

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

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| _____ |) | |
| In the Matter of: |) | |
| |) | |
| Peabody Western Coal Company |) | CAA Appeal No. |
| Title V Permit No. NN-OP 08-010 |) | |
| |) | |
| |) | |
| |) | |
| _____ |) | |

EXHIBITS

- A. NNEPA-issued Revised Part 71 Permit (April 2011)
- B. EPA-NNEPA Delegation Agreement, "Delegation of Authority to Administer a Part 71 Operating Permits Program" (October 2004)
- C. EPA Eligibility Determination (October 2004)
- D. NNEPA Transition Plan (July 2004)
- E. Peabody's Comments on NNEPA-issued Draft Part 71 Permit and Draft Statement of Basis (August 2009)
- F. Peabody's Comments on NNEPA's Draft Responses to Comments on NNEPA-issued Draft Part 71 Permit and Draft Statement of Basis (November 2009)
- G. Peabody's Petition for EAB Review of NNEPA-issued Part 71 Permit (Exhibits Omitted) (January 2010)
- H. Peabody's Comments on NNEPA-issued Draft Revised Part 71 Permit and Draft Revised Statement of Basis (December 2010)

- I. NNEPA-issued Revised Statement of Basis (April 2011)
- J. NNEPA-issued Responses to Comments on Draft Revised Part 71 Permit and Draft Revised Statement of Basis (February 28, 2011; received by Peabody in April 2011)
- K. EPA and Nez Perce Tribe Delegation Agreement (June 2005)

EXHIBIT A

NNEPA-issued Revised Part 71 Permit (April 2011)



Navajo Nation Environmental Protection Agency – Air Quality Control/Operating Permit Program
Post Office Box 529, Fort Defiance, AZ 86504 • Rt.112 North, Bldg # 2837
Telephone (928) 729-4096, Fax (928) 729-4313

TITLE V PERMIT TO OPERATE

| | | | | |
|--------------------|---|----------------------|------------------------------|---------------|
| <u>PERMIT #:</u> | <u>FACILITY NAME:</u> | <u>LOCATION:</u> | <u>COUNTY:</u> | <u>STATE:</u> |
| NN-OP 08-010 | PEABODY WESTERN COAL COMPANY – KAYENTA COMPLEX | KAYENTA | NAVAJO | AZ |
| <u>ISSUE DATE:</u> | <u>EXPIRATION DATE:</u> | <u>AFS PLANT ID:</u> | <u>PERMITTING AUTHORITY:</u> | |
| 12/07/2009 | 12/07/2014 | 04-017-NAV01 | NNEPA | |

ACTION/STATUS: FINAL PART 71 OPERATING PERMIT

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Abbreviations and Acronyms

| | |
|-----------------|--|
| Administrator | Administrator of US EPA |
| AR | Acid Rain |
| ARP | Acid Rain Program |
| CAA | Clean Air Act [42 U.S.C. § 7401 et seq.] |
| CAM | Compliance Assurance Monitoring |
| CFR | Code of Federal Regulations |
| EIP | Economic Incentives Program |
| gal | gallon |
| HAP | Hazardous Air Pollutant |
| hp | horse power |
| hr | hour |
| Id. No. | Identification Number |
| ISO | International Standards Organization |
| kg | kilogram |
| lb | pound |
| MMBtu | million British Thermal Units |
| mo | month |
| NESHAP | National Emission Standards for Hazardous Air Pollutants |
| NNEPA | Navajo Nation Environmental Protection Agency |
| NNOPR | Navajo Nation Operating Permit Regulations |
| NNADCR | Navajo Nation Acid Deposition Control Regulations |
| NO _x | Nitrogen Oxides |
| NSPS | New Source Performance Standards |
| NSR | New Source Review |
| PM | Particulate Matter |
| PM-10 | Particulate matter less than 10 microns in diameter |
| ppm | parts per million |
| PSD | Prevention of Significant Deterioration |
| PTE | Potential to Emit |
| psia | pounds per square inch absolute |
| RMP | Risk Management Plan |
| SNAP | Significant New Alternatives Program |
| SO ₂ | Sulfur Dioxide |
| TPY | tons per year |
| TSP | Total Suspended Particulate |
| USEPA | United States Environmental Protection Agency |
| VOC | Volatile Organic Compounds |

I. Source Identification

- Parent Company Name: Peabody Holding Company, LLC
- Parent Company Mailing Address: 701 Market Street
St. Louis, Missouri 63101-1826
- Plant Name: Peabody Western Coal Company – Kayenta Complex
- Plant Location: 20 miles SSW of Kayenta, Arizona
- County: Navajo, Arizona
- EPA Region: 9
- Reservation: Navajo Nation
- Tribe: Navajo & Hopi
- Company Contact: Gary Wendt Phone: (928) 677-5130
- Responsible Official: G. Bradley Brown Phone: (928) 913-9201
- EPA Contact: Roger Kohn Phone: (415) 972-3973
- Tribal Contact: Charlene Nelson Phone: (928) 729-4247
- SIC Code: 1221
- AFS Plant Identification Number: 04-017-NAV01
- Description of Process: The facility is a surface coal mining operation.
- Significant Emission Units:

| Unit ID | Unit Description | Maximum Capacity | Construction Date | Control Method |
|--|--|----------------------|-------------------|------------------------|
| J-28 Coal Processing Area at Kayenta Mine | | | | |
| J28D | Two (2) bulldozing operations | 4,500 hrs/yr | 1984-1986 | N/A |
| J28 | One (1) truck hopper | 2,600 tons/hr* | 1984-1986 | Sprays and rain birds. |
| Belt #1-N and Belt #1-S | Two (2) conveyors, from the stockpile K-5 truck hopper to the primary crusher | 2,600 tons/hr (each) | 1984-1986 | Enclosure and sprays. |
| J28 | One (1) high sulfur reclaim hopper | 2,600 tons/hr* | 1984-1986 | Sprays and rain birds. |
| Belt #8 | One (1) conveyor, from the stockpiles K-6 and K-6A truck hopper to the crusher | 2,600 tons/hr | 1984-1986 | Enclosure and sprays. |
| J28PC | Two (2) primary crushers | 2,600 tons/hr*(each) | 1984-1986 | Enclosure and sprays. |
| Belt #2 | One (1) conveyor, from the primary crusher to the screen | 2,600 tons/hr | 1984-1986 | Enclosure and sprays. |
| J28S | One (1) double deck screen | 2,600 tons/hr* | 1984-1986 | Enclosure and sprays. |

| Unit ID | Unit Description | Maximum Capacity | Construction Date | Control Method |
|--|--|------------------------------|--------------------------|------------------------|
| J28SC | One (1) secondary crusher | 500 tons/hr | 1984-1986 | Enclosure. |
| Belt #3 and Belt #4 | Two (2) conveyors associated with the sample system crusher. | 1.9 tons/hr* (each) | 1984-1986 | Enclosure and sprays. |
| J28SSC | One (1) sample system crusher | 1.9 tons/hr | 1984-1986 | Enclosure. |
| Belt #5 and Belt #6 | Two (2) conveyors, from the secondary crusher to the dome stockpile | 2,600 tons/hr* (each) | 1984-1986 | Enclosure and sprays. |
| K-5, K-6, and K-6A | Three (3) stockpiles | 8,900,000 tons/yr (combined) | 1984-1986 | N/A |
| | One (1) dome stockpile | 8,900,000 tons/yr | 1984-1986 | Enclosure and sprays. |
| N-11 Coal Processing Area at Kayenta Mine | | | | |
| N11D | One (1) bulldozing operation | 1,500 hrs/yr | 1991-1992 | N/A |
| N11 | One (1) truck hopper | 1,800 tons/hr* | 1991-1992 | Sprays and rain birds. |
| Belt #34 | One (1) conveyor, from the stockpile N-11 truck hopper to the primary crusher. | 1,800 tons/hr | 1991-1992 | Enclosure and sprays. |
| N11PC | One (1) primary crusher | 1,800 tons/hr* | 1991-1992 | Enclosure and sprays. |
| Belt #35 | One (1) conveyor, from the primary crusher to the screen. | 1,800 tons/hr | 1991-1992 | Enclosure and sprays. |
| N11S | One (1) single deck screen | 1,800 tons/hr* | 1991-1992 | Enclosure and sprays. |
| Sample Belt | One (1) conveyor, from the screen to the sample system crusher | 1,800 tons/hr | 1991-1992 | Enclosure and sprays. |
| N11SSC | One (1) sample system crusher | 1.1 tons/hr | 1991-1992 | Enclosure. |
| Belt #36 | One (1) conveyor from the sample system to transfer point | 1,800 tons/hr | 1991-1992 | Enclosure and sprays. |
| N-11 | Stockpile | 4,000,000 tons/yr | 1991-1992 | N/A |

| Unit ID | Unit Description | Maximum Capacity | Construction Date | Control Method |
|---|--|--------------------------|---|---|
| N-8 Coal Processing Area at Kayenta Mine | | | | |
| N8D | Three (3) bulldozing operations | 22,285 hrs/yr (combined) | K-1 – 1970-1973 K-2 – 1983-1984 K-3 – 1991-1992 | N/A |
| N8 | One (1) truck hopper at stockpile K-2 (low sulfur) | 2,600 tons/hr* | 1970-1973 | Sprays, rain birds, and chemical application. |
| Belt #3A | One (1) conveyor associated with the K-2 low sulfur truck hopper. | 2,600 tons/hr | 1983-1984 | Enclosure. |
| Belt #11 and Belt #12 | Two (2) conveyors to stockpile K-2 | 1,800 tons/hr (each) | 1983-1984 | Enclosure and sprays. |
| N8 | One (1) truck hopper at stockpile K-3 (high sulfur) | 2,600 tons/hr* | 1991-1992 | Sprays. |
| Belt #18 | One (1) conveyor associated with the K-3 high sulfur truck hopper | 2,600 tons/hr | 1991-1992 | Enclosure. |
| Belt #15 and Belt #16 | Two (2) conveyors to stockpile K-3 | 2,600 tons/hr (each) | 1991-1992 | Enclosure. |
| Belt #4 | One (1) conveyor, from stockpile K-1 to Belts #3 and 14 | 2,600 tons/hr | 1970-1973 | Enclosure. |
| Belt #3 and Belt #14 | Two (2) conveyors to the transfer tower | 2,600 tons/hr (each) | 1970-1973 | Enclosure. |
| Belt #27 | One (1) conveyor, from stockpile K-1 to Belt #30 | 1,800 tons/hr | 1970-1973 | Enclosure. |
| Belt #28 | One (1) conveyor, from Belts #3 and #14 to Belt #30 transfer point | 1,800 tons/hr | 1970-1973 | Enclosure. |
| N8SSC | Sample system crusher | 1.1 tons/hr | 1978-1979 | Enclosure, sprays, and chemical application. |
| Belt #31 and Belt #33 | Two (2) conveyors associated with the screens | 1,800 tons/hr (each) | 1978-1979 | Enclosure. |

| Unit ID | Unit Description | Maximum Capacity | Construction Date | Control Method |
|---|---|------------------------------|---|-------------------------------------|
| N8S | Two (2) single deck screens | 1,800 tons/hr* (combined) | 1978-1979 | Enclosure and chemical application. |
| N8SC | Two (2) secondary crushers | 600 tons/hr (each) | 1978-1979 | Enclosure and chemical application. |
| Belt #30 and Belt #32 | Two (2) conveyors, from Belts #27 and #28 to the weigh bin | 1,800 tons/hr each | Belt #30 – 1970-73 Belt #32 – 1991-92 | Enclosure. |
| K-1, K2, and K-3 | Stockpiles | 8,900,000 tons/yr (combined) | K-1 – 1970-1973 K-2 – 1983-1984 K-3 – 1991-1992 | N/A |
| Overland Conveyor System at Kayenta Mine | | | | |
| OCTP20 (Belts #20 through #25) | Five (5) conveyors, from process area J-28 to process area N-8 | 1,800 tons/hr (each) | 1983-1984 | Enclosure and sprays. |
| OCTP21 (Belts #21, 21-A, #22, and #23) | Four (4) conveyors, from process area N-8 to the coal storage silos | 1,800 tons/hr (each) | 1970-1973 | Enclosure and sprays. |
| SILO | Four (4) coal storage silos | 1,800 tons/hr* (each) | 1970-1973 | Baghouse. |
| Preparation Plant at Black Mesa Mine | | | | |
| BMD | Two (2) bulldozing operations | 4,000 hrs/yr (combined) | 1968-1970 | N/A |
| BM | One (1) truck hopper | 2,000 tons/hr* | 1968-1970 | Sprays. |
| CONV #2 | One (1) conveyor, from the truck hopper to the primary crusher | 2,000 tons/hr | 1968-1970 | Enclosure. |
| BMPC | One (1) primary crusher | 2,000 tons/hr* | 1968-1970 | Enclosure and sprays. |
| BMS | One (1) screen | 2,000 tons/hr | 1986 | Enclosure and sprays. |
| BMSC | One (1) secondary crusher | 500 tons/hr | 1986 | Enclosure and sprays. |

| Unit ID | Unit Description | Maximum Capacity | Construction Date | Control Method |
|---------------------------------|---|------------------------------|-------------------|-----------------------|
| CONV #4 and CONV #5 | Two (2) conveyors, from the primary crusher to live storage | 2,000 tons/hr (each) | 1968-1970 | Enclosure. |
| CONV #3A and CONV #3B | Two (2) conveyors associated with the screen | 2,000 tons/hr (each) | 1986 | Enclosure and sprays. |
| BMSSC | One (1) sample system crusher | 1.1 tons/hr | 1986 | Enclosure. |
| BMTSSC | Two (2) conveyors associated with the sample system crusher | 25 tons/hr (each) | 1986 | Enclosure. |
| Dead storage | One (1) reclaim hopper | 2,000 tons/hr | 1968-1970 | Sprays. |
| CONV #11 | One (1) conveyor from the reclaim hopper | 2,000 tons/hr | 1968-1970 | Enclosure. |
| CONV #7 | One (1) conveyor from the live storage to the transfer tower | 2,000 tons/hr | 1968-1970 | Enclosure. |
| CONV #8 | One (1) conveyor between the transfer towers | 2,000 tons/hr | 1968-1970 | Enclosure. |
| BMCTEC | One (1) computer test and evaluation (CT&E) sample system crusher | 1.1 tons/hr | 1968-1970 | Enclosure. |
| CONV #9, CONV #9A, and CONV #10 | Three (3) conveyors, from the main transfer tower to the pipeline | 2,000 tons/hr | 1968-1970 | Enclosure. |
| B-1, B-2, B-2A, and B-3 | Four (4) stockpiles | 6,000,000 tons/yr (combined) | 1968-1970 | N/A |
| Storage Tanks | | | | |
| K01ST | Gasoline storage tank | 12,000 gal | 1991 | N/A |
| K08ST | Gasoline storage tank | 12,000 gal | Approx 1986 | N/A |

Note: The information describing the process contained in table above is descriptive information and does not constitute enforceable conditions.

* Maximum capacity is limited to the listed value by an up- or downstream process or source.

II. Requirements for Specific Units

II.A. NSPS General Provisions

The following requirements apply to the operation, maintenance, and testing of the affected facilities in the coal preparation plants in accordance with 40 CFR Part 60, Subparts A and Y ("Standards of Performance for Coal Preparation Plants"):

1. All requests, reports, applications, submittals, and other communications to the Administrator pursuant to 40 CFR Part 60 shall be submitted in duplicate to the EPA Region 9 office at the following address [40 CFR § 60.4(a)]:

Director, Air Division (Attn: AIR-1)
EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105
2. Any owner or operator subject to the provisions of this part shall maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility; any malfunction of the air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device is inoperative [40 CFR § 60.7(b)].
3. The availability to the public of information provided to, or otherwise obtained by, the Administrator under this permit shall be governed by 40 CFR Part 2. (Information submitted voluntarily to the Administrator for the purposes of compliance with 40 CFR §§ 60.5 and 60.6 is governed by 40 CFR § 2.201 through § 2.213, and not by 40 CFR § 2.301.) [40 CFR § 60.9].
4. At all times, including periods of startup, shutdown, and malfunction, the permittee shall, to the extent practicable, maintain and operate the affected facilities, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source [40 CFR § 60.11(d)].
5. For the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any standard in 40 CFR Part 60, nothing in 40 CFR Part 60 shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have

been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed [40 CFR § 60.11(g)].

6. No owner or operator subject to the provisions of 40 CFR Part 60 shall build, erect, install, or use any article, machine, equipment or process, the use of which conceals an emission which would otherwise constitute a violation of an applicable standard. Such concealment includes, but is not limited to, the use of gaseous diluents to achieve compliance with an opacity standard or with a standard which is based on the concentration of a pollutant in the gases discharged to the atmosphere [40 CFR § 60.12].
7. With respect to compliance with all NSPS in 40 CFR Part 60, the permittee shall comply with the "General notification and reporting requirements" found in 40 CFR § 60.19 [40 CFR § 60.19].
8. The permittee shall provide written notification to NNEPA and USEPA or, if acceptable to NNEPA, USEPA, and the permittee, electronic notification of any reconstruction of an affected facility, or any physical or operational change to an affected facility that may increase the emission rate of any air pollutant to which a standard applies, unless that change is specifically exempted under this permit or in 40 CFR § 60.14(e), in accordance with 40 CFR § 60.7 [40 CFR § 60.7(a)].

II.B. NSPS, Subpart Y Requirements

Table 1— Affected Facilities Subject to New Source Performance Standards, Subpart Y

| Affected Facilities | Description |
|---|---------------------------------|
| J-28 Coal Preparation Area at Kayenta Mine | |
| J28PC | Two (2) Primary Crushers |
| J28S | One (1) Screen (Double Deck) |
| J28SC | One (1) Secondary Crusher |
| J28SSC | One (1) Sample System Crusher |
| Belt #1-N Belt #1-8 Belt #8 Belts #2-6 | Eight (8) Conveyors |
| J28TP | Transfer Points (all transfers) |
| N-11 Coal Preparation Area at Kayenta Mine | |
| N11PC | One (1) Primary Crusher |
| N11S | One (1) Screen (Single Deck) |
| N11SSC | One (1) Sample System Crusher |

| Affected Facilities | Description |
|--|---|
| Belts #34-36 | Three (3) Conveyors |
| N11TP | Transfer Points (all transfers) |
| N-8 Coal Preparation Area at Kayenta Mine | |
| N8S | Two (2) Single Deck Screens |
| N8SC | Two (2) Secondary Crushers |
| N8SSC | One (1) Sample System Crusher |
| Belt#32-33 | Two (2) Conveyors |
| N8TP | Transfer Points (K-2 and K-3 stockpile and screen/sample systems) |
| Preparation Plant at Black Mesa Mine | |
| BMS | One (1) Screen |
| BMSC | One (1) Secondary Crusher |
| BMTPS | Transfer Points (at screen and secondary crusher) |
| BMSSC | One (1) Sample System Crusher |
| CONV #3A CONV#3B | Two (2) Conveyors |
| BMTTPSSC | Two (2) Conveyors for the Sample System Crusher |

The following requirements apply to the emission units listed in Table 1 above in accordance with 40 CFR Part 60, Subpart Y:

1. The permittee shall not cause to be discharged into the atmosphere from any coal processing or conveying equipment listed in Table 1 above, gases that exhibit twenty percent (20%) opacity or greater [40 CFR § 60.252(c)].
2. The opacity standard in Condition II.B.1 shall apply at all times except during periods of startup, shutdown, or malfunction [40 CFR § 60.11(c)].

II.C. Monitoring Requirements [40 CFR § 71.6(a)(3)(i)]

1. The permittee shall conduct a weekly visible emission survey of each NSPS, Subpart Y, affected unit listed in Table 1, with the exceptions of the sample system crushers and their associated transfer points, and other underground transfer points including the following: at J-28, the tail end of Belt #8 from the high sulfur reclaim hopper and the tail ends of Belts #1-N and #1-S from the truck hopper; at N-11, the tail end of Belt #34 from the truck hopper. The visible emission survey shall be conducted, while the equipment is operating and during

daylight hours, using EPA Method 22 (Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares). If one or more NSPS affected facilities are housed within a single structure, the permittee shall conduct the visible emission survey at each opening where particulates vent to the atmosphere. If an instantaneous opacity reading is 10% or greater, the permittee shall conduct a six-minute EPA Method 9 opacity observation within 24 hours while the equipment is operating. If any emission unit is not operating at the time the observer arrives, the emission survey is not required for that emission unit on that week.

2. The permittee shall conduct a six-minute EPA Method 9 opacity observation quarterly on each NSPS, Subpart Y, affected unit listed in Table 1 while the equipment is operating, with the exceptions of the sample system crushers and their associated transfer points, and other underground transfer points including: at J-28, the tail end of Belt #8 from the high sulfur reclaim hopper and the tail ends of Belts #1-N and #1-S from the truck hopper; at N-11, the tail end of Belt #34 from the truck hopper. If one or more NSPS affected facilities are housed within a single structure, the permittee shall conduct the EPA Method 9 observation at each opening where gases vent to the atmosphere.
3. The permittee shall conduct a monthly inspection of all water sprays associated with emission points listed in Table 1, with the exceptions of those listed in condition II.C.4, to verify that the spray heads are not clogged and that they are otherwise operating as designed.
4. The permittee shall conduct a monthly inspection of the water meters at the following locations to determine whether any water meter shows a significant change in water pressure or drop in water flow rate: inlet and outlet of emission point N11PC, the truck hopper portion of emission point N11TP, the north and south outlets of emission point J28PC, the truck hopper and high sulfur reclaim hopper portions of emission point J28TP, and emission point J28S.
5. If any water spray is not operating as designed, the permittee shall take corrective action within 24 hours (or on the next weekday, if a problem is observed during a weekend or holiday) to repair, replace, or modify the spray.

II.D. Recordkeeping Requirements [40 CFR § 71.6(a)(3)(ii)]

1. The permittee shall record and maintain the following records for each visible emission survey (Method 22) and opacity observation (Method 9):
 - a. the date and time of the observation and the name of the observer;
 - b. the unit ID number;
 - c. whether or not the emission unit was operating;

- d. statement of whether visible emissions were detected or the result of Method 9 observations.
2. The permittee shall record and maintain the following record for each water spray and water meter inspection:
- a. the date and time of the observation and the name of the inspector;
 - b. the control device ID number;
 - c. whether the sprays (if inspected) were operating as designed;
 - d. whether the water meters (if inspected) showed a significant change in water pressure or drop in water flow rate; and
 - e. a description of any corrective actions taken.

II.E. Operational Flexibility

1. **Clean Air Act § 502(b)(10) Changes [40 CFR § 71.6(a)(13)(i)]**
- a. The permittee is allowed to make a limited class of changes under CAA § 502(b)(10) within this permitted facility without applying for a permit revision, provided the changes do not exceed the emissions allowable under this permit (whether expressed therein as a rate of emissions or in terms of total emissions) and are not Title I modifications. This class of changes does not include:
 - i. Changes that would violate applicable requirements; or
 - ii. Changes that would contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.
 - b. The permittee is required to send a notice to USEPA at least seven (7) days in advance of any change made under this provision. The notice must describe the change, when it will occur, and any change in emissions, and identify any permit terms or conditions made inapplicable as a result of the change. The permittee shall attach each submitted notice to a copy of this permit.
 - c. Any permit shield provided in this permit does not apply to changes made under this provision.

III. Facility-Wide or Generic Permit Requirements

Conditions in this section of the permit (Section III) apply to all emissions units located at the facility [See 40 CFR § 71.6(a)(1)].

III.A. Recordkeeping Requirements [40 CFR § 71.6(a)(3)(ii)] [40 CFR § 71.5(a)(3)(i)(B)]

In addition to the unit-specific recordkeeping requirements derived from the applicable requirements for each individual unit contained in Section II, the permittee shall comply with the following generally applicable recordkeeping requirements:

1. The permittee shall keep records of required monitoring information that include the following:
 - a. The date, place, 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 as existing at the time of sampling or measurement.
2. The permittee shall retain records of all required monitoring data and supporting information for a period of at least five (5) years from the date of the monitoring sample, measurement, report, or application. Supporting information includes all calibration and maintenance records, all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by this permit.
3. The permittee shall maintain a file of all measurements, including continuous monitoring system, monitoring device, and performance testing measurements; all continuous monitoring system performance evaluations; all continuous monitoring system or monitoring device calibration checks; all adjustments and maintenance performed on these systems or devices; and all other information required by 40 CFR Part 60, recorded in a permanent form suitable for inspection. The file shall be retained for at least five (5) years following the date of such measurements, maintenance, reports and records [40 CFR §§ 71.6(a)(3)(ii), 60.7(f)].

III.B. Reporting Requirements [40 CFR § 71.6(a)(3)(iii)] [NNOPR § 302(G)] [The NNOPR provision is enforceable by NNEPA only]

1. The permittee shall submit to NNEPA and USEPA Region 9 reports of any monitoring required under 40 CFR § 71.6(a)(3)(i)(A), (B), or (C) each six-month reporting period from January 1 to June 30, and from July 1 to December 31. All

reports shall be submitted to NNEPA and USEPA Region 9 and shall be postmarked by the 30th day following the end of the reporting period. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with Condition IV.E. of this permit.

- a. A monitoring report under this section must include the following:
 - i. The company name and address.
 - ii. The beginning and ending dates of the reporting period.
 - iii. The emissions unit or activity being monitored.
 - iv. The emissions limitation or standard, including operational requirements and limitations (such as parameter ranges), specified in the permit for which compliance is being monitored.
 - v. All instances of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, and the date on which each deviation occurred.
 - vi. If the permit requires continuous monitoring of an emissions limit or parameter range, the report must include the total operating time of the emissions unit during the reporting period, the total duration of excess emissions or parameter exceedances during the reporting period, and the total downtime of the continuous monitoring system during the reporting period.
 - vii. If the permit requires periodic monitoring, visual observations, work practice checks, or similar monitoring, the report shall include the total time when such monitoring was not performed during the reporting period and, at the source's discretion, either the total duration of deviations indicated by such monitoring or the actual records of deviations.
 - viii. All other monitoring results, data, or analyses required to be reported by the applicable requirement.
 - ix. The name, title, and signature of the responsible official who is certifying to the truth, accuracy, and completeness of the report.
- b. Any report required by an applicable requirement that provides the same information described in paragraph III.B.1(a)(i) through (ix) above shall satisfy the requirement under III.B.1(a).
- c. "Deviation" refers to any situation in which an emissions unit fails to meet a permit term or condition. A deviation is not always a violation. A

deviation may be determined by observation or through review of data obtained from any testing, monitoring, or recordkeeping established in accordance with 40 CFR § 71.6(a)(3)(i), (ii). For a situation lasting more than 24 hours, each 24-hour period (or portion thereof) is considered a separate deviation. Included in the meaning of deviation are any of the following situations:

- (i) when emissions exceed an emission limitation or standard;
 - (ii) when process or emissions control device parameter values indicate that an emission limitation or standard has not been met; or
 - (iii) when observations or data collected demonstrate noncompliance with an emission limitation or standard or any work practice or operating condition required by the permit.
2. The permittee shall promptly report, to USEPA Region 9 and NNEPA, deviations from permit requirements, including those attributable to upset conditions as defined in this permit; the probable cause of such deviations; and any corrective actions or preventive measures taken. "Promptly" is defined as:
- a. any definition of "prompt" or "promptly," or a specific timeframe for reporting deviations as provided in an underlying applicable requirement that is identified in this permit; but
 - b. where the underlying applicable requirement provides neither a definition nor a timeframe for reporting deviations, reports of deviations shall be submitted on the following schedule:
 - i. for emissions of any regulated pollutant excluding a hazardous air pollutant or a toxic air pollutant(as identified in the applicable regulation) that continue for more than two hours in excess of permit requirements, the report must be made within 48 hours of the occurrence; and
 - ii. for all other deviations from permit requirements, the report shall be submitted as part of the semi-annual monitoring report required in paragraph III.B.1 of this permit.
3. If any of the conditions in III.B.2(b)(i) or (ii) of this permit apply, the source must report to USEPA and NNEPA by telephone, facsimile, or electronic mail, within the timeframe given above. A written notice, certified consistent with paragraph III.B.4 of this permit, must be submitted to USEPA and NNEPA within ten (10) working days of the occurrence. All deviations reported under this section must also be identified in the six-month report required under paragraph III.B.1.

4. Any application form, report, or compliance certification required to be submitted by this permit shall contain certification by a responsible official of truth, accuracy, and completeness. All certifications shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

III.C. Stratospheric Ozone and Climate Protection [40 CFR Part 82]

1. Pursuant to 40 CFR Part 82, Subpart E, the permittee shall comply with the standards for the labeling of products using ozone-depleting substances.
 - a. All containers in which a Class I or Class II substance is stored or transported, all products containing a Class I substance, and all products directly manufactured with a Class I substance must bear the warning statement specified in 40 CFR § 82.106 if it is being introduced into interstate commerce.
 - b. The placement of the required warning statement must comply with the requirements of 40 CFR § 82.108.
 - c. The form of the label bearing the required warning statement must comply with the requirements of 40 CFR § 82.110.
 - e. No person may modify, remove, or interfere with the required warning statement except as described in 40 CFR § 82.112.
2. The permittee shall comply with the standards for recycling and emissions reduction pursuant to 40 CFR Part 82, Subpart F, except as provided for the servicing of motor vehicle air conditioners (MVACs) in Subpart B.
 - a. Persons opening appliances for maintenance, service, repair, or disposal must comply with the required practices pursuant to 40 CFR § 82.156.
 - b. Equipment used during the maintenance, service, repair, or disposal of appliances must comply with the standards for recycling and recovery equipment pursuant to 40 CFR § 82.158.
 - c. Persons performing maintenance, service, repair, or disposal of appliances must be certified by an approved technician certification program pursuant to 40 CFR § 82.161.
 - d. Persons disposing of small appliances, MVACs, and MVAC-like appliances must comply with recordkeeping requirements pursuant to 40 CFR § 82.166. ("MVAC-like appliance" is defined at 40 CFR § 82.152.)

- e. Persons owning commercial or industrial process refrigeration equipment must comply with leak repair requirements pursuant to 40 CFR § 82.156.
 - f. Owners/operators of appliances normally containing fifty (50) or more pounds of refrigerant must keep records of when the refrigerant was purchased and added to such appliances pursuant to 40 CFR § 82.166(k).
3. If the permittee manufactures, transforms, destroys, imports, or exports a Class I or Class II substance, the permittee is subject to all the requirements specified in 40 CFR Part 82, Subpart A.
 4. If the permittee performs a service on motor (fleet) vehicles when this service involves an ozone-depleting substance refrigerant (or regulated substitute substance) in the MVAC, the permittee is subject to all applicable requirements as specified in 40 CFR Part 82, Subpart B. The term "motor vehicle," as used in Subpart B, does not include a vehicle for which final assembly has not been completed. The term "MVAC" as used in Subpart B does not include the air-tight sealed refrigeration system used as refrigerated cargo, or the system utilized on passenger buses using HCFC-22 refrigerant.
 5. The permittee shall be allowed to switch from any ozone-depleting substance to any alternative that is listed in the Significant New Alternatives Program promulgated pursuant to 40 CFR § 82, Subpart G.

III.D. Asbestos from Demolition and Renovation [40 CFR § 61, Subpart M]

The permittee shall comply with the requirements of the National Emission Standard for Asbestos, codified in 40 CFR Part 61, Subpart M, for all demolition and renovation projects.

III.E. Compliance Schedule [40 CFR §§ 71.5(c)(8)(iii), 71.6(c)(3)]

1. For applicable requirements with which the source is in compliance, the source shall continue to comply with such requirements.
2. For applicable requirements that will become effective during the permit term, the source shall meet such requirements on a timely basis.

III.F. Chemical Accident Prevention Provisions [CAA § 112(r)(1), (r)(3), (r)(7)] [40 CFR Part 68]

1. The following activities are considered essential and necessary to satisfy the general duty requirements of CAA § 112(r)(1):
 - a. identify hazards which may result from accidental releases, using appropriate hazard assessment techniques;
 - b. design, maintain, and operate a safe facility; and

- c. minimize the consequences of accidental releases if they occur.
2. An owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined under 40 CFR § 68.115, shall comply or shall have complied with the requirements of the Chemical Accident Prevention Provisions no later than the latest of the following dates, pursuant to 40 CFR § 68.10:
 - a. June 21, 1999;
 - b. Three years after the date on which a regulated substance is first listed under 40 CFR § 68.130; or
 - c. The date on which a regulated substance is first present above a threshold quantity in a process.

III.G. Permit Shield [40 CFR § 71.6(f)(1)(i)]

1. Compliance with the conditions of the title V permit shall be deemed compliance with the requirements of 40 CFR Part 60, Subpart Y, Standards of Performance for Coal Preparation Plants, as of the date of permit issuance.

IV. Title V Administrative Requirements

IV.A. Fee Payment [NNOPR Subpart VI] [The NNOPR provision is enforceable by NNEPA only. This provision shall not be considered a term or condition of a Part 71 permit.]

1. The permittee shall pay an annual permit fee in accordance with the procedures outlined below [NNOPR § 603(A), (B)].
 - a. The permittee shall pay the annual permit fee by October 20 of each year.
 - b. The fee payment shall be in United States currency and shall be paid by money order, bank draft, certified check, corporate check, or electronic funds transfer payable to the order of the Navajo Nation EPA Air Quality Control Program.
 - c. The permittee shall send the fee payment and a completed fee filing form to:

Navajo Nation EPA Air Quality Control Program
Operating Permit Program Section
P.O. Box 529
Fort Defiance, AZ 86504

2. The permittee shall submit a fee calculation worksheet form with the annual permit fee by October 20 of each year. Calculations of actual or estimated emissions, and calculation of the fees owed, shall be computed on the fee calculation worksheets provided by the EPA. Fee payment of the full amount must accompany each fee calculation worksheet.
3. The fee calculation worksheet shall be certified by a responsible official consistent with 40 CFR § 71.5(d).
4. Basis for calculating annual fee:

The annual emissions fee shall be calculated by multiplying the total tons of actual emissions of all "fee pollutants" emitted from the source by the applicable emissions fee (in dollars/ton) in effect at the time of calculation. Emissions of any regulated air pollutant that already are included in the fee calculation under a category of regulated pollutant, such as a federally listed hazardous air pollutant that is already accounted for as a VOC or as a PM-10, shall be counted only once in determining the source's actual emissions [NNOPR § 602(A), (B)(1)].

- a. "Actual emissions" means the actual rate of emissions in TPY of any fee pollutant emitted from a part 71 source over the preceding calendar year. Actual emissions shall not include emissions of any one fee pollutant in excess of 4,000 TPY, or any emissions that come from insignificant activities [See NNOPR § 602(B)(1), § 102(5)].
- b. Actual emissions shall be computed using methods required by the permit for determining compliance, such as monitoring or source testing data.
- c. If actual emissions cannot be determined using the compliance methods in the permit, the permittee shall use other federally recognized procedures.
- d. The term "fee pollutant" is defined in NNOPR § 102(24).
- e. The term "regulated air pollutant" is defined in NNOPR § 102(50), except that for purposes of this permit the term does not include any pollutant that is regulated solely pursuant to 4 N.N.C. § 1121 nor does it include any hazardous air pollutant designated by the Director pursuant to 4 N.N.C. § 1126(B).
- f. The permittee should note that the applicable fee is revised each year to account for inflation, and it is available from NNEPA by March 1 of each year.
- g. The total annual fee due shall be the greater of the applicable minimum fee and the sum of subtotal annual fees for all fee pollutants emitted from the source [NNOPR § 602(B)(2)].

5. The permittee shall retain, in accordance with the provisions of 40 CFR § 71.6(a)(3)(ii), all fee calculation worksheets and other emissions-related data used to determine fee payment for five (5) years following the submittal of its fee payment. Emission-related data include, for example, emissions-related forms provided by NNEPA and used by the permittee for fee calculation purposes, emissions-related spreadsheets, and records of emissions monitoring data and related support information required to be kept in accordance with 40 CFR § 71.6(a)(3)(ii).
6. Failure of the permittee to pay fees in a timely manner shall subject the permittee to the assessment of penalties and interest in accordance with NNOPR § 603(C).
7. When notified by NNEPA of underpayment of fees, the permittee shall remit full payment within thirty (30) days of receipt of notification.
8. A permittee who believes an NNEPA-assessed fee is in error and wishes to challenge such fee shall provide a written explanation of the alleged error to NNEPA along with full payment of the NNEPA-assessed fee.

IV.B. Blanket Compliance Statement [CAA § 113(a), (e)(1)] [40 CFR §§51.212,52.12,52.33,60.11(g),61.12, 71.6(a)(6)(i), (ii)]

1. The permittee must comply with all conditions of this Part 71 permit. Any permit noncompliance, including, but not limited to, violation of any applicable requirement; any permit term or condition; any fee or filing requirement; any duty to allow or carry out inspection, entry, or monitoring activities; or any regulation or order issued by the permitting authority pursuant to this part constitutes a violation of the Clean Air Act and is grounds for enforcement action; permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. 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 this permit [40 CFR § 71.6(a)(6)(i), (ii)].
2. Determinations of deviations, continuous or intermittent compliance status, or violations of this permit are not limited to the applicable testing or monitoring methods required by the underlying regulations or this permit; other credible evidence (including any evidence admissible under the Federal Rules of Evidence) must be considered in such determinations [CAA § 113(a), (e)(1); 40 CFR §§ 51.212, 52.12, 52.33, 60.11(g), 61.12].

IV.C. Compliance Certifications [40 CFR § 71.6(c)(5)] [NNOPR § 302(D)] [The NNOPR provision is enforceable by NNEPA only]

1. The permittee shall submit to NNEPA and USEPA Region 9 a semi-annual certification of compliance with permit terms and conditions, including emission limitations, standards, or work practices, postmarked by January 31 and July 31 of each year and covering the previous six-month period ending on December 31 and June 30, respectively. The compliance certification shall be certified as to truth, accuracy, and completeness by the permit-designated responsible official consistent with Section IV.D. of this permit and 40 CFR § 71.5(d) [40 CFR § 71.6(c)(5)].
2. The certification shall include the following:
 - a. Identification of each permit term or condition that is the basis of the certification.
 - b. Identification of the method(s) or other means used for determining the compliance status of each term and condition during the certification period.

If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with CAA § 113(c)(2), which prohibits knowingly making a false certification or omitting material information.

- c. The compliance status of each term and condition of the permit for the period covered by the certification based on the method or means designated above. The certification shall identify each deviation and take it into account in the compliance certification.
- d. A statement whether compliance with each permit term was continuous or intermittent.

IV.D. Duty to Provide and Supplement Information [40 CFR §§ 71.6(a)(6)(v), 71.5(b)]
[NNOPR § 301(E)] [The NNOPR provision is enforceable by NNEPA only]

The permittee shall furnish to NNEPA and USEPA Region 9, within a reasonable time, any information that NNEPA and USEPA Region 9 may request in writing to determine whether cause exists for modifying, revoking, and reissuing, or terminating the permit, or to determine compliance with the permit. Upon request, the permittee shall also furnish to NNEPA and USEPA Region 9 copies of records that are required to be kept pursuant to the terms of the permit, including information claimed to be confidential. Such information may be provided to USEPA Region 9 only, pursuant to 40 CFR § 71.6(a)(6)(v), at the permittee's discretion. Information claimed to be confidential should be accompanied by a claim of confidentiality according to the provisions of 40 CFR Part 2, Subpart B. The permittee, upon becoming aware that any relevant facts were omitted or incorrect information was submitted in the permit renewal application, shall promptly submit such supplementary facts or corrected information. The permittee shall also

provide additional information as necessary to address any requirements that become applicable to the facility after this renewal permit is issued.

IV.E. Submissions [40 CFR §§ 71.5(d), 71.6, 71.9] [NNOPR § 702] [The NNOPR provision is enforceable by NNEPA only]

Any document required to be submitted with this permit shall be certified by a responsible official as to truth, accuracy, and completeness. Such certifications shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete. All documents required to be submitted, including reports, test data, monitoring data, notifications, compliance certifications, fee calculation worksheets, and applications for renewals and permit modifications, shall be submitted to NNEPA and USEPA Region 9, as applicable, at the respective addresses below:

Navajo Nation EPA Air Quality Control Program
Operating Permit Program
P.O. Box 529
Fort Defiance, AZ 86504
and

Director, Air Division (Attn: AIR-1)
EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105

IV.F. Severability Clause [40 CFR § 71.6(a)(5)]

The provisions of this permit are severable, and in the event of any challenge to any portion of this permit, or if any portion is held invalid, the remaining permit conditions shall remain valid and in force.

IV.G. Permit Actions [40 CFR § 71.6(a)(6)(iii)] [NNOPR § 406] [The NNOPR provision is enforceable by NNEPA only]

This permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

IV.H. Administrative Permit Amendments [40 CFR § 71.7(d)] [NNOPR § 405(C)] [The NNOPR provision is enforceable by NNEPA only]

The permittee may request the use of administrative permit amendment procedures for a permit revision that:

1. corrects typographical errors;
2. identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;
3. requires more frequent monitoring or reporting by the permittee;
4. allows for a change in ownership or operational control of a source where the NNEPA determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the NNEPA;
5. incorporates into the Part 71 permit the requirements from preconstruction review permits authorized under an EPA-approved program, provided that such a program meets procedural requirements substantially equivalent to the requirements of 40 CFR §§ 71.7 and 71.8 that would be applicable to the change if it were subject to review as a permit modification, and compliance requirements substantially equivalent to those contained in 40 CFR § 71.6; or
6. incorporates any other type of change which NNEPA has determined to be similar to those listed above in subparagraphs (1) through (5).

IV.I. Minor Permit Modifications [40 CFR § 71.7(e)(1)] [NNOPR § 405(D)] [The NNOPR provision is enforceable by NNEPA only.]

1. The permittee may request the use of minor permit modification procedures only for those modifications that:
 - a. do not violate any applicable requirement.
 - b. do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit.
 - c. do not require or change a case-by-case determination of an emissions limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis.
 - d. do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:

- i. a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I; and
 - ii. an alternative emissions limit approved pursuant to regulations promulgated under CAA § 112(i)(5).
 - e. are not modifications under any provision of CAA, Title I.
 - f. are not required to be processed as a significant modification.
2. Notwithstanding the list of changes eligible for minor permit modification procedures in paragraph (1) above, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by EPA.
3. An application requesting the use of minor permit modification procedures shall meet the requirements of 40 CFR § 71.5(c), and shall include the following:
- (i) a description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;
 - (ii) the source's suggested draft permit;
 - (iii) certification by a responsible official, consistent with 40 CFR § 71.5(d), that the proposed modification meets the criteria for the use of minor permit modification procedures and a request that such procedures be used; and
 - (iv) completed forms for the permitting authority to notify affected states as required under 40 CFR § 71.8.
4. The permittee may make the change proposed in its minor permit modification application immediately after it files such application. After the permittee makes the change allowed by the preceding sentence, and until the permitting authority takes any of the actions authorized by 40 CFR § 71.7(e)(1)(iv)(A) through (C), the permittee must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the permittee need not comply with the existing permit terms and conditions it seeks to modify. If the permittee fails, however, to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.
5. The permit shield under 40 CFR § 71.6(f) may not extend to minor permit modifications [See 40 CFR § 71.7(e)(1)(vi)].

IV.J. Group Processing of Minor Permit Modifications [40 CFR § 71.7(e)(2)]

1. Group processing of modifications by EPA may be used only for those permit modifications that:
 - a. meet the criteria for minor permit modification procedures under paragraph IV.I.1 of this permit; and
 - b. collectively are below the threshold level of ten percent (10%) of the permitted emissions for the emissions unit for which the change is requested, twenty percent (20%) of the applicable definition of major source in 40 CFR § 71.2, or five (5) tons per year, whichever is least.
2. An application requesting the use of group processing procedures shall be submitted to EPA, shall meet the requirements of 40 CFR § 71.5(c), and shall include the following:
 - a. a description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;
 - b. the permittee's proposed draft permit;
 - c. certification by a responsible official, consistent with 40 CFR § 71.5(d), that the proposed modification meets the criteria for use of group processing procedures, and a request from the responsible official that such procedures be used;
 - d. a list of the permittee's other applications awaiting group processing, and a calculation of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under Condition IV.J.1(b) above; and
 - e. completed forms for the permitting authority to use to notify affected states as required under 40 CFR § 71.8.
3. The permittee may make the change proposed in its minor permit modification application immediately after it files such application. After the permittee makes the change allowed by the preceding sentence, and until the permitting authority takes any of the actions authorized by 40 CFR § 71.7(e)(1)(iv)(A) through (C), the permittee must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the permittee need not comply with the existing permit terms and conditions it seeks to modify. However, if the permittee fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

4. The permit shield under 40 CFR § 71.6(f) may not extend to group processing of minor permit modifications [See 40 CFR § 71.7(e)(1)(vi), (e)(2)(vi)].

IV.K. Significant Permit Modifications [40 CFR § 71.7(e)(3)] [NNOPR § 405(E)] [The NNOPR provision is enforceable by NNEPA only]

1. The permittee must request the use of significant permit modification procedures for those modifications that:
 - a. do not qualify as minor permit modifications or as administrative amendments;
 - b. are significant changes in existing monitoring permit terms or conditions; or
 - c. are relaxations of reporting or recordkeeping permit terms or conditions.
2. Nothing herein shall be construed to preclude the permittee from making changes consistent with Part 71 that would render existing permit compliance terms and conditions irrelevant.
3. The permittee must meet all requirements of Part 71 when seeking significant permit modifications. For an application to be determined complete, the permittee must supply all information required by 40 CFR § 71.5(c) for permit issuance and renewal, but only that information that is related to the proposed change [See 40 CFR §§ 71.7(e)(3)(ii), 71.5(a)(2)].

IV.L. Reopening for Cause [40 CFR § 71.7(f)] [NNOPR § 406] [The NNOPR provision is enforceable by NNEPA only]

NNEPA or USEPA shall reopen and revise the permit prior to expiration under any of the following circumstances:

1.
 - a. Additional requirements under the Clean Air Act become applicable to a major Part 71 source with a remaining permit term of three (3) or more years.
 - b. NNEPA or USEPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.
 - c. NNEPA or USEPA determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

2. Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists, and shall be made as expeditiously as practicable.
3. Reopening for cause by NNEPA shall not be initiated before notice of such intent is provided to the Part 71 source by NNEPA at least 30 days in advance of the date that the permit is to be reopened, except that NNEPA may provide a shorter time period in the case of an emergency.
4. Reopening for cause by USEPA shall follow the procedures set forth in 40 C.F.R. § 71.7(g).

IV.M. Property Rights [40 CFR § 71.6(a)(6)(iv)]

This permit does not convey any property rights of any sort, or any exclusive privilege.

IV.N. Inspection and Entry [40 CFR § 71.6(c)(2)]

Upon the presentation of credentials and other documents as may be required by law, the permittee shall allow authorized representatives from NNEPA and USEPA to:

1. enter upon the permittee's premises where a Part 71 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;
2. access and copy, at reasonable times, any records that must be kept under the conditions of the permit;
3. inspect, at reasonable times, any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and
4. sample or monitor, at reasonable times and as authorized by the Clean Air Act, substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

IV.O. Emergency Provisions [40 CFR § 71.6(g)]

1. In addition to any emergency or upset provision contained in any applicable requirement, the permittee may seek to establish that noncompliance with a technology-based emission limitation under this permit was due to an emergency. To do so, the permittee shall demonstrate the affirmative defense of emergency through properly signed, contemporaneous operating logs, or other relevant evidence indicating that:
 - a. an emergency occurred and that the permittee can identify the cause(s) of the emergency;

- b. the permitted facility was at the time being properly operated;
- c. during the period of the emergency, the permittee took all reasonable steps to minimize the levels of emissions that exceeded the emissions standards or other requirements in this permit; and
- d. the permittee submitted notice of the emergency to EPA within two (2) working days of the exceedance of the emissions limitations due to the emergency. This notice must contain a description of the emergency, any steps taken to mitigate the emissions, and any corrective actions taken. This notice fulfills the requirements of Condition III.B.2 of this permit.

In any enforcement proceeding, the permittee attempting to establish the occurrence of an emergency has the burden of proof.

2. An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation and that causes the source to exceed a technology-based emissions limitation under the permit. 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.

IV.P. Transfer of Ownership or Operation [40 CFR § 71.7(d)(1)(iv)]

A change in ownership or operational control of this facility may be treated as an administrative permit amendment if NNEPA determines no other change in the permit is necessary, provided, that a written agreement containing a specific date for the transfer of permit responsibility, coverage, and liability from the current permittee to the new permittee has been submitted to NNEPA.

IV.Q. Off Permit Changes [40 CFR § 71.6(a)(12)] [NNOPR § 404(B)] [The NNOPR provision is enforceable by NNEPA only]

The permittee is allowed to make certain changes without a permit revision, provided that the following requirements are met:

1. No change is addressed or prohibited by this permit;
2. Each change must comply with all applicable requirements and may not violate any existing permit term or condition;
3. Changes under this provision may not include changes or activities subject to any requirement under Title IV or that are modifications under any provision of the CAA, Title I;

4. The permittee must provide contemporaneous written notice to NNEPA and USEPA Region 9 of each change, except for changes that qualify as insignificant activities under 40 CFR § 71.5(c)(11). The written notice must describe each change, the date of the change, any change in emissions or pollutants emitted, and any applicable requirements that would apply as a result of the change;
5. The permit shield does not apply to changes made under this provision; and
6. The permittee must keep a record describing all changes that result in emissions of any regulated air pollutant subject to any applicable requirement not otherwise regulated under this permit, and the emissions resulting from those changes.

IV.R. Permit Expiration and Renewal [40 CFR §§71.5(a)(1)(iii), 71.6(a)(11), 71.7(b), 71.7(c)(1)(i), 71.7(c)(2)(ii), 71.8(d)]

1. This permit shall expire upon the earliest occurrence of one of the following events:
 - a. for sources other than those identified in subparagraph IV.R(1)(a) above, five (5) years elapses from the date of issuance; or
 - b. the source is issued a Part 70 permit by an EPA-approved permitting authority.
2. Expiration of this permit terminates the permittee's right to operate unless a timely and complete permit renewal application has been submitted on or before a date six (6) months prior, but not more than eighteen (18) months prior, to the date of expiration of this permit.
3. If the permittee submits a timely and complete application for a renewal permit, consistent with 40 CFR § 71.5(a)(2), but the permitting authority has failed to issue or deny the renewal permit, the permit shall not expire until the renewal permit has been issued or denied. Any permit shield granted pursuant to 40 CFR § 71.6(f) may extend beyond the original permit term until the permit is renewed or denied.
4. The permittee's failure to have a Part 71 permit is not a violation of this part until NNEPA takes final action on the permit renewal application. This protection shall cease to apply if, subsequent to the completeness determination, the permittee fails to submit, by the deadline specified in writing by NNEPA, any additional information identified as needed to process the application.
5. Renewal of this permit is subject to the same procedural requirements that apply to initial permit issuance, including those for public participation and affected state and tribal review.

6. The application for renewal shall include the current permit number, description of permit revisions and off permit changes that occurred during the current permit term, any applicable requirements that were promulgated and not incorporated into the permit during the current permit term, and any other information required by the application form.