements by stating that, at the time of issuance of this permit, the use of any particulate control technology on a Subpart Y affected facility constitutes a federally enforceable requirement of this permit to ensure compliance with the existing NSPS visible emissions limit.

- PWCC also requests that the permit contain certain negative declarations by NNEPA with respect to several requirements that do not apply. In keeping with 40 C.F.R. § 71.6(f)(1)(ii), NNEPA is requested to include the following determinations in this section of the permit:

(1) The quantity of emissions from each "grandfathered" facility identified herein must be used in determining the source's potential to emit and its annual permit fee. At the time of issuance of this permit, there were no other requirements applicable to any of those grandfathered facilities.

(2) At the time of issuance of this permit, no facility at the source was subject to any promulgated revisions to NSPS Subpart Y.

(3) At the time of issuance of this permit, no facility at the source was subject to any requirement arising from section 112 of the Clean Air Act.

(4) At the time of issuance of this permit, neither EPA nor NNEPA had determined whether the source constituted a "major stationary source" for PSD applicability purposes.

IV.B.2

- In some situations the only available credible evidence may be that provided by "applicable testing or monitoring methods required by the underlying regulations or this permit." Therefore, this condition's requirement that "other credible evidence . . . ***must*** be considered" should be modified by the words, "if available."

IV.C title

- As explained previously, delete reference to "NNOPR § 302(I)".

IV.C.1

- The dates in this condition will need to be revised to be consistent with the eventual effective date of the renewed permit.

IV.C.2

- As explained previously, this condition must be deleted in its entirety because there is no permit issued under NNOPR to which this requirement applies.

IV.D title

- As explained previously, delete reference to "NNOPR § 301(E)" because there is no permit issued under NNOPR to which that cited regulation applies.

IV.D	- 40 C.F.R. § 71.6(a)(6)(v) provides: "[I]n the case of a program delegated pursuant to § 71.10, for information claimed to be confidential, the permittee may furnish such records directly to the Administrator along with a claim of confidentiality." Although Condition I.4 of the Delegation Agreement speaks to NNEPA's processing of information provided under a claim of confidentiality, PWCC believes the discretion provided to the permittee by § 71.6(a)(6)(v) allows that information to be submitted only to EPA. - "40 CFR § 2" should be "40 CFR Part 2".
IV.E title	- As explained previously, citation to "NNOPR Subpart VI" is allowed because the Delegation Agreement requires NNEPA to collect fees consistent with that NNEPA regulation. NNOPR Subpart VI, however, does not apply to activities other than fee collection. - As explained previously, citation to NNOPR "Section 702" must be deleted because, aside from NNOPR Subpart VI, no other NNOPR provisions are applicable to the Part 71 permit. - NNOPR "Section 703" deals with NNEPA's transition from delegated Part 71 program to Part 70 program. As such, that "Section 703" has no applicability to the instant Part 71 permit and must be deleted.
IV.G, IV.H, IV.I, IV.K, IV.L, IV.Q titles	- In each Condition, the cited NNOPR provision cannot authorize the type of Part 71 permit action addressed by that provision. The cited NNOPR provisions are applicable to a permit issued under NNOPR – a permit which Black Mesa Complex is not required to have, and does not have, at this time. Please delete, respectively, "NNOPR § 406", "NNOPR §405(C)", "NNOPR § 405(D)", "NNOPR § 405(E)", "NNOPR § 406" and "NNOPR § 404(B)".
IV.R.1.a	- Because this provision is not applicable to Black Mesa Complex, PWCC requests that it be deleted in its entirety.
IV.R.1.b	As our comments on the Cover Letter indicate, PWCC believes the 5-year duration of a Title V permit must be measured relative to its effective date and not to its issuance date.
IV.R.3	In the last line of this Condition, please change the word "may" to "shall." Should NNEPA believe there could be cause for the permit shield not continuing to apply under these circumstances, then that possible event should be addressed in this Condition as an exception rather than allowing

the continuing existence of the permit shield to be discretionary in all cases.

IV. PWCC COMMENTS ON THE DRAFT STATEMENT OF BASIS

Section No.	Comment
I.d	- On August 7, 2009 PWCC wrote to NNEPA, taking exception with an allegation at section I.j of the draft statement of basis that PWCC's application to renew the initial Title V permit for Black Mesa Complex was not timely. *See* letter from Gary Wendt, PWCC, to Charlene Nelson, Navajo Nation Operating Permit Program, of Aug. 7, 2009. PWCC incorporates that letter into these comments by reference. In keeping with that communication from PWCC, the discussion in the last paragraph of this Section I.d must be revised to reflect re-issuance of the initial Title V permit on June 1, 2004. The timeline for EPA Region 9's processing of the initial Title V permit for this source was rather atypical. The following lists key dates in that timeline and Region 9's associated actions: • Sept. 23, 2003 -- Initial Title V permit issued; • Oct. 23, 2003 -- Initial Title V permit intended to be reopened before it became effective; and -- Initial Title V permit's effective date extended to Feb. 23, 2004; • Feb. 18, 2004 -- Initial Title V permit's effective date extended to May 28, 2004; • June 1, 2004 -- Initial Title V permit re-issued; and -- Initial Title V permit's effective date extended to July 1, 2004. The key consideration in this particular processing sequence is the fact that Region 9 reopened the initial permit ***before it ever became effective***. Moreover, Region 9 extended the effective date of that initial Title V permit on two separate occasions until the Region had completed its reopening process. Finally, when it re-issued the initial Title V permit, EPA Region 9 set the effective date as July 1, 2004. Typically when a Title V permit is reopened, the permit has already been in effect for some period, and the subject source has operated under that permit's conditions. That is not, however, the case with Region 9's reopening of Black Mesa Complex's initial Title V permit before it ever became effective. Thus, while June 1, 2004 was the date the "reopened" Title V permit was issued for Black Mesa Complex, under the peculiar

circumstances of that permit, June 1, 2004 was also the date the initial Title V permit was re-issued. That second issuance date is highly significant because Region 9's action on that date "started the clock running" for the 5-year duration of that permit. (See further comments to Sections (e) "Existing Approvals" and (j) "Enforcement Issue.")

1.e

- As explained in the discussion above, the source never operated under a Part 71 permit that was issued on September 23, 2003. Rather, Black Mesa Complex did not begin operating under its initial Title V permit until it became effective on July 1, 2004. As stated in the draft statement of basis, that operation continued under approval of the first administrative amendment issued by NNEPA.

- Reference to the initial Title V permit issued on June 1, 2004 as the "reopened Title V permit issued on June 1, 2004" is very misleading and inappropriate in this instance because that characterization implies that the source had been operating under its Title V permit prior to the reopening process. For that reason, PWCC objects to describing EPA's action on June 1, 2004 as issuance of a "reopened" permit. "Re-issuance of the initial Title V permit" is a more appropriate description of that permit's status.

- At the bottom of page 3, the discussion of "Monitoring and Testing Requirements" needs to be revised to better reflect the actual scope of Subpart Y applicability at Black Mesa Complex. Subpart Y designates "processing and conveying equipment" as individual affected facilities, and Black Mesa Complex includes some of those types of affected facilities. Subpart Y also designates both "coal storage systems" and "transfer and loading systems" as types of affected facilities. However, Black Mesa Complex does not include any coal storage system or transfer and loading system that is covered by that NSPS.

1.f

- As discussed with respect to Condition I of the draft permit, the Title V permit is "hollow" for grandfathered facilities that have no applicable requirements. Therefore, for each "grandfathered" unit listed in the table of Significant Emission Units, PWCC requests the entries for "Maximum Capacity" and "Control Method" be marked with an identifying symbol (**) to denote that particular information for that specific unit is provided for informational purposes only.

- Peabody also believes that the title of this table, i.e., "Permitted Emission Units and Control Equipment" is inappropriate inasmuch as some of the emission units have never gone through a permitting process other than Title V and consequently have no permit requirements. PWCC requests the title of this table be conformed to that title in the draft permit, i.e., "Significant Emission Units."

1.j - This matter has been addressed by PWCC in a letter dated August 7, 2009 to Ms. Charlene Nelson at NNEPA. PWCC incorporates that letter in these comments by reference. PWCC strongly believes that there is no "enforcement issue" arising from the date on which the Company's application to renew its Title V permit was submitted to NNEPA.

1.l - The standard definition of "potential to emit" (PTE) should be included in this Section. Contrary to the draft statement of basis explanation, the scope of PTE is not constrained only to criteria pollutants and hazardous air pollutants. Furthermore, the statement that "[a]ctual emissions are typically lower than PTE" is not only unnecessary, but is also incorrect for the surface coal mining category of sources.

- PWCC objects to inclusion of values for potential to emit PM in the table for "Potential to Emit." The Part 71 Permit Program applies solely to Title V requirements, and EPA has concluded that PM is not a "regulated air pollutant" for purposes of Title V. *See* memorandum from Lydia Wegman, EPA OAQPS, to EPA Regional Air Directors of Oct. 16, 1995 ("Definition of Regulated Pollutant for Particulate Matter for Purposes of Title V"). The table's inclusion of the PTE values for PM adds nothing to a determination of the scope of Title V applicability to this source and adds nothing relevant to any Part 71 applicable requirement.

- The discussion in the second footnote to the table is confusing and suggests a deficiency in PWCC's application. PWCC's application did include an estimate of fugitive emissions from wind erosion.

Nevertheless, PWCC believes the discussion should be revised to state: "Because coal preparation is a source category that is 'listed' under section 302(j) of the Clean Air Act, but surface coal mining is not such a 'listed' category, Black Mesa Complex's potential to emit is based upon all stack and fugitive emissions from coal preparation activities plus any stack emissions from surface mining activities."

1.m - As explained above, PM is not a regulated pollutant for purposes of Title V. Consequently, there was no reason to report actual emissions of PM. PWCC requests that the table of actual emissions delete any reference to PM.

- The parenthetical note about "PTE data not provided by the source ..." is confusing. It is also irrelevant with respect to this section that addresses actual emissions. Please delete the statement in parenthesis.

3 - Because the Part 71 Permit Program applies solely to Title V requirements, PWCC objects to inclusion of this section on PSD

Applicability. Either with or without the context of Title V permitting, NNEPA simply has no need to perform a PSD threshold applicability determination for Black Mesa Complex at this time which could prejudice some later PSD threshold calculation when it is required.

Moreover, the discussion regarding the inclusion of fugitive emissions in the threshold calculation is very misleading. Finally, the history of the source and its lack of prior preconstruction permitting have already been addressed in Section 1.d of the draft statement of basis.

4.a

- Black Mesa Complex does not have any coal storage system or coal transfer and loading system that is subject to Subpart Y. The discussion should be re-written to indicate that Subpart Y applicability at Black Mesa Complex is confined to coal processing and conveying equipment.

- For purposes of consistency and clarity, PWCC requests that any pollutant-emitting activity subject to NSPS be referred to only as an "affected facility" and not as an "affected unit" or an "affected emission unit."

- The table listing individual affected facilities at the source that are subject to Subpart Y needs to conform to the listing provided in Condition II.B of the permit, as explained therein. Please **delete** the following facilities from the table:

- For N-8 area: Belts #3A, #11, #12, #14, #15, #16, #18, #27, #28, #30 and #32; the corresponding Description should be changed to "Two (2) Conveyors".
- For Overland Conveyor System: OCTP20 and OCTP21.
- For Black Mesa Prep Plant: BMPC, CONV#2, CONV#4, CONV#5, CONV#11, CONV#7, CONV#8, BMCTEC, CONV#9, CONV#9a and CONV#10. For the group of conveyors designated as CONV#4, CONV#5, CONV#3A and CONV#3B, change the Description to "Two (2) Conveyors".

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- Certain conditions of the Part 71 Permit Program may not be delegated. *See, e.g.*, 40 C.F.R. § 71.10(j). Thus, Part 71 authority may not be delegated "in whole." This section needs to be revised to make clear that authority to administer the Part 71 Permit Program applicable to the Black Mesa Complex was delegated to NNEPA by EPA Region 9 on October 15, 2004.

V. OTHER COMMENTS

A. Draft Permit

Condition No.	Comment
Table of Contents	The titles of the subsections, e.g., NSPS Requirements" need to match their titles in the permit itself, e.g., "NSPS Subpart Y Requirements". (Subsections II.B, II.C, III, III.G, IV.J and IV.K)
II.A. 1st sentence	After the words ". . . maintenance, and testing", add the word "of".
II.A.3	"40 CFR § 2" should be "40 CFR Part 2".
II.A.5, 6 and 7	"40 CFR § 60" should be "40 CFR Part 60".
II.C	- Title should be only "Monitoring Requirements" since there are no "Testing Requirements". - Citation only to 40 CFR § 71.6(a)(3)(i) is sufficient.
III.B.3	"40 CFR § 60" should be "40 CFR Part 60".
III.D title	"40 CFR § 82" should be "40 CFR Part 82".
III.D.1, 2, 3, 4 & 5	"40 CFR § 82" should be "40 CFR Part 82".
III.E title & last sentence	"40 CFR §61" should be "40 CFR Part 61."
III.G title	"40 CFR § 68" should be "40 CFR Part 68".
IV.A.2	In the first sentence, the date should be changed from April 1 to October 20, i.e., "The permittee shall submit a fee calculation worksheet form with the annual permit fee by October 20 of each year."

B. Draft Statement of Basis

Section No.	Comment
1.d	In this section and elsewhere, replace the words "Peabody Energy" with "Peabody Western Coal Company."
1.e	In the table of "Monitoring Requirements" on page 4, several of the Condition Numbers are incorrectly identified for the respective Requirements to which they correspond. In particular, II.C.4 should be

II.C.3; II.C.5 should be II.C.4; and II.C.6 should be II.C.5. Also, Condition II.C.5 in the fourth box of Monitoring Requirements should be II.C.4.

1.e In the last paragraph on page 4, PWCC believes the words ", opacity observations" should be inserted after the words "VE surveys" and before the words "and water spray inspections."

1.e In the next to last "bullet" on page 4, PWCC requests the current language be replaced with the following: "Weekly VE survey using EPA Method 22".

1.f On page 6, the "Unit Description" for Belt #36 should be "One (1) conveyor from the screen to transfer point."

1.f On page 8 for Unit ID "BMCTEC," please delete "CT&E" from the Unit Description. We believe "CT&E" is an abbreviation for the name of the company that originally operated the lab and did the coal testing.

1.i Please change the values of "Maximum Capacity" for the following tanks to the correct values shown below:

Unit ID	Maximum Capacity (gal)
K06ST	5,000
K09ST	10,000
K22ST	500 (each of 2 compartments)

In addition, the installation date for Tank J7ST should be 1987.

1.j In the second paragraph, correct the spelling for "application".

4.a In the table's entries of affected facilities for area J-28, "Belt #1-8" should be "Belt #1-S".

4.a In the table's entries of affected facilities for area N-11, "Belts #34-26" should be "Belts #34-36".